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Judicial Sabbaticals

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JUDICIAL SABBATICALS

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This publication is the product of a study undertaken in furtherance of the Federal Judicial Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been subjected to staff review within the Center, and publication signifies that it is regarded as responsible and valuable. It should be noted, however, that on matters of policy the Center speaks only through its Board.

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SUMMARY

Sabbatical leaves have proven to be a useful concept for providing extended periods of time away from the job for individuals to pursue other needs or interests. The concept has spread from academic and religious institutions to business and industry, law firms, and government.

After surveying these analogies, this staff paper reviews the limited ways in which the concept has been applied to the judiciary. It then discusses the desirability and feasibility of extending judicial sabbaticals further, particularly to the federal judiciary. The principal virtues of such sabbaticals are that they have the potential to improve efficiency and productivity, enhance creativity and reflective powers, provide an opportunity for educational development and professional and personal growth, reduce stress, improve morale, attract a greater number of highly qualified individuals to the bench, decrease attrition (with its attendant costs), and put judges more in touch with the communities whose interests they serve.

Because of these possibilities, the staff paper concludes that sabbatical leaves for judges can be a valuable way to deal with some of the challenges that face the federal judiciary today.

I. BACKGROUND

By letter dated September 20, 1985 to A. Leo Levin, then director of the Federal Judicial Center, First Circuit Judge Frank M. Coffin, chairman of the Committee on the Judicial Branch of the Judicial Conference of the United States, noted that the committee had "occasionally discussed the possibility of exploring the idea of sabbatical opportunities being made available to judges at suitable intervals to avoid or minimize the possibility of 'burn out' and to enhance the continued productivity and creativity of judges."¹ Judge Coffin requested that the Federal Judicial Center "over time . . . assemble, analyze and organize materials that might help [the Committee] focus on feasible, acceptable, and useful ways of implementing the idea."²

Director Levin asked me to undertake this project for the Committee on the Judicial Branch when I was a Judicial Fellow at the Federal Judicial Center from 1985 to 1986. I drafted a report surveying and distilling the relevant materials and raising appropriate items for the committee's consideration, discussion, and inquiry. The report was presented at a meeting of the Committee on the Judicial Branch on January 27, 1986. This staff paper constitutes an updated and expanded version of that report.

1. Letter from Judge Frank M. Coffin to A. Leo Levin (Sept. 20, 1985).

2. Id.

II. INTRODUCTION: THE CONCEPT OF A SABBATICAL LEAVE

A "sabbatical" denotes a period of rest that occurs at regular intervals. The term is thought to be derived from the Hebrew shabat, meaning rest. In Exodus 23:10 and Leviticus 25:1-7 are Biblical references to sabbaticals; indeed, the professions of education and religion have traditionally granted sabbatical leaves based on the historical precedent of ancient Jews who declared a sabbath every seventh year to allow fields and vineyards to remain fallow (as decreed to Moses on Mount Sinai).³

One investigator identified four concerns important in Hebraic history that were addressed by the shabat: (1) spiritual, mental, and physical regeneration for human beings; (2) economic renewal of resources and facilitation of the marketplace; (3) social equity to aid those who were unable to cultivate natural resources; and (4) education of the people about their faith and their purpose in the world.⁴

3. See N. Andreasen, The Old Testament Sabbath (1972); N. Barack, A History of the Sabbath (1965); A. Heschel, The Sabbath (1963); L. Newman, The Sanctity of the Seventh Year (1983); Kimball, The Origin of the Sabbath and Its Legacy to the Modern Sabbatical, 49 J. Higher Educ. 303 (1978). Other authors argue that the concept predates the Hebrew derivation. See, e.g., H. Webster, Rest Days: A Sociological Study (1911).

4. Kimball, supra note 3, at 304.

III. PURPOSES OF A SABBATICAL LEAVE TODAY: THE EXPERIENCE IN ACADEMIA

Some of the notions described above were central to the idea of sabbatical leaves that developed for academic institutions. But differences in whom the sabbatical leave was for (i.e., the individual or the institution) and what it was for (e.g., rest, research, writing, improved teaching skills) were present from the first statements on the subject. For example, President Charles Eliot of Harvard University--the first university to promulgate a formal sabbatical-leave policy, in 1880--said that sabbaticals were for the health, rest, study, and especially the research needs of his faculty.⁵ In 1922, the Special Committee on Sabbatical Leave at Dartmouth College reported the following:

The purpose of sabbatical leave is to render the recipient more useful to the college as a teacher, as an investigator, or as an administrator. Leaves of absence are in nowise to be regarded as increased vacation periods, as primarily opportunities for increased financial advantage to the instructor or as due him upon the ground solely of length of service. They are an investment of college funds designed to increase the efficiency of the teaching force.⁶

Yet many states, such as Louisiana, specifically provide for

5. See W. Eells & E. Hollis, *Sabbatical Leave in American Higher Education: Early History and Current Practices* 10 (1962).

6. Report of the Special Committee on Sabbatical Leave, Dartmouth College (Jan. 23, 1922), quoted in D. Dunlap, *Sabbatical Leave Practices and the Changing Law* 23-24 (unpublished doctoral dissertation, University of Oregon, 1980).

sabbatical leaves for public school teachers "for the purpose of professional or cultural improvement, or for the purpose of rest and recuperation."⁷

Although there has always been some recognition of the benefit that the sabbatical provides to the individual, most of the emphasis in the literature has been on the institutional utility of sabbaticals.⁸ The Association of American University Professors, for example, has stated formally that, for the benefit of the institution's program and development, it is the "obligation of every faculty member" to make use of sabbatical opportunities.⁹ Obviously, however, there is a great deal of overlap in sabbatical goals, for the primary benefit to the institution's academic and research programs derives from the renewal and regeneration of the individual faculty members.¹⁰

7. E.g., La. Rev. Stat. Ann. § 17:1171 (West 1982) (emphasis added); see also id. § 17:1177A (West 1982 & Supp. 1987). The contract between the Board of Education of the City of New York and the United Federation of Teachers, in addition to covering regular sick leave, provides for a special six-month sabbatical leave for stress-related debility or burnout for teachers who have served seven years on a regular appointment. (The typical sabbatical leave for New York City teachers is provided after fourteen years of service.) Agreement Between the Board of Education of the City School District of the City of New York and United Federation of Teachers, Sept. 9, 1984-Sept. 9, 1987, art. 16B (Sabbatical Leaves).

8. See, e.g., A. Eberle & R. Thompson, Sabbatical Leaves in Higher Education 6 (1973).

9. Association of American University Professors, Statement of Principles on Leaves of Absence, 57:4 AAUP Bull. 522 (1971).

10. H. Daugherty, Sabbatical Leaves in Higher Education, 1979, at 64-66 (unpublished doctoral dissertation, Indiana University, 1980); K. Musil, The Legal and Philosophical Implications of Two Conceptualizations of Sabbatical Leave 1-2 (unpublished doctoral dissertation, University of Michigan, 1974).

(These dual goals became clear on a broader scale in 1973, when a national sabbatical-leave program--entitled "A Universal Worker Self-Renewal Program"--was advocated by the H.E.W.-sponsored report, Work in America.¹¹ Both individuals and the country were expected to profit were the concept to be implemented. Multiple advantages were also stressed in "The Parental and Disability Leave Act," first introduced by Representative Patricia Schroeder in 1985.¹²)

11. Report of the Special Task Force to the Secretary of Health, Education, and Welfare, Work in America 129-34 (1973) (providing for a six-month sabbatical every seven years or a one-year sabbatical every fourteen years, at 70 percent of one's salary); see also Lamott, Proposed: That Every American Should Get One Year Off in Every Seven, Esquire, Feb. 1973, at 63; Melching & Broberg, A National Sabbatical System: Implications for the Aged, Gerontologist, Apr. 1974, at 175.

12. H.R. 2020, 99th Cong., 1st Sess. (1985) (requiring employers to provide a four-month leave without pay for a father or mother who chooses to stay at home with a newborn infant, a newly adopted child, or a child who was seriously ill). Subsequent bills on the topic include the following: H.R. 4300, 99th Cong., 2d Sess. (1986) ("Family and Medical Leave Act of 1986"); H.R. 284, 100th Cong., 1st Sess. (1987) ("Family and Medical Leave and Job Security Act of 1987"); H.R. 925, 100th Cong., 1st Sess. (1987) ("Family and Medical Leave Act of 1987"); S. 249, 100th Cong., 1st Sess. (1987) ("Parental and Medical Leave Act of 1987"). For some of the commentary on these proposals, see, e.g., H.R. Rep. No. 699, 99th Cong., 2d Sess., pts. 1 & 2 (1986) (concerning H.R. 4300); Benesch, Debate Looms on Liberalizing Leave for Workers, Wash. Post, July 10, 1986, at A21, col. 2; Blankenhorn, Why Parental Leave Makes Sense, N.Y. Times, Apr. 7, 1987, at A35, col. 1; "Family Rights" for Employees, N.Y. Times, Jan. 20, 1987, at D2, col. 1 (interview with Rep. Schroeder); Goodman, Maternity Leave Is Just the Beginning, Wash. Post, Feb. 1, 1986, at A19, col. 1; Greenhouse, Momentum and "Family Leave", N.Y. Times, Feb. 23, 1987, at A18, col. 4; Lamp, Laws Can't Make Us Good Parents, Legal Times, Dec. 1, 1986, at 11, col. 1; Max, The Need for Parental Leaves, N.Y. Times, Aug. 27, 1986, at A23, col. 1 (noting that "America remains the only industrial nation in the world without a national policy for parental leaves"); Morse, The Hill Debate on Time Off for Children, Wash. Post, May 20, 1987, at B6, col. 1; Should Leaves for Parents Be Mandatory?, N.Y. Times, Dec. 29, 1985, at E16, col. 1; Smeal, How About Paid Leave for Being a Parent?, Wash. Post, Jan. 20, 1987 (Health

IV. CHARACTERISTICS OF SABBATICAL LEAVES IN ACADEMIA

Sabbatical leave policies and procedures vary among academic institutions--some three-quarters of which have sabbatical-leave programs¹³--on many factors, including the criteria for eligibility, the duration and frequency of sabbatical leaves, the amount of financial assistance provided, the activities that are encouraged or discouraged, and the obligations for continued service. I discuss these in some detail, because analogies will have to be made for judicial sabbaticals.¹⁴

A. Criteria for Eligibility

The typical academic sabbatical requires: a certain period

Section), at 6, col. 2; Wolf, New Parents: Job-Protected Leave Law Urged, A.B.A. J., June 1986, at 27.

The federal proposals got a boost when the Supreme Court upheld California's pregnancy-leave law in January 1987. California Federal Savings & Loan Ass'n v. Guerra, 107 S. Ct. 683 (1987); see generally Comment, Beyond Cal Fed: Parenting Leave Possibilities, 10 Harv. Women's L.J. 294 (1987). And Minnesota recently became the first state to require employers to offer parental leave to both the mother and the father of a newborn child, in a law effective August 1, 1987. See Minnesota Law Is Requiring Work Leaves for New Parents, N.Y. Times, June 18, 1987, at A20, col. 4. More than half of the states are considering legislation modeled on Rep. Schroeder's bill. Id.

13. They are afforded at 96 percent of all universities, 84 percent of the four-year colleges, and 60 percent of the two-year colleges. C. Andersen & F. Atelsek, Sabbatical and Research Leaves in Colleges and Universities v, 8 (American Council on Education, Higher Education Panel, Report No. 53, 1982); R. Goodall, Sabbatical Leave Programs in Public Institutions of Higher Education in the United States of America and Australia (unpublished doctoral dissertation, University of Nevada-Reno, 1980).

14. See infra pp. 60-63 (features of sabbatical leaves for federal judges).

of prior service to the institution (commonly six years, but some schools provide for sabbatical leave after as few as three years or as many as ten years); a formal proposal that is reviewed by a committee (although some institutions deem sabbatical leaves to be a matter of right, with no formal proposal requirement at all); the completion of a report at the end of the sabbatical year describing the faculty member's activities; and that not more than a given percentage of the institution's faculty (usually 5 to 7 percent) be on sabbatical at any one time. It should also be noted that, since a major purpose of sabbatical leave is to benefit the institution in the long term, some institutions do not grant sabbatical leaves to faculty members who have less than a certain number of years (usually three or four) left until retirement.

B. Duration and frequency of Leave

Sabbatical leaves are normally granted for up to one year in colleges and universities, and are available thereafter in periods that are equal to the prior-service requirement. Public-school sabbatical leaves are usually granted for up to six months, with a full-year leave being the exception. There is general agreement in the literature that leaves of less than six months tend not to provide the benefits that are deemed to be desirable.¹⁵

15. The same appears to be true in business, see infra note 37, and in law firms, see Long, Sabbatical Leaves from a Jealous Mistress, 59 A.B.A. J. 749, 750 (1973); Taylor, Sabbatical Program in Retrospect, Law Office Econ. & Mgmt., Winter 1981, at 502.

C. Financial Assistance Provided

A crucial distinction must be made between "sabbatical leaves" and "leaves of absence": the former provide compensation; the latter do not. The predominant compensation for sabbatical leaves at colleges and universities is full pay for a one-semester sabbatical or half pay for an academic-year sabbatical. A few schools provide more, such as three-quarters pay for an academic-year sabbatical. Public-school systems usually provide for full salary less the cost of hiring a substitute teacher to replace the faculty member on leave, but in no event will the salary be reduced by more than one-half. Full benefit packages are provided. (Benefits are not usually provided for a leave of absence without pay, although a faculty member can ordinarily pay the school's contribution as well as his or her own to avoid a lapse in coverage, depending on the type of benefit.)

