Has the Time Come for Judicial Sabbaticals

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Has the time come for judicial sabbaticals?

As in other professions that already offer sabbaticals, sabbaticals for judges have the potential to improve efficiency, reduce stress, and promote personal and professional growth. The ultimate beneficiary will be society itself.

by Ira P. Robbins
"sabbatical" denotes a period of rest that occurs at regular intervals. The term is thought
to be derived from the Hebrew shabat, which was designated as a day of rest.
Exodus 23:10 and Leviticus 25:1-7 contain references to sabbaticals; indeed,
the professions of education and religion have traditionally granted sabbatic-
cal leaves based on the historical prece-
dent of ancient Jews who declared a sabbath every seventh year to allow fields
and vineyards to remain fallow (as de-
creed to Moses on Mount Sinai).1

One investigator identified four con-
cerns important in Hebraic history that
were addressed by the shabat: spiritual,
mental, and physical regeneration for
human beings; economic renewal of re-
sources and facilitation of the market-
place; social equity to aid those who were
unable to cultivate natural resources; and
education of the people about their faith
and their purpose in the world.2

Some of the notions described above
were central to the idea of sabbatical
leaves that developed for academic insti-
tutions. But differences in whom the
sabbatical leave was for (i.e., the indi-
vidual 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 exam-
ple, President Charles Eliot of Harvard
University—the first university to pro-
mulgate a formal sabbatical-leave pol-
icy in 1880—said that sabbaticals were
for the health, rest, study and especially
the research needs of his faculty.3 In 1922,
the Special Committee on Sabbatical
Leaves 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 admin-
istrator. 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 col-
lege funds designed to increase the effi-
ciency of the teaching force.4

Yet many states, such as Louisiana, spe-
cifically provide for sabbatical leaves for
public school teachers ‘for the purpose of
professional or cultural improvement, or
for the purpose of rest and recuperation.’5

Although there has always been some
recognition of the benefit that the sab-
batical provides to the individual, most
of the emphasis in the literature has been
on the institutional utility of sabbati-
cals.6 The Association of American Uni-
viversity Professors, for example, has stated
formally that, for the benefit of the insti-
tution’s program and development, it is
the ‘obligation of every faculty member’
to make use of sabbatical opportunities.7

Obviously, however, there is a great deal
of overlap in sabbatical goals, for the
primary benefit to the institution’s aca-
demic and research programs derives
from the renewal and regeneration of the
individual faculty members.8

(These dual goals became clear on a
broader scale in 1973, when a national
sabbatical-leave program—entitled “A
Universal Worker Self-Renewal Pro-
gram”—was advocated by the H.E.W.-
sponsored report, Work in America.9 Both
individuals and the country were ex-
pected to profit if the concept was to be
implemented. Multiple advantages were
also stressed in “The Parental and Dis-
ability Leave Act,” first introduced by Re-
presentative Patricia Schroeder in 1985.10)

Academic sabbaticals

Sabbatical leave policies and procedures
vary among academic institutions—
some three-quarters of which have sab-
batical-leave programs—on many fac-
tors, including the criteria for eligibility,
the duration and frequency of sabbatical
leaves