D. Activities that Are Encouraged or Discouraged

The activities that are encouraged or discouraged depend on the perceived advantages of sabbatical leaves at the particular institution: to provide better teaching; to provide increased efficiency; to develop broader professional views; to develop more mature scholarship and enhance one's understanding of culture; to provide rest and a fresh outlook; to provide an inspiration to other teachers; to aid the institution or system in attracting new teachers and retaining present ones; and to assist individual teachers in attaining better positions.¹⁶ Many

16. See, e.g., National Education Association Research

schools stress research projects; many others stress graduate study in pedagogy or in one's substantive field; some allow for a general broadening of one's perspectives (and therefore encourage travel); and a few (especially those that provide for rest and recuperation) place no restrictions at all on the types of activities that one may undertake during the sabbatical leave. Teaching at another institution during the sabbatical, however, is generally discouraged. The Association of American University Professors, for example, has emphasized that heavy teaching duties year after year make maintenance of full vigor, a fresh mind, and broad intellectual interests impossible.¹⁷

E. Obligations for Continued Service

Virtually all academic institutions provide that the faculty member must return to the institution for a specified period. (Some provide for a period of one or two years; others provide for a period equal to twice the length of the sabbatical leave.) If the individual does not return, the institution is entitled to reimbursement of any compensation that was provided. This requirement is more an ethical one than an actual one, however, since few institutions actively seek reimbursement.

Division, Sabbatical Leaves for Public School Teachers 3 (1927).

17. Association of American University Professors, Statement of Principles on Leaves of Absence, 58 AAUP Bull. 244 (1972).

V. SABBATICAL LEAVES IN OTHER AREAS

A. Business and Industry

Because of the perceived advantages of sabbatical leaves in academia, the concept has spread to business and industry.¹⁸ Sabbaticals were first applied in a major way to blue-collar workers when, in 1963, the United Steel Workers won contracts giving senior production workers a thirteen-week "extended vacation" every five years.¹⁹ In the 1975 Bureau of Labor Statistics compilation of major collective-bargaining contracts in effect in business and industry, only sixty-five had educational-leave policies, and none had sabbatical-leave clauses.²⁰ Today, approximately one out of every ten major companies has some form of sabbatical leave.²¹ Typically, they are provided to broaden professional skills, to provide employees with an opportunity for professional growth, to deal with stress and burnout on the job, and to attract and keep workers.²²

As in academia, sabbatical leaves in business and industry range from the structured to the free-form. The structured sab-

18. See, e.g., Rountree, Renew Your Career--Take a Sabbatical, Hosp. & Health Services Ad., Fall 1979, at 67.

19. Goldston, Executive Sabbaticals--About to Take Off?, 51:5 Harv. Bus. Rev. 57, 65 (1973).

20. Bureau of Labor Statistics, U.S. Dep't of Labor, Characteristics of Major Collective Bargaining Agreements, Bull. 1888 (1975).

21. English, Sabbaticals Spread from Campus to Business, U.S. News & World Rep., Jan. 28, 1985, at 79.

22. Id.; see also supra note 12 and accompanying text (parental leave).

batical is the type that is most frequently used, and implies that the time away from the job is preplanned--such as taking courses, teaching, or providing a particular service. IBM, for example, provides a one-year sabbatical, at full pay, for employees to share their knowledge and experience in meaningful ways. Since 1971, more than six hundred employees have taken part, teaching visually impaired, deaf, minority, and other students at more than one hundred sixty institutions.²³ Xerox has long permitted its employees to take sabbaticals for "social responsibility" activities.²⁴ From 1971 to 1981, more than two hundred employees with at least three years of prior service took sabbatical leaves averaging ten months in duration to help minorities, youth, the handicapped, refugees, former convicts, and abused children.²⁵

23. See Harvard Magazine, Nov.-Dec. 1985, at 42-43 (IBM advertisement). Unlike some companies, IBM does not consider its sabbatical program to be a fringe benefit; rather, it is for "personal development The benefits of the [program] are direct and obvious The employee on . . . leave comes back self-renewed, happier and with a broader experience." Healy, The Sabbatical--Executive Style, Dun's, Mar. 1974, at 74, 76 (quoting an IBM executive).

24. Apcar, More Firms Offer Sabbaticals from Jobs, But Sometimes Workers Hate to Return, Wall St. J., Mar. 26, 1985, at 33 (East ed.), 39 (West. ed.). Apcar also reports that Intel Corporation provides eight-week sabbatical leaves for employees who have been with the company for seven years. Further, Tandem Computers, Inc., views the practice of sabbatical leaves as so important that it provides to all of its employees, not just its managers, a six-week sabbatical, with full pay, every four years: "Our position is that everybody works just as hard. They just play a different role on the team." Id. (quoting a Tandem spokeswoman).

25. Moskal, Business Meets Its Social Responsibility, Industry Week, Apr. 20, 1981, at 54; see also Wash. Post, Apr. 29, 1986, at C5, col. 4.

Unstructured sabbaticals are often referred to as free-lance experiences, because they do not follow a preplanned agenda or program. Time, Inc., for example, entitles its employees to one year off at full pay after fifteen years of service, with no restrictions;²⁶ McDonald's employees are given a fully paid eight-week leave of absence for every ten years of full-time service; Rolm Corporation gives twelve weeks off with full pay or six weeks at double pay for six years of employment;²⁷ Chase Manhattan allows one year off in seven for managers and other key employees to "deepen their insights with regard to social relationships."²⁸

Some sabbatical activities, of course, are less directly productive than others. One executive, for example, spent his sabbatical leave playing the major golf courses of the world. Another (the managing director of Morgan Stanley & Co., an investment firm) spent half of his six-month sabbatical leave on a climbing trip in the Himalayas, walking six hundred miles through two hundred villages.²⁹ (He later wrote: "I had a hankering to immerse myself in the wilderness and experience what it would be like to lose touch with this century."³⁰) A Wells Fargo employee

26. Goldston, supra note 19, at 61.

27. English, supra note 21, at 79-80.

28. Cross, How to Take a Mini-Sabbatical, 62:11 Nation's Bus. 54 (1974).

29. McCoy, A Mountaineer's Sabbatical, 16:3 Institutional Investor 13, 15 (1982); McCoy, The Parable of the Sadhu, 61:5 Harv. Bus. Rev. 103 (1983).

30. McCoy, A Mountaineer's Sabbatical, supra note 29, at 16. He spent the other half of his sabbatical as an "executive

expanded a gardening hobby during his sabbatical.³¹ And one employee of Tandem Computers used his sabbatical to attend the Cordon Bleu cooking school in London.³²

No matter what the form, however, in most instances the result of the sabbatical leave is a renewed sense of energy and enthusiasm.³³ Sabbaticals routinely provide a "need for fresh thinking."³⁴ As one commentator has written:

A sabbatical is a pause in one's career which allows time to reflect on the past and plan the future--as a person and a professional. It is not an escape from reality or a "cop out." It should be the time to confront reality and to objectively cope with and decipher those issues which are confusing. It can change an individual's life, restore sagging energy, and be instrumental in improving efficiency on the job. Professional expertise can be enhanced while on a leave of absence. Individuals can sort out their personal priorities, renew their enthusiasm for life and job, and continue their educational development. These triumphs can occur when the person seeks meaningful change, is ready for it and is dedicated to achieving it. The sabbatical can be considered as a flexible tool that will help point the [individual] in the proper direction.³⁵

in residence" at the Stanford Business School and the Center for Ethics and Social Policy at the Graduate Theological Union at Berkeley. Id.

31. English, supra note 21, at 79.

32. Apar, supra note 24.

33. Olmstead, Time Out!--Professors Aren't the Only Ones Who Need Sabbaticals, Savvy, Apr. 1984, at 25.

34. Id. at 26.

35. Rountree, supra note 18, at 69; see also Dana, Taking Time for a Leave of Absence, Wash. Post, Apr. 29, 1986, at C5, col. 1.

One company president--Eli Goldston of Eastern Gas & Fuel Associates--upon returning from a six-month sabbatical (as a Visiting Fellow at the London Graduate School of Business Studies), told of how he had gotten "not [just] a recharged battery, but a new motor."³⁶ He then proceeded to study sabbatical-leave policies at each of the "Fortune 500" industrial companies, and concluded: "When you grant free time to an educated man with an inquisitive mind, he is . . . likely to use it reasonably well and bring benefits to himself, his company, and his social environment."³⁷ This view was echoed by Irwin Miller, chairman of the Cummins Engine Company and a Fellow of the Yale Corporation, who has pointed out that typical successful businessmen

will probably have read their last poem when they leave college. There will be no creation of art that will move them to tears. There will be no shocking condition in the world or tragic event that can cause consuming anger in them or raise genuine righteous indignation [T]heir capacity to feel will slowly be extinguished and only the

36. Goldston, supra note 19, at 63.

37. Id. at 66. He also concluded that a period of six months is the minimum time for a meaningful sabbatical:

The length of a vacation almost requires it to be an island of play in an ocean of work. A six-month sabbatical, on the other hand, presents an opportunity to ease gradually from a person's principal occupation into other consuming interests and then return to that occupation with a basis of knowledge and friendships sufficient to maintain these other interests along with his work.

Id. at 68.

appetites will remain. . . .

Does it seem odd that painting and poetry and music and suffering and great causes and dedication to religion are essential to an effective Organization Man? Well they are for without them he is a half man, half happy, half bored, half effective³⁸

B. Law Firms

The same may be true of attorneys, of whom it has been said that to be only a lawyer is to be only half a lawyer. Although there have been no formal studies of sabbatical-leave programs in law firms, there have been reports in the literature of individual sabbaticals, which are available in both large and small law firms.³⁹

One attorney wrote about his four-month "European adventure."⁴⁰ Another--a securities lawyer at a large firm in Washington, D.C. (Wilmer & Pickering) that offers a six-month sabbatical leave every seven years, without restrictions--spent his time backpacking through Nepal, India, and other Asian countries. He described this as a "humbling, provoking and in some

38. McAdoo, Sabbaticals for Businessmen, Harpers, May 1962, at 40; see also Tsaklanganos, Sabbaticals for Executives, Personnel J., May 1983, at 364, 365. One businesswoman who advocated leaves of absence to have time to slow down and "smell the flowers" wrote after her four-month leave: "Do you have any idea how wonderful it is not to have to be an expert, not to have to have an opinion on these flowers, not to review them, just to walk through them and be dazzled?" Margolis, On Not Going for It, Vogue, Oct. 1985, at 143.

39. See, e.g., Jacobs, On Sabbatical, Nat'l L.J., Apr. 14, 1986, at 1, col. 1; Taylor, supra note 15.

40. Thomson, The Great Escape, Docket Call, Winter 1982, at 6.

ways disturbing experience. The physical distance insured a detachment that provided an opportunity for much reflection and introspection. It raised anew important questions about what I and my fellow lawyers do with our lives and talents."⁴¹ Maurice Nessen, a partner at a large law firm in New York (Kramer, Lowenstein, Nessen, Kamin & Soll) combined a three-month paid sabbatical with a three-month leave of absence without pay to become Acting Attorney in Charge of the Legal Aid Society's Harlem Neighborhood Office, helping to develop an ongoing advocacy training program for the Society's civil attorneys. (He had spent a previous sabbatical as a visiting professor at Columbia Law School.)⁴² Similarly, when Louis Oberdorfer (now a judge of the United States District Court for the District of Columbia) was with the Wilmer firm he took a sabbatical leave to work for the Neighborhood Legal Services Program.⁴³ Other plans for law-

41. Klein, Lawyer Finds New Perspective in Exotic Sabbatical, Legal Times (Washington), Sept. 8, 1980, at 10. At one business meeting after his return, he thought that

[t]here was enough brainpower and energy in that room . . . to run with markedly improved results nearly every village, if not country, [I] had visited over the previous six months. And this talent would neither feed, clothe nor house a single human being in this country, to say nothing about the nearly two billion needy souls whose lands [I] had enjoyed with the bittersweet perspective of a visitor from the "developed" side of our planet.

Id.

42. Hochberger, Model "Pro Bono" Lawyer, N.Y.L.J., Feb. 4, 1980, at 1.

43. See Wash. Post, July 25, 1978, at A10, col. 3; see also Quade, Lawyer Takes Leave to Volunteer His Help, 68 A.B.A. J. 12

yers on sabbatical leave have included studying harmony and counterpoint at the San Francisco Conservatory of Music and being an advisor to the Supreme Court of Afghanistan.⁴⁴

On the value of sabbatical leaves for lawyers, one attorney wrote:

There was a time when a lawyer was able to keep abreast of all the new developments in the law, read the best of recent works of literature, participate actively in bar association and community projects, immerse himself in cultural pursuits or interesting hobbies, and spend time with family and friends. He was or could become a whole person.

In contrast, the lawyer today can scarcely keep abreast of his narrow specialty within the great tide of developing law.⁴⁵

It was important, he thought, "to brush the sediment from entrenched habits and practices, to provide new associations and ideas, and to enlarge perspective and renew the spirit."⁴⁶ In short, the sabbatical leave allows the participant to order his or her own priorities, and adds an important dimension to the individual's life--choice.⁴⁷ It provides the person with "an

(1982).

44. Jacobs, supra note 39 (noting that some firms offer sabbaticals to senior associates as well as to partners; also noting that one firm actually requires partners to take sabbaticals).

45. Long, supra note 15, at 749; see also Weinberg, Teaching Sabbaticals for Practicing Lawyers, 63 A.B.A. J. 643, 645 (1977); infra note 111 and accompanying text; infra note 126.

46. Long, supra note 15, at 749.

47. Id.

opportunity for self-discovery and self-development,"⁴⁸ "an opportunity . . . to make an unhurried assessment of his progress and future goals. From this assessment, he is likely to return with a fresh outlook and new ideas, resulting in his being a more effective lawyer."⁴⁹ From being able to have the time to read good books, or to learn about art or music, or to give time to retarded children, or to discover other cultures, the individual will be in a better position to make more informed social, cultural, and political judgments.⁵⁰

C. Government

Sabbatical leaves are also available in government, both locally⁵¹ and nationally. In the executive branch of the federal government, for example, "[t]he head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness."⁵² The sabbatical leave does not result in the loss of or reduction in pay, other leave to which the appointee would otherwise be entitled, credit for time or

48. Id. at 750.

49. Id. at 749.

50. Id.

51. Sipel, The Merits of Leaving . . . for Awhile, 61:2 Pub. Mgmt. 11 (1979) (article by Palo Alto, California, city manager, who took a six-month leave without pay, but with full benefits).

52. 5 U.S.C. § 3396(c)(1) (1982).

service, or performance or efficiency rating.⁵³ Further, the agency head may authorize travel expenses that are "determined to be essential for the study or experience."⁵⁴

The purposes of these sabbatical leaves are to "[h]elp to meet organizational needs for managerial improvement and increased productivity";⁵⁵ to help members of the Senior Executive Service "keep up-to-date in professional, technical, managerial, sociological, economic and political areas";⁵⁶ and to "meet the individual needs of [Senior Executive Service] members for growth and development--intellectually and personally."⁵⁷

The sabbatical is available after seven years of service at the Senior Executive level,⁵⁸ and after every ten years of service thereafter,⁵⁹ but is unavailable if the appointee is eligible for voluntary retirement with a right to an immediate annuity.⁶⁰ As a condition of being granted a sabbatical leave, the appointee must agree to return to the civil service upon the completion of the sabbatical for a period of two consecutive years.⁶¹ If the person does not return, he or she is liable to

53. Id.

54. Id.

55. 5 C.F.R. § 412.107(d)(2)(i) (1987).

56. Id. § 412.107(d)(2)(ii).

57. Id. § 412.107(d)(2)(iii).

58. 5 U.S.C. § 3396(c)(2)(B) (1982).

59. Id. § 3396(c)(2)(A).

60. Id. § 3396(c)(2)(C); see also 5 U.S.C. § 8336 (1982).

61. 5 U.S.C. § 3396(c)(3)(A) (1982).

the United States for payment of all expenses of the sabbatical, including salary.⁶² Finally, the law provides that the Office of Personnel Management "shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector."⁶³

The provisions of this highly structured sabbatical plan are also available to members of the Defense Intelligence Senior Executive Service,⁶⁴ the Senior Foreign Service,⁶⁵ and teachers in the Department of Defense Overseas Dependent School System whose permanent duty station is in the Republic of Panama.⁶⁶

One other program in the federal government that is analogous to the highly structured type of sabbatical is the "executive exchange," which provides for high-level members of the government and the private sector to work in the other sector for one year. Administered by the President's Commission on Executive Exchange, the work experience of "presidential exchange executives" is placed in the broader context of both federal government and private sector operations and, "to the extent desirable and appropriate, may include exposure to international economic and foreign affairs."⁶⁷ Program participants draw a

62. Id. § 3396(c)(3)(B).

63. Id. § 3396(d).

64. 10 U.S.C. § 1601(a)(7) (1982).

65. 22 U.S.C. § 3984(c) (1982).

66. Id. § 3671(c) (1982).

67. Exec. Order No. 12,493 (Dec. 5, 1984), 3 C.F.R. p. 227

salary of about \$60,000, and the host organization pays travel and moving expenses. (Private sector employers often make up the salary differential for their employees who participate in the public sector.⁶⁸) Regarding the value of the program, an assistant treasurer of Reader's Digest who spent a year in the Office of the Secretary of Health, Education, and Welfare stated: "Many of the business people have led somewhat insular lives. They've been involved with families and jobs and have never taken any real interest in world events. For many, it is a real awakening."⁶⁹

VI. SABBATICAL LEAVES FOR JUDGES

With the foregoing context, it is now appropriate to examine the concept of sabbatical leaves for judges--a concept that has not been a reality in this country in any comprehensive way.

(1985), 49 Fed. Reg. 47,819 (1984).

68. Gamarekian, A Capital Sabbatical, N.Y. Times, Oct. 25, 1981, at § 3 (Business Section), p. 7. There is a requirement that the federal participants remain with the government for three years after the conclusion of their assignments. President's Commission on Executive Exchange, 1985-86 Brochure, at 2.

69. Gamarekian, supra note 68, at 7. There are, of course, appropriate conflict-of-interest safeguards. See 5 C.F.R. § 737.33 (1985); 43 C.F.R. § 20.735-23 (1985); see also 18 U.S.C. § 207 (1982).

A. The Need for Judicial Sabbaticals

1. Morale and Incentive

Instances of concern with judicial morale are too numerous to require extensive discussion or citation. Judges' salaries not only have not kept pace with advances in law and other professions, but they have also not kept pace with the cost of living.⁷⁰ It has been reported, for example, that a veteran state judge in Indiana recently saw his youngest son graduate from law school and move to a Washington law firm at a starting salary that was higher than his own current salary.⁷¹ And an Illinois circuit judge challenged as unconstitutional a provision of the Illinois Constitution that prohibits judges from working at a second job or holding a position of profit.⁷²

Then Chief Justice Warren Burger addressed the inadequacy of judicial compensation for federal judges in his 1985 Year-End Report on the Judiciary:

70. See, e.g., The Report of the Commission on Executive, Legislative, and Judicial Salaries, Quality Leadership: Our Government's Most Precious Asset 14-18 (1986) [hereinafter Quality Leadership]; The Quiet Crisis: A Report by the 1984-85 Commission on Executive, Legislative, and Judicial Salaries 8-13 (1985) [hereinafter The Quiet Crisis]; Goldman, Federal Judges Are Found Not Guilty, N.Y. Times, Apr. 23, 1987, at A27, col. 1.

71. Dove, Crisis in Judicial Morale Generates Study and Action, Benchmarks (Bulletin of the Indiana Judicial Center), Aug.-Sept. 1981, at 1. Retired Chief Justice Burger recently echoed this theme, noting that more than half of his former law clerks were earning more than Supreme Court Justices would under the proposal that became law early in 1987. Greenhouse, Burger Urges Passage of Pay Raises, N.Y. Times, Feb. 3, 1987, at A20, col. 4.

72. Taylor, Tired of Hamburgers, Judge Wants Second Salary, Nat'l L.J., Jan. 5, 1981, at 1. In response to criticism, Judge James Griffin stated: "To hell with public service. Am I supposed to go to the poor house?" Id.

Since I took my present office in 1969, the compensation of federal judges in real dollars has declined by more than one-third, while the salary of the average white-collar worker lost less than 4 percent. The gap between private practice income and judicial salaries has widened so that today the average pay of partners in large law firms is about three times that of the federal judge before whom they appear. Members of the judiciary may be under more pressure than similarly recompensed members of the executive and legislative branches due to the initial financial sacrifice in entering judicial service and the lifetime commitment to the bench that traditionally has held out neither prospect for career advancement nor likelihood of return to the lucrative private sector.⁷³

Chief Justice Burger referred to a recent survey that indicated that 80 percent of the 553 federal judges responding said they were unable to live on their judicial compensation alone.⁷⁴ He also noted that "[m]ore judges have resigned since 1970, when salary erosion accelerated, than during the entire proceeding [sic] 180 years."⁷⁵ Chief Justice William Rehnquist, too, has

73. Burger, 1985 Year-End Report on the Judiciary, at 13 (1985); see also Rehnquist, 1986 Year-End Statement, at 1-2 (1986). In December 1986, the Commission on Executive, Legislative, and Judicial Salaries noted that a federal judge's pay over the past eighteen years, in real dollars, decreased by almost 40 percent. Quality Leadership, supra note 70, at 18, 30.

74. Burger, supra note 73, at 13; see Corporate Committee for Fair Compensation of the Federal Judiciary, Federal Judicial Salaries: A Gamble with the Future (1985).

75. Burger, supra note 73, at 14; see also Feinberg, The Coming Deterioration of the Federal Judiciary, 42 Rec. A.B. City N.Y. 179, 183 (1987) (noting that thirty-nine federal judges resigned between 1976 and 1986, twenty-four of them between 1981 and 1986); Hengstler, Salary Woe, A.B.A. J., July 1986, at 18; Frank, Judges Wanted, A.B.A. J., June 1985, at 25.

noted "the possibility that lawyers will come to see federal judicial service not as a calling but as a stepping stone to a lucrative private practice."⁷⁶ And Second Circuit Chief Judge Wilfred Feinberg referred to the level of federal judicial salaries as "ridiculous,"⁷⁷ "grossly inadequate,"⁷⁸ and a "psychic insult,"⁷⁹ in a recent article entitled The Coming Deterioration of the Federal Judiciary.⁸⁰

If judicial salaries continue to lag, arguably judges should be entitled to sabbatical leaves as an earned privilege, as most law professors and many lawyers are. Beyond the notion of privilege or fringe benefit, however, sabbaticals can provide an important incentive for highly qualified individuals to ascend to the bench and a further incentive to remain there.

2. Health

a. Nature of the Problem of Judicial Stress

At least as important as the morale and incentive factors is that of stress on the bench, for, at the same time that federal judges are suffering from this "quiet crisis"⁸¹ of inadequate

76. Rehnquist, supra note 73, at 2.

77. Feinberg, supra note 75, at 179.

78. Id. at 181.

79. Id. at 179.

80. Feinberg, supra note 75.

81. Burger, supra note 73, at 14; see The Quiet Crisis, supra note 70. Although federal judges' salaries were raised early in 1987, see H.R. Doc. No. 11, 100th Cong., 1st Sess. (1987) (transmitting President's recommendations for executive, legislative, and judicial salaries), the raises did not even come

compensation, "they are working longer hours and more days than ever before but . . . they cannot run fast enough even to stay in the same place."⁸² Are sabbatical leaves therefore an appropriate way to deal with other problems and concerns that are faced by federal judges and the federal judiciary?

Virtually every article or commentary on judicial sabbaticals mentions stress or "burnout"--what Judge Wade McCree, Jr., called the "judicial blahs"⁸³ and Oregon Justice Ralph Holman referred to as life in a "decisional squirrel cage."⁸⁴ This should not be surprising, for, in terms of stress-related illnesses, judges are in a hazardous occupation.⁸⁵

Recommending judicial sabbaticals, former California Chief Justice Rose Bird, for example, said the following about California's trial-court judges:

They are the very backbone of the judicial system, and they are asked to perform almost superhuman tasks every day.

close to the level that was recommended by the Commission on Executive, Legislative, and Judicial Salaries, see Quality Leadership, supra note 70, at 6.

82. Burger, supra note 73, at 3.

83. McCree, Sabbatical Rejuvenation: "A Cure for the Judicial Blahs"?, Legal Times, Nov. 3, 1980, at 10, col. 1, discussed infra at notes 122-27 and accompanying text.

84. Holman, An Experience in Judicial Administration, 51 Judicature 125 (1967); see infra note 148.

85. As an aside, when James Kuhn, vice president for "individuality" at McDonald's Corporation, was trying several years ago to convince his superiors that sabbatical leaves were needed to combat stress, a top company officer in his mid-forties suffered a heart attack. Kuhn's case was then much easier to make. Apar, supra note 24.

They are always the neutral arbiters between two opposing parties, and they get all the crossfire that such a position attracts. They must be dispassionate, objective, and impartial while at the same time remaining compassionate and concerned about the human drama being acted out before them.

Judges must contain and balance many seeming contradictions. They must be gentle but firm, persuasive but tough, merciful but strong. They must do justice to each case before them, but they must do a lot of justice each and every day if the overwhelming volume of work is to be completed. They must remain a part of their community, but they must also maintain a measure of reserve in order to comply with the strictures of the judicial canons of ethics.

That is a lot to ask of any individual, and all of us need to be more sensitive to the pressures that trial court judges face on a daily basis. That sort of wear and tear takes its toll, for this is one area where there is no judicial immunity. Like trial lawyers or anyone else in a high stress environment, trial judges are susceptible to burnout.

We ought to face that fact of judicial life and begin to think seriously about ways to give judges some relief from the unrelenting pressures of their duties. . . . Our trial judges are a unique and invaluable resource. If we do not take steps to preserve them, we will all be diminished by their loss.⁸⁶

86. Chief Justice Suggests Sabbaticals for Judges, 24 Cal. Cts. & Commentary 5 (1984). Federal District Judge John Keenan has noted that the effort of trying to "do the right thing when the situations are very close" can spell anxiety for the judicial newcomer. "You want to make sure you use your power properly and don't abuse it." Werner, Getting the Judge Ready for the Bench, N.Y. Times, Apr. 23, 1983, at B6, col. 3. District of Columbia Superior Court Judge Peter Wolf would concur:

I like being a judge, but there are many times I resent the workload. It is constant, never-ending, tiring, limiting (of one's outlook and activities), and pervasive. Decisions, however close, must be

These impressions have been confirmed empirically. In a recent study of ninety-two general-jurisdiction judges from twenty-five states by the National Judges Health-Stress Research Project (a joint endeavor of the Institute of Law, Psychiatry, and Public Policy of the University of Virginia and the American Academy of Judicial Education),⁸⁷ 71 percent of the judges in the sample were identified as exhibiting strong "Type A" behavior (i.e., highly competitive, always in a hurry, attempting to do more than one thing at a time, very precise, always punctual, reticent to express feelings, etc.).⁸⁸ None of the judges was completely free of Type A behavior, and only 2 percent of the judges were rated as relatively stress-free.⁸⁹ A Washington Post writer reporting on this study said:

made, should be made promptly, and the need for a decision will almost never go away. Time for thorough research is an infrequent luxury. . . . Being a trial judge is a hard and steady use of the mind. . . . He or she can never relax. The judge's mind has to be intently focused on the one case at hand and in some assignments must move through as many as 10 or 20 different cases an hour.

Wolf, "So What's It Like Being a Judge?", 1:4 Wash. Law. 44, 46-47 (1987) (emphasis in original). Judge Wolf added that all of this constant, intense work leads to a "memory overload problem." Id. at 47.

87. Showalter & Martell, Personality, Stress and Health in American Judges, 69 Judicature 82 (1985).

88. Id. at 84.

89. Id. Many commentators suggest that the stress of success is particularly acute for women. See, e.g., H. Braiker, The Type E Woman: How to Overcome the Stress of Being Everything to Everybody (1986).

It sounds like a prescription for disaster: select the kind of men and women most apt to suffer from stress, put them into positions where they must quickly make decisions affecting millions of dollars or the freedom--or even lives--of others, and insulate them from criticism, correction, or a gentle easing aside if they begin to crack.

That is just what the U.S. judicial system does with judges.⁹⁰

Dr. Walter Menninger, senior staff psychiatrist at the Menninger Foundation, who has taught stress-management courses sponsored by the Federal Judicial Center, surveyed federal judges in 1981. Of the 254 judges who responded to his questionnaire, only half felt comfortable with how they handled stress in their lives; 11 percent said that they did not know how to handle that stress.⁹¹ According to Menninger, the sources of judicial stress include workloads, sentencing, dealing with incompetent attor-

90. Moskowitz, Increasing Attention Being Paid to Stress Suffered by Judges, Wash. Post, Dec. 2, 1985 (Business Section), at 25. An early study found that judges and lawyers were twice as likely to die of arteriosclerotic heart disease as were members of a group of similar status, education, and activity level --namely, professors. L. Guralnick, Mortality by Occupation and Cause of Death Among Men 20 to 64 Years of Age, U.S. 1950, in 53 Dep't of Health, Education, and Welfare, Vital Statistics--Special Reports (1963). In 1976, the American Heart Association estimated that the cost of stress-induced cardiovascular disease in the United States was \$26.7 billion a year. Cooper, What's New in . . . Stress, 16:6 Personnel Mgmt. 40 (1984). Although the figure for the judiciary is not available, certainly the cost of replacing and training judges because of retirement, illness, and premature death is not insubstantial.

Business executives also speak of the high cost of inept decisions made by employees who are pushed beyond their competence by stress. Benson & Allen, How Much Stress Is Too Much?, 58:5 Harv. Bus. Rev. 86, 86-87 (1980).

91. Middleton, Judges Told How to Deal with Stress, 67 A.B.A. J. 1100, 1100 (1981).

neys, finances, and family problems.⁹² Also important, but less often stated by judges as causes of stress, were living up to expectations, a struggle over quality and thoroughness, and concern whether the right decisions had been made.⁹³

Isaiah Zimmerman, a clinical psychologist who specializes in judicial stress, notes that judges may have a diminished awareness of stress, stemming from cultural stereotypes: "Judges, probably even more than chief executives or religious leaders, have to live within the strictures of their public image. Judges tend to hold back from expressing fatigue, uncertainty, diminished recall, temporary depression, and other causes for anxiety."⁹⁴ Because judges tend to seal off such awareness, "[l]ater, when under severe stress, they do not pick up warning signals early enough. This can result in irritability and inefficiency. Becoming more self-aware and recognizing the early warning signals can help prevent this."⁹⁵

Zimmerman discusses the commonly shared myth that,

92. Id.; cf. Schwarzer, Dealing with Incompetent Counsel--The Trial Judge's Role, 93 Harv. L. Rev. 633 (1980) (article by federal district judge, Northern District of California).

93. Middleton, supra note 91, at 1100; see also supra note 86; J. Memory, Work Related Stress of State Criminal Trial Court Judges 201 (unpublished doctoral dissertation, Florida State University, 1981). In Memory's study, 59 percent of the responding judges who gave reasons for preferring other work listed stress as a reason.

94. Zimmerman, Stress: What It Does to Judges, and How It Can Be Lessened, 20:3 Judge's J. 5, 6 (1981), reprinted in American Judicature Society, Handbook for Judges 117 (G. Williams & K. Sampson eds. 1984).

95. Id.

no matter how heavy the demands are upon a highly responsible and prestigious person, he or she will continue to produce excellent decisions, maintain a high volume of work, and remain in reasonably good spirits. This is . . . achieved by working longer hours, evenings and weekends, and by postponing vacations. Another part of the myth assumes that this deprivation is temporary and that the judge's family accepts this.⁹⁶

Challenging the myth, Zimmerman explains the stress that is inherent in the judicial career--from a lonely transition from practice or teaching, social isolation, financial pressure, the lack of objective feedback, information and topic overload, mid-life passage, and little control over caseload and clientele⁹⁷--and stress that is inherent in the judicial system--including the bureaucratic processing of cases and the public perception that a judge's schedule is leisurely.⁹⁸

Another psychologist, Bernard Suran, likens judges to doctors, who share "a common set of personality characteristics that are typical of 'supercharged,' achieving individuals in any profession."⁹⁹ These characteristics include an overdeveloped capa-

96. Id.

97. Id. at 6-8; Squires, Learning to Live with Stress, Wash. Post, Apr. 9, 1986 (Health Section), at 12-16; supra note 86 (Judge Peter Wolf's description of the "memory overload problem"); infra text accompanying note 116 (Chief Judge Aubrey Robinson's comments on judicial stress); see also National Center for State Courts, Judicial Burnout: Stress and Coping Among Trial Judges (Mar. 1, 1982) (proposal submitted to Department of Health and Human Services).

98. Zimmerman, supra note 94, at 8-9.

99. Suran, Psychological Disability Among Judges and Other Professionals, 66 Judicature 184, 185 (1982).

city to defer gratification, the focus on goals outside of oneself as a person ("résumé mentality"), and the emphasis on controlling the events and environment in which one lives.¹⁰⁰ Like Zimmerman, Suran finds that many judges focus on external-achievement orientation, rather than on internal self-examination:¹⁰¹

The questions of self-examination become difficult to ask let alone answer. What is it about me that needs tending? Do I manage my feelings well? Why am I subject to depression and anxiety? How satisfying are my relationships? What can I do to make them more satisfying? What really makes me happy?

. . . So many professionals who have focused on external achievements enter the mid-life years with the growing realization of their mortality and vulnerability for which their high achievement, perfectionism, denial of feelings and interpersonal needs leave them ill-prepared and exposed to psychological distress.¹⁰²

The exaggerated need to control one's own environment and events that touch one's life leaves few real friends to count on when stress occurs, and leads as well to an inability to rely on

100. Id.

101. Id. at 187. Henry Kissinger has described the syndrome: "There is the tragedy of the man who works hard all his life for something and then doesn't get it. There is the even more bitter tragedy of the man who gets what he wants and then finds it empty." The Failure of Success 8 (A. Marrow ed. 1972); see also S. Berglass, The Success Syndrome (1986); Goleman, The Strange Agony of Success, N.Y. Times, Aug. 24, 1986, at § 3 (Business Section), pp. 1, 12; compare Volcansek-Clark, Why Lawyers Become Judges, 62 Judicature 166 (1978).

102. Suran, supra note 99, at 188-89 (emphasis in original).

someone else for help; both are necessary in dealing with stress.¹⁰³

b. Effects of Stress

According to the literature, too much stress, by lowering an individual's defenses, can cause or aggravate physical or mental illness, and may produce one or more of the following negative feelings, behavior patterns, psychosomatic effects, and illnesses:

- Negative feelings: rejection, disconnection from others, anxiety, resentment, depression, anger, pessimism, lack of enthusiasm, despondency, and fatigue;
- Behavior patterns: loss of initiative, inability to complete projects, procrastination, loss of motivation, loss of morale, poor concentration, excessive alcohol consumption, excessive smoking, excessive eating, inability to unwind, confusion, loss of sleep, poor memory, irritability, indecisiveness, unfounded egocentric self-confidence, indiscriminate blame-placing, "workaholicism," marital disharmony, erratic behavior, uncontrollable mood swings, apathy, bolstering the least objective alternative, and low productivity;
- Psychosomatic effects: headaches, body aches and pains, skin irritations, reduced sexual drive, and recurrence of previous illness;
- Illnesses: heartburn, spastic stomach, ulcers, high blood pressure, and heart attack.¹⁰⁴

103. Id. at 191.

104. See Nisberg & Label, How to Cope with Stress: A Major Occupational Hazard for Accountants, Practical Accountant, Mar. 1984, at 65, 67; see also I. Janis & L. Mann, Decision Making: A Psychological Analysis of Conflict, Choice, and Commitment 87 (1977); Derogatis, Lipman & Covi, The SCL-90: An Outpatient Psychiatric Rating Scale, 9 Psychological Bull. 13 (1973); Middleton, supra note 91, at 1101; Showalter & Martell, supra note 87, at 85-86; Squires, supra note 97, at 16; Suran, supra note 99, at 187; Zimmerman, supra note 94, at 9.

The particular reaction of an individual to stress depends on the nature of the stressful situation, how the stressful situation is perceived, the individual's resources, and the techniques that are available to the individual for easing the stress.

c. What Can Be Done About Stress?

As a judge once asked Dr. Walter Menninger, "What can I do on the bench that will reduce the urge to scream?"¹⁰⁵

Stress is a fact of judicial life. But burnout does not have to be. A certain amount of stress, in fact, is important to efficiency and performance,¹⁰⁶ part of "the fabric of a rich life."¹⁰⁷ A common definition of stress is that it is "the non-specific response of the body to any demand, whether it is caused by, or results in, pleasant or unpleasant conditions."¹⁰⁸ "It is the [constant] state of being 'on duty.'"¹⁰⁹ The difference between stress and burnout, therefore, is one of degree. The individual's ability to control the amount of stress in his or her life is the factor that determines whether he or she will suffer from burnout.¹¹⁰

105. Middleton, supra note 91, at 1100.

106. The classic work on this is Yerkes & Dodson, The Relation of Strength of Stimulus to Rapidity of Habit Formation, 1908 J. Comp. Neurology & Psychology 459.

107. Squires, supra note 97, at 12 (quoting Dr. Philip Gold, a stress researcher at the National Institute of Mental Health).

108. H. Selye, The Stress of Life 74 (rev. ed. 1976) (emphasis removed).

109. Zimmerman, supra note 94, at 5.

Certainly there is no single method for controlling stress, but studies uniformly show that individuals who have control over their personal situations are better able to cope with stress than those who believe that they have no mastery over their personal lives. Scholars appear to agree that stress-management techniques should be both institutional and individual.

At the institutional level, an environment should be created in which the individuals have: the freedom to vent their emotions; the opportunity to take a day off when they need it, without being seen as irresponsible; the opportunity to take a sabbatical, for the purposes of self-renewal, self-discovery, and self-development; and an improved "quality of life" at work (which may require changes in such items as staffing, case management, compensation, and other benefits).

At the individual level, persons wanting to minimize stress should: get regular physical exercise; change diet to cut down on sugar, salt, caffeine, alcohol, and red meat; learn a systematic method of relaxing; improve planning skills; avoid unhealthy and unnecessary competition; recognize and accept personal limits; avoid becoming indifferent about work; talk out troubles (with one's spouse or a peer, for example); develop and exercise a sense of humor; and have some fun.¹¹¹

110. See generally H. Freudenberger, *Burn-out: The High Cost of High Achievement* (1980); *The Burnout Syndrome: Current Research, Theory, and Interventions* (J. Jones ed. 1981); I. Welsh, D. Madeiros & G. Tate, *Beyond Burnout* (1982).

111. See, e.g., Cobb, *Social Support as a Moderator of Life Stress*, 38 *Psychosomatic Med.* 300 (1976); McMnamin, "Burnout" and Stress in the Office, *Nat'l L.J.*, Dec. 26, 1983, at 15; Middleton, *supra* note 91, at 1101; Nisberg & Label, *supra* note 104,

Writers also agree that, while some of the stress-minimization suggestions are obvious, they are often given only lip service. The crucial point is not merely to acknowledge them, but actually to implement them.¹¹² The goal is to gain control over one's life, to develop a proper balance, to keep life in perspective.

Clearly, a sabbatical leave is one major means by which to accomplish this goal.¹¹³ George Sipel, a former Palo Alto, Cali-

at 67-70; Showalter & Martell, supra note 87, at 86-87; Simmons, Productivity from A to Zzzzzzzz. . ., N.Y. Times, July 6, 1986, at F3, col. 1; Squires, supra note 97, at 16; Suran, supra note 99, at 190-92; Zimmerman, supra note 94, at 8, 49 (presenting a "personal burnout prevention plan" for judges that includes suggestions in four areas: professional, personal, physical, and administrative). An article on the hobbies and pastimes of Australian judges shows some of them hiking ("bushwalking"), growing roses, woodworking, meditating, reading and writing poetry, and engaging in sports activities (such as tennis, skiing, sailing, fencing, and dressage). Siddons, When Judges Adjourn, 60 Law Inst. J. 525 (1986).

112. Nisberg & Label, supra note 104, at 70. It is important to note that the Federal Judicial Center, as part of its regular training for new and veteran judges and other judicial personnel, holds workshops on stress and stress management. See, e.g., Werner, supra note 86. For example, at the Seminar for Bankruptcy Judges that was held in San Diego on January 15-17, 1986, Kenneth C. Crawford, former director of the Center's Continuing Education and Training Division, presented a session on "Managing Stress and Health." The topics included: "how to recognize health danger signals; the stress-work-health connection; what stress is; where it comes from; what it can do; how to prevent its effects; problems with people, performance, overwork, boredom; the stressful personality; [and] stress-proofing yourself." Federal Judicial Center, Seminar for Bankruptcy Judges, Jan. 15-17, 1986, at 4. Judges' spouses are encouraged to accompany them to these sessions. Id. In addition, there are materials on the subject that are available from the Center's media library, including such titles as "How to Manage Stress," "Increasing Productivity Through Stress Management," "Living with Stress," "Management of Stress," "Stress Management: A Positive Strategy," "Power Under Pressure," "Finding Time," "How to Get More Done," and "How to Get Things Done." See Federal Judicial Center, 1987 Catalog of Audiovisual Programs 43, 46-48 (1987).

113. Although my research focused predominantly on the de-

fornia, city manager summed up well the relationship between stress and sabbatical leaves:

A viable alternative to quitting, changing jobs, or being fired is the leave of absence or sabbatical leave. As a strategy for dealing with stress, the leave of absence combines the benefits of "getting away from it all" while minimizing the risks that accompany termination. It provides a way to "suspend" oneself from the rigors of daily employment in order to recharge one's batteries or to assess one's personal and/or professional life. . . . It [also provides an opportunity] to cycle back for education, leisure, short term social service, or government assignments.

I had always been task-oriented, well organized, and highly motivated. One of my objectives during the leave was to . . . refrain from structuring my time. A snowy day at Lake Tahoe when I sat for three hours and just watched the snow fall is one of my most vivid memories of the leave. Unbelievably relaxing! I can't recall ever having relaxed like that before. . . .

I focused on having fun--doing things on the spur of the moment I enjoyed the present instead of constantly planning and preparing for the future. . . .

I approached my return vigorously and creatively. . . . I viewed problems more objectively and independently. I felt unencumbered and was able to provide constructive, aggressive leadership Healthwise, I expect the leave extended my life by several years.

Perhaps most significant to me was the realization that while my job is important

sirability and feasibility of sabbatical leaves for judges, it quickly became clear to me that attention must be paid, and paid immediately, to formulating a plan to deal with stress management for members of the judicial branch, whether such a plan includes judicial sabbaticals or not. Such a decision could be a critical one, affecting both the judiciary as an institution and judges (and others) as individuals.

and I still relish the challenge of work, there are other parts of my life that are equally important. I no longer will allow the job to control me.

Additionally, the [city] council . . . did not have to go through the difficult task of selecting a new manager, with its attendant risks. And they got a revitalized person when I returned.¹¹⁴

In short, a sabbatical leave can help one relax, reflect, rethink, and rejuvenate.

B. Judges' Proposals for Judicial Sabbaticals

When asked what would be the most important single change he would make in the way the federal judiciary operates today, Chief Judge Aubrey Robinson, Jr. of the United States District Court for the District of Columbia answered: "the establishment of sabbatical leave for every federal judge":¹¹⁵

Our judges are working conscientiously, some of them are overworking themselves. We have judges who are workaholics and they just get immersed in what they are doing and they drive everyone around them. But that doesn't make for efficiency necessarily. . . .

[W]e have to remember that in doing this work we are not machines. There are peaks and valleys in our days and in our weeks and

114. Sipel, supra note 51, at 11-14; see supra note 38 and accompanying text.

115. Interview with Chief Judge Aubrey Robinson, Jr., The Third Branch, Feb. 1985, at 10.

in our years. We cannot drive ourselves day in and day out for an extended period of time.

. . . [O]ne needs to have an opportunity to step back and think--to get some perspective. A judge should have the opportunity to explore some areas of the law in depth --those areas that he or she may not previously have had the opportunity to explore. We need to think about what's coming down the line, to determine whether we want to spend the rest of our life on the bench.¹¹⁶

Chief Judge Robinson recommended a sabbatical of "no less than 6 months, ideally 12 months,"¹¹⁷ with eligibility for the leave after ten years on the bench. There would be no conditions placed on the sabbatical (other than to avoid conflicts of interest):

I don't think there should be any requirement that you do anything. I have enough confidence in the integrity of the people to be sure they would avail themselves of the opportunity to do the kinds of things they feel they should do. If it be travel they felt they needed, they would travel; or if it be to study, write, or teach, they would do that. These are the kinds of people, by and large, who have been appointed to the bench. There's a sense of dedication that one has, and it stays; there's a sense of purpose. There need be no restrictions placed at all, just the opportunity.¹¹⁸

Finally, the sabbatical would be fully paid:

116. Id. at 5, 10.

117. Id. at 10.

118. Id.

What I'm talking about, of course, is the epitome; there is little possibility of the acceptance of the suggestion that a judge be paid for doing what he or she wants to do for a year. . . . [Were the sabbatical to be without pay,] there may be some [judges] wealthy enough before they came on the bench who can afford to do what they want to do But we are in a position where, even if we can afford to do it, we can't [because there is no provision even for a leave of absence]. I would like judges to have the opportunity, and that would be a choice each judge would have to make.¹¹⁹

Other influential members or former members of the federal bench have also espoused sabbatical leaves for judges. For example, Judge Albert Tate, Jr., then an associate justice of the Louisiana Supreme Court and later a judge of the United States Court of Appeals for the Fifth Circuit, wrote an article in 1976 supporting the concept of judicial leaves (without pay) "to avoid a . . . narrowing of perspective and preoccupation with routine."¹²⁰ "The purpose will be not only to enrich the judges . . . but [also] to enable them to contribute greater reflective powers . . . to the ultimate enrichment of the judicial systems in which they serve."¹²¹

Wade McCree, Jr., formerly a federal district judge, a judge of the United States Court of Appeals for the Sixth Circuit, and Solicitor General of the United States, recommended sabbaticals

119. Id.

120. Tate, Sabbaticals for Judges?, 60 *Judicature* 8, 8 (1976).

121. Id. at 9.

to remedy the "judicial brain drain."¹²² He wrote that he

had ceased to find [the] job as acutely challenging as it had once been. . . . Even the most satisfying work can begin to cloy. . . . It has been my experience that as the challenge wanes, one begins to focus on the drawbacks of the job, including its isolation and the ever increasing demands of case management [--work that becomes] burdensome through tedious repetition.¹²³

One of the virtues of judicial sabbaticals, he continued, would be rejuvenation of the person, and, therefore, the retention of judges who would be more complete individuals:

Judges and teachers have much in common. Judges are also in important respects like artists. Theirs is an essentially creative endeavor, particularly at the appellate level where we ask our judges to sculpt the law and to oversee its orderly evolution.

Most especially, we ask judges to interpret the law in the light of reason and experience. And yet judges, more than academics, work for the most part in isolation, and are cut off from much of the experience that animates the lives of the people affected by their decisions. That isolation can be exacerbated by the fact that sometimes something Napoleonic overcomes some lawyers when they don the black robe, and it is in everyone's best interest that they take it off once in a while.¹²⁴

122. McCree, supra note 83, at 10.

123. Id.

124. Id. Professor and former Arkansas Supreme Court Associate Justice Robert Lefflar has also drawn the comparison between judges and teachers: "Perhaps we are approaching a time when appellate judges will be expected to have the same intellectual

According to Judge McCree, the kinds of projects that judges could undertake during sabbatical leaves would certainly include teaching or participation in some aspect of the criminal-justice system other than judging--such as working at a halfway house, a drug-rehabilitation program, or a home for wayward youth. "But the kinds of jobs for judges that most intrigue me are the ones that will carry judges farthest from their accustomed moorings, and place them in a position to meet society head on, and challenge them to develop new skills. I would look to commerce, industry, and government," keeping in mind potential conflicts of interest and the separation of powers.¹²⁵ Simply put, what judges need is an "opportunity . . . to decompress."¹²⁶ Judge McCree would not encourage judges to take a position "that would

opportunities [including sabbaticals] throughout their careers as are supposed to be available to law teachers." Leflar, Continuing Education for Appellate Judges, 15 Buffalo L. Rev. 370, 377 (1966); see also infra text accompanying notes 189 & 190.

125. McCree, supra note 83, at 10.

126. Id. Judge Mariana Pfaelzer of the United States District Court for the Central District of California recently addressed an interviewer's question, "What would you like to do if you had some spare time?," as follows:

If I had the time, I'd go back to school. I'd study two things: I'd take some architecture courses and several art courses. . . . But I don't have the time. I don't [even] have the time to do the things I have to do.

Overend, So Says Mariana Pfaelzer, L.A. Times Magazine, Dec. 1, 1985, at 22 (emphasis in original); see also supra text accompanying note 45; supra note 111 and accompanying text; infra note 148 and accompanying text. As Judge Elizabeth Kovachevich of the United States District Court for the Middle District of Florida stated in another context: "We cannot manufacture time; we can only manage the time that we have." Quoted by Chief Justice Burger, Remarks at the Annual Meeting of the American Law Institute, May 15, 1984, at 7.

be constructive and serve them well back on the bench, but that would . . . leave them in need of an immediate second sabbatical."¹²⁷

State and local judges have also supported judicial sabbaticals. Judge Tim Murphy, for example, in his letter of resignation from the District of Columbia Superior Court in 1985, wrote: "Time away from the constant stress of dealing with human conflict and misery, to reflect on one's work and what justice is all about, would surely make for an even stronger and better court. . . . [I]t is presently a matter of 'quit or die' to get a respite. I am opting for the former."¹²⁸ And Wyoming Chief Justice Richard Thomas told the Wyoming Bar Association in 1985 that, because of the pressure of the judicial function, he would urge the state legislature to adopt a plan to allow judicial sabbaticals: "We need to find a way to remove a judge for several months from the daily grind of an endless series of important decisions."¹²⁹

127. McCree, supra note 83, at 10.

128. Bruske, Judge Tim Murphy to Retire--Workload Forced "Quit or Die" Choice, Wash. Post, Feb. 14, 1985, at B4; see also Murphy, Add Sabbaticals to Judges' "Quit or Die" Options, Legal Times, Jan. 13, 1986, at A2, col. 1. Similarly, resigning from the bench after seven years, Texas Municipal Judge Cleve Moten recently stated: "I find every time I get [to the office] it's like stepping onto a treadmill that's going too fast. I think I've done a good job. I just think I have marketable skills and I can do something other than destroy myself." A.B.A. J., July 1987, at 25.

129. UPI Wire Service, Aug. 23, 1985; see also Chief Justice Suggests Sabbaticals for Judges, 24 Cal. Cts. & Commentary 5 (1984) (former California Chief Justice Rose Bird's comments about trial judges, in her 1984 State of the Judiciary message) (quoted supra at text accompanying note 86); Loreto, Leave of Absence for Judges, 10 Judges' J. 53 (1971). Chief Justice

C. Judicial Sabbaticals in Practice

Considering the many benefits and opportunities that judicial sabbaticals can provide, it is surprising that--despite current interest in at least twelve states (Arizona, Colorado, Florida, Louisiana, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Ohio, Utah, and Wyoming) to initiate a provision to permit a leave of absence or a sabbatical leave for judges--only three jurisdictions in the United States--Oregon, Alaska, and Puerto Rico--allow for them in some meaningful form.¹³⁰

Thomas would have retired judges fill in for the judges who were on sabbatical leave. UPI Wire Service, Aug. 23, 1985. For some Oregon judges' and justices' experiences on and views toward sabbatical leaves, see infra notes 147-52 and accompanying text.

130. See National Center for State Courts, Examination of the Judicial Leave Policies in the Fifty States 7 (Feb. 23, 1984) (unpublished memorandum).

Judicial sabbaticals do exist in other countries. In New South Wales, for example, trial and appellate judges are afforded a six-month sabbatical leave with full pay after five years on the bench, or a full year after ten years of service. See Criminal Courts Technical Assistance Project, Report of the Judicial Education Study Group 23-24 (1978). Although it has been reported that Canada offers similar opportunities, id. at 24, sabbatical leaves for Canadian judges are only now being considered seriously. Brief for the Joint Committee on Judicial Benefits of the Conference of Chief Justices and the Canadian Judges Conference to the 1983 Review Commission, at 35 (1983); see also Forer, Oh Canada! Where Judges Go First Class, 25:3 Judges' J. 14, 16 (1986) ("There is confidence that [judicial] sabbaticals for emotional and intellectual refreshment and alleviation of stress and burnout will become a national policy and practice.").

Former United States Solicitor General Erwin N. Griswold has noted that the concept of sabbaticals for judges has its origin with nineteenth-century British judges. Regularly riding circuit to the various colonies, these judges periodically needed time off for home leave. When some of the judicial power was transferred to local judges, to be treated equally, they, too, were given the same time off for "home leave." Personal conversation

If six months or more is the ideal term during which to pursue a sabbatical project or program, then other types of leave provisions--such as annual vacation leave, administrative leave, or sick leave--would not usually be acceptable substitutes. Sixteen states and the District of Columbia have formal provisions that authorize all judges to use a determined amount of annual vacation (from twenty to thirty working days). In the other thirty-four states, the amount of annual vacation that may be taken is within a judge's discretion. "The length of the vacation varies from 2 weeks to 6 weeks and depends of factors such as pending workload, local court policy and the availability of a substitute judge to manage the vacationing judge's workload."¹³¹

Seven states have provisions that recognize that time may be taken beyond annual vacation for administrative-leave purposes (e.g., to attend judicial conferences or programs for continuing judicial education, or to complete reports that are required by courts of last resort or the Administrative Office of the United States Courts). Five states authorize a designated number of days (from four to twenty) for judges to spend at state-sponsored and national education programs, conferences, or speaking engagements. In most states, the amount of time that may be taken for administrative-leave purposes is not specified. The standard practice is to allow judges to attend educational programs and conferences or meetings without charging the time to annual vaca-

with Erwin N. Griswold (Dec. 16, 1985).

131. National Center for State Courts, supra note 130, at 2; see supra note 15 and accompanying text; supra note 37.

tion.¹³²

It is not unusual for a judge to take an extended leave of absence due to illness. Judges have taken sick leave for up to one year in some states, and--with the exception of California--there are no formal guidelines that delineate a period of absence beyond which an inquiry would be made regarding the judge's ability to return and serve competently.¹³³

Finally, in several states judges have received permission from the chief justice or chief judge of the court of last resort to attend judicial-education programs (either as faculty members or as students) that extend from six to eight weeks. The general practice is for a judge to notify the administrative supervisory judge of his or her court and the court of last resort of the desire to take an extended absence, and the purpose of the absence. The request is then reviewed on its merits.¹³⁴

Beyond these provisions, only three jurisdictions--Oregon, Alaska, and Puerto Rico--have formally enacted programs for extended leaves of absence or sabbatical leaves for judges. In addition, the Ohio House of Representatives considered a judicial-sabbatical bill in 1986, and the Institute of Judicial Administration proposed a sabbatical program for judges in 1987. A

132. National Center for State Courts, supra note 130, at 2-3.

133. Id. at 7. The California Rules of Court provide that the presiding judge shall notify the Judicial Performance Committee of a judge's absence due to disability that totals ninety court days or more during any twelve-month period. Id.

134. Id. The Minnesota legislature has enacted legislation in the past to authorize a judge to complete a one-year graduate program at Harvard University. Id.

brief description of each of these programs and proposals follows.

1. The Oregon Experience

Section 1.290 of the Oregon Revised Statutes, enacted in 1965, provides for leaves of absence for "any judge of the Supreme Court, the Court of Appeals, the Oregon Tax Court, any circuit court or any district court."¹³⁵ Upon receiving a written application, the Supreme Court may grant a judge a leave of absence without pay for a period of not more than one year,¹³⁶ and only if it is "satisfied that the administration of justice in Oregon will be enhanced by granting the leave."¹³⁷

Although the provision that the leave be without pay differs from Chief Judge Robinson's proposal¹³⁸--thereby assuring that fewer judges will take advantage of the leave--the statute nevertheless does constitute authorization for a respite from one's judicial duties, authorization that is now lacking in most jurisdictions. Specifically, the statute provides that "[a]bsence on leave by a judge under this section does not create a vacancy in the office to which he was elected or appointed, nor is the judge subject to removal as a consequence thereof."¹³⁹

135. Or. Rev. Stat. § 1.290(1) (1985) (originally enacted in 1965).

136. Id. § 1.290(2). "Application is considered a waiver of salary by the applicant for the period of time he is absent under the leave granted by the court." Id.

137. Id.

138. See supra text accompanying notes 115-19.

Further, for the purpose of computing a judge's length of service for the Judges' Retirement Fund and the Public Employees' Retirement System, any period for which a judge is on leave of absence pursuant to section 1.290 is included.¹⁴⁰

To manage the caseload of the judge who is on leave, a senior judge (i.e., one who retires after twelve or more years of service as a judge of the district court, circuit court, Oregon tax court, court of appeals, or supreme court) is assigned¹⁴¹ or a judge pro tempore (i.e., an active judge of one of the aforementioned courts) is appointed.¹⁴² A senior judge who retired from the supreme court may be assigned to serve on any state court, but a senior judge who retired from a court other than the supreme court may be assigned only to a state court other than the supreme court.¹⁴³ To serve as judge pro tempore of the supreme court, the supreme court may appoint "any regularly elected and qualified judge of the Court of Appeals, Oregon Tax Court or circuit court";¹⁴⁴ to serve as judge pro tempore of the court of appeals, the supreme court may appoint "any regularly elected and qualified judge of the Supreme Court, tax court or circuit court";¹⁴⁵ to serve as judge pro tempore of the tax court, any

139. Or. Rev. Stat. § 1.290(5) (1985).

140. Id. §§ 1.290(6), (8).

141. Id. § 1.300.

142. Id. § 1.600.

143. Id. § 1.300(2).

144. Id. § 1.600(1).

145. Id.

circuit court, or any district court, the supreme court may appoint "any regularly elected and qualified judge of the Supreme Court, Court of Appeals, Oregon Tax Court, circuit court or district court."¹⁴⁶

Since the enactment of the statute in 1965, at least six judges or justices have been granted leaves of absence. In 1965, Associate Justice Kenneth O'Connell spent a year at the Center for Advanced Study in Behavioral Sciences.¹⁴⁷ From January to May 1967, Associate Justice Ralph Holman attended New York University Law School as the first "judge in residence" under the auspices of the Institute of Judicial Administration.¹⁴⁸ In 1974, Chief Justice Arno Denecke taught fall-semester courses on judicial process and bankruptcy at the University of Arizona School of Law.¹⁴⁹ Since then, one trial judge spent an academic

146. Id. § 1.615.

147. For Justice O'Connell's views on judicial sabbaticals, see O'Connell, Continuing Education for the Judiciary, 16 J. Legal Educ. 405 (1964).

148. See Holman, supra note 84. Justice Holman wrote:

It seems ironical that, because of overcrowded dockets, [appellate judicial] work which requires, above all, opportunity for broad, reflective contemplation and study should have developed into a sort of decisional squirrel cage where a judge becomes wholly preoccupied with a gross number of opinions that has to be written.

Id. at 126. He continued: "During the time I had been on the appellate court I had read only one book which was not necessary to a case under consideration." Id. at 127; see also supra note 126.

149. Letter from Loren D. Hicks, Oregon State Court Administrator, to Michael Krell, Vermont Court Administrator (Sept. 13, 1979).

year at Whittier Law School working on projects related to trial practice and judicial administration,¹⁵⁰ another trial judge taught law for a year at Oklahoma City University, and a supreme-court justice took a four-month leave to teach at Arizona State Law School.¹⁵¹ Only in this last case did the media ridicule the judge for not staying at home and attending to judicial business when the court was faced with a heavy caseload.¹⁵²

Each of the Oregon judges and justices who have taken advantage of the leave-of-absence provisions has spent the leave in an academic setting. This is probably so for two reasons: one is that, compared to the practice of law or participation in government, this setting is least likely to raise conflicts of interest; the other is that, compared to traveling or pursuing a hobby --or simply resting--teaching at least provides some financial remuneration.

2. The Alaska Experience

Although it is commonly stated that Oregon is the only state that explicitly provides for extended leaves of absence for its judges, Alaska appears to have the equivalent, at least in some respects.

Rule 28(g) of Alaska's Rules of Court Procedure and Administration allows for leaves of absence of up to one year,¹⁵³ for a

150. Id.

151. Letter from Duane M. Anders, Personnel Director, Oregon Judicial Department, to Kathleen Sampson, Director of Information Services, American Judicature Society (July 25, 1985).

152. Id.

plan that is "related to the administration of justice," such as formal education programs and teaching at educational institutions.¹⁵⁴

The supreme court shall also consider the benefit the Alaska Court System will derive from the leave of absence and the length of time the judge has served. A leave of absence may be granted only if the supreme court is satisfied that the administration of justice in Alaska will not be adversely affected by granting the leave.¹⁵⁵

Although medical benefits remain in force,¹⁵⁶ unlike in Oregon the leave constitutes an interruption in service for retirement and supplemental-benefits purposes.¹⁵⁷

The rule does not specify how a judge's caseload is covered during the period of his or her leave, and there does not appear to have been any leave yet taken pursuant to the rule.

3. The Puerto Rico Experience and Proposal

If the real difference between a sabbatical leave and a leave of absence is that the former is with pay and the latter is not, then there is no state in the United States that allows for

153. 4 Alaska R. Ct. Proc. & Admin. 28(g)(4) (1985). Rule 28(g) went into effect on April 4, 1983 (although it was then numbered rule 28(e)). Telephone interview with Stephanie Cole, Deputy Director, Alaska Court System (July 23, 1987).

154. 4 Alaska R. Ct. Proc. & Admin. 28(g)(3) (1985).

155. Id.

156. Id. 28(g)(8).

157. Id. 28(g)(7).

judicial sabbaticals. The only jurisdiction that comes close to providing them is Puerto Rico.

In 1970, Puerto Rico enacted a statute that provides:

Sabbatical leave shall be granted to the judges of the District Court, Superior Court and Supreme Court with the purpose of offering to the members of the judiciary the opportunity for professional improvement.¹⁵⁸

The Chief Justice of Puerto Rico is hereby empowered to establish the procedure for the petition of sabbatical leave and to adopt any other necessary regulation to enforce this chapter.¹⁵⁹

The only person who was ever granted a sabbatical leave under these provisions was Associate Justice Marco A. Rigau of the Puerto Rico Supreme Court. He was on leave with full pay from May 1, 1977 to May 1, 1978, to write a book. But he was seriously ill for most of that year, and never completed the book. The other justices of the Supreme Court divided Justice Rigau's caseload.¹⁶⁰

No rules or regulations for granting sabbatical leaves were ever passed in furtherance of the statute, however, because the chief justice of Puerto Rico "was never able to get legislative funding for the program, in spite of his repeated request for such funds."¹⁶¹ But a set of sabbatical rules--Reglamento para

158. P.R. Laws Ann. tit. 4, § 251 (1978) (originally enacted in 1970).

159. Id. § 252.

160. Letter from Judge Angel G. Hermida, Puerto Rico Superior Court (Dec. 17, 1985).

la Concesión de Licencias Sabáticas (Rules for Granting Sabbatical Leaves)--was proposed in 1983 and is currently pending before the chief justice of Puerto Rico.¹⁶²

Article 2 of the proposed rules provides that sabbatical leaves may be granted to members of the judiciary for the purpose of study, research, and other activities that will benefit the individual and the judicial branch.¹⁶³ Article 3 lists the specific activities that are covered: postgraduate study or research in law and other disciplines that are related to the judicial process; writing books, articles, or monographs on law and related disciplines; preparation of manuals and materials on the judicial process; serving as a professor at a recognized teaching institution; participating in institutes, seminars, and workshops related to law and similar disciplines; serving as a professor or participant in educational programs of the judicial branch; and travel or other activities that the chief justice of Puerto Rico, in his discretion, certifies as being for professional improvement of the individual or for the benefit of the judicial branch.¹⁶⁴

Article 4 deals with the formation, composition, and duties of the "Sabbatical Committee," which would evaluate the applica-

161. Id.

162. Letter from Rafael J. Torres Torres, Director, Puerto Rico Institute of Judicial Studies (July 14, 1987).

163. Reglamento para la Concesión de Licencias Sabáticas art. 2 (proposed). The textual discussion of these proposed rules is based on my own translation. Any errors in translation, therefore, are mine.

164. Id. art 3.

tions and make recommendations to the administrative director of the courts. The committee would also compile information on interesting sabbatical opportunities for judges.¹⁶⁵

Sabbaticals would be available to all members of the supreme and trial courts who have served for four consecutive years, as well as to municipal judges who have been named to a second term of office.¹⁶⁶ The following criteria would be taken into account in granting sabbatical leaves: the physical and mental states of the candidates; their years of service to the judiciary; the specific sabbatical proposals; the possibilities for professional improvement or for rendering service for the improvement of the judicial branch; the academic preparation of the candidates, as well as their abilities and special skills; and previous sabbaticals that the candidates have been granted.¹⁶⁷

The sabbatical leave could be granted for up to one year, depending on the needs of the judiciary and the particular proposal.¹⁶⁸ Unlike the Oregon program, however, the time on leave under the proposed rules would not count as time in service for the granting of later sabbaticals,¹⁶⁹ nor would it extend the term of one's appointment,¹⁷⁰ although it would count as time in service for all other purposes.¹⁷¹

165. Id. art 4.

166. Id. art 5.

167. Id.

168. Id. art. 7.

169. Id. art. 6.

170. Id. art. 7.

Article 10 deals with compensation. A judge who was on sabbatical leave would receive his or her regular salary. Moreover, the judge could receive other compensation during the leave, as long as the conflict-of-interest rules were followed. The chief justice could condition the approval of a sabbatical leave on the applicant's consent to receive a lower salary (presumably when more judges than the available funds can support at full salary apply for leave in a given year), but in any event the compensation would never be less than 10 percent of the judge's regular salary. The salary would be fixed by the chief justice, taking into account both the other income of the judge and the additional expenses that would be incurred by taking the leave.¹⁷²

Another important section is Article 12, which provides for the obligation to return to the judiciary for a period of not less than twice the term of the sabbatical, except where, for intervening reasons (such as physical incapacity), the chief justice decides otherwise. If the judge did not return when required to do so, he or she would have to reimburse the judicial branch for any compensation that was received.¹⁷³

Finally, upon completion of the sabbatical the judge would have to provide a written report detailing the sabbatical activities.¹⁷⁴

171. Id. art. 11.

172. Id. art. 10.

173. Id. art. 12.

174. Id. art. 13.

Apart from the sabbatical-leave provisions, judges in Puerto Rico are permitted to take leaves of absence without pay. For example, Judge Angel Hermida of the Superior Court of Puerto Rico was a visiting professor at Boston University Law School during the spring 1984 semester, receiving salary from Boston University. The chief justice of Puerto Rico allowed him to combine regular vacation leave with a leave without pay. The chief justice also assigned an "at large" superior court judge to manage Judge Hermida's cases during his absence.¹⁷⁵

4. The Ohio Proposal

In August 1986, a judicial-sabbatical bill was introduced in the Ohio House of Representatives. Under House Bill 1009, judges and justices of all Ohio courts of record would be authorized to apply to the Ohio Supreme Court for a sabbatical leave.¹⁷⁶ During the leave, which could not exceed one year,¹⁷⁷ the judge could engage in legal-education-related teaching or study that would "enhance his legal expertise, administrative capabilities, or judicial skills."¹⁷⁸ The bill further provided that the administration of justice in the state must be enhanced by the leave of absence and that the judge's absence must not "adversely affect the administration of justice" in his or her court.¹⁷⁹

175. Letter from Judge Angel G. Hermida, supra note 160.

176. Ohio H.B. No. 1009, 116th Gen. Ass., Reg. Sess. (1986).

177. Id. § 2701.031(A)(2). Nor could a judge receive more than one leave of absence for sabbatical (i.e., educational) purposes during any six-year term of office. Id. § 2701.031(D).

178. Id.

The chief justice of the Ohio Supreme Court would designate a substitute judge to serve in place of the judge who was on leave,¹⁸⁰ and the leave of absence would not create a vacancy in the office of the judge.¹⁸¹ Moreover, the leave would not extend the term of the judge.¹⁸²

During the leave of absence, the judge would not be entitled to receive any compensation, including salary and fringe benefits,¹⁸³ although the judge could pay the entire cost of maintaining health benefits for the period of the leave¹⁸⁴ and could purchase service credit for purposes of the public-employees retirement system.¹⁸⁵

House Bill 1009 was reported out of the House Judiciary and Criminal Justice Committee on November 12, 1986, by a vote of ten

179. Id. §§ 2701.031(C)(1), 2701.031(C)(2)(b),(c).

180. Id. § 2701.031(F). The substitute would have to be an attorney admitted to practice in Ohio, reside within the territorial jurisdiction of the court, and for at least six years prior to the designation have engaged in the practice of law or served as a judge of any court of record in the United States. Id. The substitute would receive the same compensation, fees, and fringe benefits as would the other judges of the court. Id.

181. Id. § 2701.031(E)(2). A judge on such a leave of absence, however, would be considered as not serving on the court for the purpose of selecting the administrative or presiding judge of the court. Id.

182. Id. § 2701.031(E)(3). In addition, if the judge's term of office expired while he or she was on the leave of absence and the judge sought election to a subsequent term, he or she would have to comply with all of the laws dealing with the nomination and election of a judge to that subsequent term. Id.

183. Id. § 2701.031(E)(1).

184. Id.

185. Id. § 2701.031(H).

to one,¹⁸⁶ but no further action was taken.¹⁸⁷

5. The Institute of Judicial Administration Proposal

In April 1987, the Institute of Judicial Administration (IJA) released a consultant's report on judicial sabbaticals, prepared for the Committee on Judicial Sabbaticals of both the New York State Association of Supreme Court Justices and the American Bar Association Judicial Administration Division's National Conference of State Trial Judges.¹⁸⁸ Recommending that every jurisdiction in the nation adopt judicial-sabbatical legislation, the report emphasized the similarities with academia:

Judges resemble educators in their professional reliance on mental processes. Like teachers, they are expected to be dispensers of wisdom, possessors of vast stores of knowledge, and skilled communicators. Both professionals must be able to analyze and synthesize quantities of related information. Such tasks clearly require time for rest and reflection, as well as time for reading, writing, and research to acquire more knowledge.¹⁸⁹

186. Minutes of the Ohio Judiciary and Criminal Justice Committee, Nov. 12, 1986, at 2.

187. The bill was introduced too late in the 1985-86 legislative session to receive serious consideration. It was not reintroduced in the next session because the judge who had sought introduction of the bill--to take a leave of absence to serve as a judicial fellow at the United States Supreme Court--resigned from his judgeship to accept the fellowship anyway. There was thus no further incentive to proceed with the bill. Telephone interview with JoAnn Marrale, secretary to Ohio Rep. JoLynn Boster (who introduced H.B. 1009) (June 11, 1987).

188. B. Flicker, Judicial Sabbaticals (Institute of Judicial Administration, Apr. 15, 1987) (unpublished consultant's report) [hereinafter IJA Report].

The report went on to note the dissimilarities with academia as well, especially concerning the obligations and isolation of judges:

Judges have an even greater responsibility than teachers. Judges must resolve controversies that affect personal freedom, private property rights, and public welfare. They must exercise judgment and they must do it independently, even when their final decision is the product of a multi-judge court. In addition, judges are isolated from many of the normal activities of society by a strict Code of Judicial Conduct, preventing them from participating in politics, charitable fundraising, fraternizing with formerly close associates in bar association committees, and expressing themselves publicly on controversial legal issues about which they may care deeply.¹⁹⁰

The report proposed that judges be eligible for sabbatical leaves for one year at half pay or six months at full pay after six years of continuous full-time service.¹⁹¹ Eligible judges would apply to their presiding judge, who would evaluate the proposed sabbatical program and the impact of granting the leave on the court's caseload.¹⁹² Applications would not be approved automatically, but would be referred to the state's chief justice for final determination.¹⁹³

Among many other beneficial and enriching activities for

189. Id. at 17-18.

190. Id. at 18.

191. Id. at 19-20, 28, 36.

192. Id. at 20, 36.

193. Id. at 20, 22, 36.

judges on sabbatical leave, the report mentioned: the opportunity for judicial education as teachers or as students; research and study, whether conducted independently or as part of a funded program; membership on a state or national commission to reform the courts or the law; and travel to other jurisdictions to observe and compare practices and procedures.¹⁹⁴ "The goals of the activities selected would be to revive and refresh the judges, expand and invigorate their store of knowledge and experience, and renew their personal contact with the universe outside their courtrooms."¹⁹⁵

Finally, it is important to note that the IJA proposed sabbatical leaves not as a substitute for higher salaries for judges, but rather as a means of making judicial service more spiritually and intellectually rewarding--to give judges who are under extreme stress a chance to regenerate their minds and bodies,¹⁹⁶ returning to their courts more productive and better prepared to handle the complex demands of the judicial role.

194. Id. at 22-28.

195. Id. at 25.

196. Id. at 18. One important factor to consider, the report noted, is "restoration of health, focusing on the problem of stress or burn-out and . . . the applicant's need for regeneration." Id. at 21.

VII. FEATURES OF SABBATICAL LEAVES FOR FEDERAL JUDGES

A. Questions to Consider

On the federal side, there are no provisions for either sabbatical leaves or leaves without pay for judges. In any serious discussion to consider such leaves, therefore, the following questions, among others, must be addressed:

1. Eligibility

Who should be eligible to receive sabbatical leaves? If leaves were to be made available to active district- and circuit-court judges,¹⁹⁷ should provision also be made for non-Article III judges (i.e., bankruptcy judges and magistrates) who would otherwise be qualified?¹⁹⁸

2. Frequency

What period of prior service should be required before the

197. I do not argue that the need for sabbatical leaves is greater for district judges than it is for circuit judges, or vice versa. As discussed throughout this staff paper, there are many good reasons to support judicial sabbaticals--not simply to relieve some of the intensity and stress at the trial level, see, e.g., supra notes 86 & 128 and accompanying text; supra text accompanying notes 116 & 129, or some of the tedium at the appellate level, see supra text accompanying note 123. (This comment is by no means to imply that there is a lack of tedium at the trial level or of intensity and stress at the appellate level. The question is simply one of degree.)

198. The question of sabbatical leaves or leaves of absence for Justices of the Supreme Court is beyond the scope of this paper. Cf. McKay, The Judiciary and Nonjudicial Activities, 35 Law & Contemp. Probs. 9 (1970). Also beyond its scope is the question whether, at some point, sabbatical leaves should be made available to all employees of the judicial branch. See supra note 24 (policy at Tandem Computers).

granting of the first sabbatical leave? What intervening period should be required before the next leave?

3. Duration

How long may the sabbatical leave last? Must the time that is taken be continuous?

4. Compensation

Should the leave be with full salary, partial salary, or no salary at all? If it is at full or partial salary, may the judge earn additional compensation during the leave? If so, should the outside compensation be applied to the costs that are incurred by the government as a result of the sabbatical? Should the judge be permitted to receive a total amount in excess of his or her annual salary?

5. Benefits and Seniority

Should all benefits remain in full force during the leave, or should there be an interruption of some benefits? Should the leave count as time in service for purposes of retirement and seniority?

6. Case Coverage

Who will handle the caseload of the judge who is on leave?

7. Procedures

Should sabbatical leave be available automatically to judges who are eligible, or should there be a formal application pro-

cess? If it is the latter, what procedures should be established for the review of sabbatical applications?

8. Restrictions

Should there be any restrictions on the granting of sabbatical leaves? For example, must a judge propose a formal project or program? If so, what types of projects or programs should qualify? Must the judge present a report at the conclusion of the sabbatical? If so, what use should be made of the report? May a sabbatical leave be granted to relieve burnout and stress, without any formal project or program?

Because of the large number of judges who would qualify for the first round of sabbatical leaves, perhaps in the short term they should be granted based on seniority and for projects or programs that give the judge little flexibility in the timing of the leave.¹⁹⁹ For the long term as well, should there be a maximum number or percentage of judges (e.g., per circuit or per district) who may take a sabbatical at any one time? Should a leave be available if the judge plans to retire or assume senior status within a certain number of years (e.g., four)? If a judge satisfies all of the criteria, may a sabbatical nevertheless be denied if the Chief Justice or the chief judge of the circuit or district believes that the leave would seriously burden the court? If so, how should that burden be defined?

199. The Institute of Judicial Administration has noted that, in New York, at least half of the trial and appellate judges would be immediately eligible for sabbaticals based on continuous years of service alone. IJA Report, supra note 188, at 30-31.

9. Conditions

Must a judge return to the bench after the sabbatical leave? If so, for how long? What penalty should be imposed if the judge does not return for the required period? Can sabbatical leaves accumulate? May a judge perform any judicial duties while on sabbatical leave?

B. The Most Difficult Issues: Cost and Case Coverage

From the perspective of the federal judge, probably the ideal sabbatical leave would be one that is available after a period of from six to ten years of service, lasts for up to one year, is at full salary without an interruption of benefits, has no restrictions on outside income other than those that presently exist,²⁰⁰ and is without any restriction concerning its form. From the perspective of the judiciary as an institution, however, the other considerations that are listed above come into play. Most important are those of cost and case coverage.

It should be noted that I do not purport to have definitive answers to these major questions; rather, I merely note and discuss the various arguments, ideas, and alternatives.

200. E.g., 28 U.S.C. § 454 (1982) (regarding the practice of law); ABA Code of Judicial Conduct, Canon 6 (1980) (regarding the appearance of impropriety). A recent study indicates that most federal judges do, in fact, have outside income. Pike & Speicher, Most U.S. Judges Earn Off-the-Bench Income, Nat'l L.J., July 6, 1981, at 3, 35; see also National Center for State Courts, Incentives for Judges 5 (Oct. 1981) (unpublished memorandum); National Center for State Courts, Judicial Compensation for Quasi-Judicial and Extra-Judicial Activities (Oct. 1980) (unpublished memorandum).

1. Cost

A sabbatical-leave program, of course, does not come without its costs. But the actual direct cost--predominantly, paying the salary of an individual who does not contribute directly to the institution during the period of the sabbatical²⁰¹--may be less than it appears to be at first. In academia, for example, where individuals typically take sabbatical leaves every seventh year, the direct cost is estimated at about only 15 to 30 percent of the teacher's salary, for usually many of the individual's duties can be handled in-house.²⁰²

In addition, along with the direct costs must be considered the direct and indirect benefits and savings to the institution. If a sabbatical leave improves individual morale, creativity, and productivity, for example, the institution certainly profits by it.²⁰³ As the Institute of Judicial Administration recently noted:

The judicial system should benefit from having keener, brighter, and more attuned judges[. This] would be an incidental advantage to the . . . institution of the direct

201. With respect to salary, Judge Albert Tate has written that "the [state] legislature cannot reasonably be expected to pay a salary to a judge who is not actually performing judicial duties." Tate, supra note 120, at 8-9. But state legislatures do pay the salaries of public school and university teachers who are on sabbatical leave. Moreover, as discussed in this section of the text, the state, or federal, government may actually benefit greatly by providing judicial sabbaticals.

202. See H. Daugherty, supra note 10, at 32-34.

203. See, e.g., Criminal Courts Technical Assistance Project, supra note 130, at 22-23 (proposing judicial sabbaticals); English, supra note 21, at 79.

benefit that the individual judges and society would gain from their release from their courtroom[s] into the community for a sabbatical leave.²⁰⁴

Sabbaticals also provide an incentive to attract new and better personnel and to retain existing ones. In the law-firm context, for example, one attorney has written that "[w]hen [the] workload is especially hectic or when the legal problems at hand are not intellectually stimulating at the moment, the sabbatical program can stand out as a promised reward for 'sticking with it.'"²⁰⁵

A benefit like this can also reduce direct costs. Retired Chief Justice Burger has recently noted that "[s]ome estimates suggest that it takes five years for a lawyer, no matter how well-qualified, to reach peak efficiency as a judge in the complex work of today's courts."²⁰⁶ If this is true, then, to the

204. IJA Report, supra note 188, at 24. "We are prepared to adopt a presumption that a judge who has returned from a period of leave for travel, education, research, or equivalent activities will be more valuable to the court." Id. at 35; see also Lamott, supra note 11, at 167 (quoting David Linowes, a certified public accountant):

I could argue that there need not be any extra costs and conceivably could be [substantial savings from a national sabbatical-leave program] [A] renewed employee is a much more productive employee. Not only will he work with much more enthusiasm, and therefore accomplish more, but, by his absence and return, the employee will recognize many of the unnecessary motions he had been performing in the past and thereby rethink his approach to doing the job.

205. Long, supra note 15, at 750; see also supra note 128 and accompanying text.

extent that a sabbatical-leave program reduces attrition of judges, the costs to the judicial system are lessened.²⁰⁷ Further, if a sabbatical leave persuades a judge that the judiciary is not the appropriate place for him or her, the system thereby advances by no longer having on the bench an unmotivated, frustrated person who may not be producing up to capacity.²⁰⁸ Finally, some writers argue that the institution also benefits indirectly from sabbatical-leave programs because they "eliminate the [individual's] need to feel indispensable."²⁰⁹

Considering these benefits and savings, employers who offer sabbaticals in business and industry report that the expense is small, compared to what they get in return.²¹⁰ Some employers see the benefits to the institution as so great, in fact, that they require their employees to take sabbaticals when they are eligible for them.²¹¹

206. Burger, supra note 73, at 3; see also Howard, Judge Harold R. Medina: The "Freshman" Years, 69 Judicature 127 (1985); Werner, supra note 86.

207. "Every time an experienced judge steps down, there is an immeasurable loss of wisdom and expertise to the [judiciary and the] community. . . . I am certain that if I had been able to take a sabbatical or were looking forward to one in the near future, I would still be on the bench." Murphy, supra note 128; see Burton, Healthy Perks Keep Turnover Low, Firms Find, Computer World, Dec. 3, 1984, at 95; English, supra note 21, at 79.

208. See, e.g., Cooper, supra note 90; Dods, Is There a Sabbatical in Your Future?, 45:4 Bus. Q. 30 (1980).

209. Kanter, Is There Life After Partnership?, Barrister, Winter 1983, at 10; Lamott, supra note 11, at 66 (relating view of Dr. John Coleman, then president of Haverford College, who took a sabbatical leave to work at menial jobs for a year).

210. See English, supra note 21, at 79. Wells Fargo Vice President Nancy Thompson stated: "It's worth many times the investment." Id.

2. Case Coverage

Besides the financial cost of the sabbatical leave, how to handle the caseload of the judge who is on leave is another major concern.²¹² Depending on the number of judges who are on sabbatical at any given time, the creative, well-coordinated use of active judges, magistrates,²¹³ senior judges, visiting judges,²¹⁴ and judges sitting by designation (both within a circuit and nationally) may go a long way toward managing the caseload.²¹⁵ As former Federal Judicial Center Director A. Leo Levin wrote regarding visiting judges: "The ability to shift judicial re-

211. See, e.g., Long, supra note 15, at 750; supra note 44.

212. The problems of cost and case coverage are not totally intertwined, for there still would be a caseload problem if judges were to take leaves of absence without pay, rather than sabbatical leaves. Of course, without compensation fewer judges would go on leave, so the coverage problem would be of a lesser magnitude.

213. See C. Seron, The Role of Magistrates: Nine Case Studies (Federal Judicial Center 1985).

214. See D. Stienstra, Visiting Judges in the Federal District Courts (Federal Judicial Center 1985).

215. For the authority to shift judicial resources from one federal court to another, see 28 U.S.C. §§ 291-296 (1982 & Supp. III 1985). In the state context, the Institute of Judicial Administration predicted the following:

To the extent that backlog can be contained and managed by redistributing cases within the court, rotating judges into the busy courts from less overworked courts, and increasing case-handling capability by delegating responsibilities to retired judges, magistrates, referees, special masters, commissioners, and judges pro tem, the backlog and judicial shortage problems can be overcome.

IJA Report, supra note 188, at 31; see also id. at 33-34 (mentioning the use of magistrates and senior judges to alleviate some of the burdens in the federal system).

sources from one federal court to another has contributed significantly to the efficiency of the federal judicial system."²¹⁶ The same is true of senior judges. Chief Justice Burger noted in his 1985 Year-End Report on the Judiciary: "Senior (semi-retired) federal judges, who literally 'work for nothing,' annually contribute the equivalent work of about 70 full-time, active judges. Without the work of the Senior Judges, the federal judicial system would have foundered."²¹⁷

216. Levin, Foreword, in D. Stienstra, supra note 214, at v.

217. Burger, supra note 73, at 3. Chief Judge John Godbold of the United States Court of Appeals for the Eleventh Circuit (now director of the Federal Judicial Center) recently indicated that, in twenty-two weeks of court scheduled from January 1 to June 30, 1986, involving twenty-two three-judge panels, all but one of those panels included a senior judge. Thornton, Senior Judges Stop Working Because of Pension Change, Wash. Post, Jan. 8, 1986, at A2, col. 5; see also Lubasch, At Retirement Age, Federal Judges Help Reduce Court's Caseload, N.Y. Times, Apr. 5, 1987, at 48, col. 1. (Senior Federal District Judge Milton Pollack stated: "I'm a compulsive worker, and I enjoy what I'm doing so much that I would be lost without the long hours and constant challenges." Id.) As the number of federal judges increases, so, too, will the available pool of senior judges. For a review of statutory and other provisions affecting senior judges, see Administrative Office of the United States Courts, Report Concerning the Status of Senior Judges (May 1986).

Another possible source for case coverage is that of "temporary judgeships." While this concept has been enacted by statute in some states, however, see, e.g., supra text accompanying notes 142 & 144-46 (Oregon provisions); see generally Barnett & Rubinfeld, The Assignment of Temporary Justices in the California Supreme Court, 17 Pac. L.J. 1045 (1986); Wildman & Whitehead, A Study of Justice Pro Tempore Assignments in the California Supreme Court, 20 U.S.F. L. Rev. 1 (1985), there is no general federal counterpart. See Note, Federal Recess Appointments, 38 Wash. L. Rev. 453 (1963); Note, Recess Appointments to the Supreme Court -- Constitutional But Unwise?, 10 Stan. L. Rev. 124 (1957); Note, Temporary Appointments to the Federal Judiciary: Article II Judges?, 60 N.Y.U. L. Rev. 702 (1985); cf. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No 98-353, § 202(b), 98 Stat. 333, 347-48 (1984) (codified at 28 U.S.C. § 133 (1982 & Supp. III 1985)) (inter alia, creating seven district judgeships with the provision that "[t]he first vacancies in each

Finally, if various aspects of federal jurisdiction are reduced or eliminated, as Chief Justice Burger and others have proposed--the elimination of diversity-of-citizenship jurisdiction, for example²¹⁸--then the caseload problem would certainly be alleviated, for sabbatical leave and other purposes.

A recent study of faculty leaves in academia, finding that sabbatical leaves and other leaves of absence were immensely important to both the individual and the institution, concluded that "[d]epartments will need to be more creative in finding ways to cover [faculty members on leave], and more careful coordination of leaves likely will be necessary."²¹⁹ The problem of caseload coverage is probably the greatest administrative obstacle to judicial sabbaticals. If sabbatical leaves for federal judges are found to present substantial advantages, however, then creative case management and careful coordination of judges on leave may similarly be necessary.

of the offices of district judge authorized by this subsection, occurring five years or more after the effective date of this Act [July 10, 1984], shall not be filled"); 28 U.S.C. § 372(b) (1982) (procedures for appointment of substitute judge on failure to retire for disability) ("Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled.").

There is the separate problem, of course, of a "permanent vacancy factor" in the federal judiciary. See Committee on the Federal Courts, Remedying the Permanent Vacancy Problem in the Federal Judiciary: The Problem of Judicial Vacancies and Its Causes, 42 Rec. A.B. City N.Y. 374, 374 (1987) (noting an annual loss of at least 75,000 judicial hours by vacancies resulting from retirement, resignation, and death).

218. See, e.g., Burger, supra note 73, at 14-15.

219. Marker, Faculty Leaves, in Issues in Faculty Personnel Policies 41 (J. Fuller ed. 1983).

C. The Idea of a "Mini-Sabbatical"

However much sense it may make for both the individual and the institution, the notion of the "ideal" sabbatical leave for judges, as described above--or even an extended leave of absence without pay--may prove to be infeasible because of cost, case coverage, public perception,²²⁰ or the unlikelihood of congressional approval.²²¹ In that case, one might consider the possibility of a "mini-sabbatical," a period of three or four months away from one's judicial responsibilities. This type of leave would clearly cost less than the full-scale sabbatical, impose less of a burden on the caseload, and might not require congressional approval.

The idea is for the individual to have enough time to provide a meaningful interlude, but not so much time as to burden the system unduly. The time could come, for example, from an accumulation of leave time over several years²²² or from two or

220. Noting that the idea of judicial sabbaticals might cause a "clamor" because of rising judicial costs, an editorial in the National Law Journal nevertheless recommended experimentation with such a plan, because of its potential benefits. Nat'l L.J., May 18, 1987, at 12, col. 1.

221. The Institute of Judicial Administration, as a matter of prudence, if not obligation, recommends obtaining statutory approval for judicial sabbaticals for state judges, IJA Report, supra note 188, at 30, 36, since "[t]he supervisory authority of the state's supreme court might not be broad enough to mandate payment to judges during their sabbatical year or half-year." Id. at 30.

222. Although federal judges are not statutorily held to a fixed number of annual leave days, a judge planning such a sabbatical leave in the foreseeable future might avoid taking extended periods away from the court on nonjudicial business for a particular period preceding the leave, to minimize any burden to the court during the leave.

three months added to a summer court recess (for those courts that have summer recesses), and perhaps could be treated as an administrative matter, requiring only the approval of the chief judge of the circuit or district. Consider the following paragraph from the Minutes of the 1983 Judicial Conference of the Seventh Circuit:

Mr. [Collins] Fitzpatrick [the circuit executive for the United States Court of Appeals for the Seventh Circuit] pointed out the importance of summer recesses of courts. They are necessary to get the judges off the treadmill; judges must be able to see the light at the end of the tunnel. He pointed out that judges are generalists and cannot be expected merely to react and continually face crisis situations. The summer recess encourages judges to push hard to get their work completed. They can then use their precious free time, if any, to read legal and non-legal writings, to reflect and to rest. The goal is for the judges to return to the bench fresh and enthusiastic.²²³

Justice Louis Brandeis said it well: "I could do twelve months' work in eleven months, but not in twelve."²²⁴

223. Minutes of the Annual Judicial Conference of the Seventh Circuit, Chicago, Ill. (May 2-3, 1983).

224. A. Mason, Brandeis 78 (1956) Brandeis wrote in 1893:

[The mind] must be alert and be capable of meeting emergencies, must be capable of the tour de force. This is not possible for him who works along, not only during the day but also much of the night, without change, without turning the mind into new channels, with the mind always at some tension. The bow must be strung and unstrung; work must be measured not merely by time but also by its intensity. There must be a time for that unconscious thinking which comes to the busy

The period of the summer recess itself may simply not be enough in which to obtain the full range of individual benefits that the literature on sabbaticals emphasizes. A mini-sabbatical of three to four months, on the other hand, with full salary and no restrictions, may be a feasible alternative.²²⁵ In that period a judge could have the time to do some serious writing or lecturing, for example, or join a law school faculty for a quarter or a semester²²⁶ (as several Oregon justices and judges²²⁷ and Judge Hermida of Puerto Rico²²⁸ have done)--something more substantial than taking, for instance, a one-day seminar on literary classics in Brandeis University's Legal Studies Program or a one- or two-week course for lawyers and judges at the Harvard Law School, or attending the Aspen Institute for Humanistic Studies for a few weeks in the summer.²²⁹

man in his play.

Id.

225. I am not advocating mini-sabbaticals per se. My research compels me to recommend more substantial (i.e., six-month to one-year) leaves. Nevertheless, mini-sabbaticals could provide another option, experimental or otherwise.

226. See supra note 37. As Sixth Circuit Senior Judge George Edwards has written, "[l]egal writing, lecturing, teaching and studying are antidotes to judicial atrophy." Edwards, Commentary on Judicial Ethics, 38 Fordham L. Rev 258, 275 (1969).

227. See supra text accompanying notes 147-52.

228. See supra text accompanying note 175.

229. Several federal appellate judges have also attended the Graduate Program for Judges at the University of Virginia School of Law. The program requires attendance at six-week summer sessions for two summers. Meador, The Graduate Degree Program for Judges at the University of Virginia, 22:3 Judges' J. 18 (1983). Expenses for federal judges are paid by the program and the Federal Judicial Center. See, e.g., The Third Branch, Jan. 1986, at 2. (Since January 1986, the University of Nevada

VIII. CONCLUSION

In this paper, I have reviewed the concept of sabbatical leaves, from its Mosaic antecedents to its present contexts in academia, business and industry, law firms, and government. Sabbatical leaves have been applied to the judiciary only to a limited extent, however, and not to the federal judiciary at all. Considering their immense value to both the individual and the judicial system, the case for their extension is a strong one.

To summarize, judicial sabbaticals have the potential to:

- improve efficiency and productivity;
- enhance creativity and reflective powers;
- provide the opportunity for educational development and professional and personal growth;
- reduce stress;²³⁰
- improve morale;
- attract a greater number of highly qualified individuals to the bench;
- decrease attrition (with its attendant costs); and
- put judges more in touch with the communities whose interests they serve.

(Reno), in conjunction with the National Judicial College, has offered an advanced degree in "judicial studies," designed exclusively for trial judges. The degree requirements include attendance at two six-week summer sessions and the completion of a thesis. National Judicial College Newsletter, Fall/Winter 1985, at 1; The Third Branch, Mar. 1986, at 2.)

230. See supra note 113 (recommending that a plan be formulated immediately to deal with stress management for members of the judicial branch).

Arguably, these are qualities that no effective, respected judicial system can afford to be without.

Regarding his recommendation for judicial sabbaticals to cure "judicial blahs" and remedy the "judicial brain drain," Judge Wade McCree stated in November 1980: "This proposal . . . may not be an idea whose time has come, but I am convinced that its day will arrive if some of us who recognize its value will engage in the public debate of its merits and demerits."²³¹ Today the time for judicial sabbaticals may or may not have arrived. But the debate is well worth pursuing, and pursuing with dispatch. Too much is at stake when the judicial branch does not function as well as it could. As the Institute of Judicial Administration recently concluded:

The judicial system is always in crisis. But an overloaded system needs the individuals working in it to be at the peak of their ability to deal effectively with their assigned tasks. With suitable regard for the right of the public to the best judicial system the [government] can provide, we urge that a fair judicial sabbatical program . . . be adopted in every jurisdiction in the nation.²³²

Sabbatical leaves for judges can be an important and productive way in which to deal with some of the challenges and minimize or eliminate some of the problems that face the federal judiciary today. Like teachers, judges have enormous influence

231. McCree, supra note 83, at 10.

232. IJA Report, supra note 188, at 37.

both in our society and on our society.²³³ For the society's benefit, therefore, as well as for their own, judges need the precious gifts of time and perspective to sustain their pursuit of judicial excellence. These gifts should be considered necessities, and not luxuries, for those who, in the words of one former federal judge, do "the work of God."²³⁴

233. "A teacher affects eternity; he can never tell where his influence stops." H. Adams, *The Education of Henry Adams* 300 (E. Samuels ed. 1973) (originally published in 1907). On the comparison between judges and teachers, see, e.g., supra note 124 and accompanying text; supra text accompanying notes 189 & 190.

234. Interview with Abraham D. Sofaer, *The Third Branch*, Feb. 1987, at 1, 10.

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

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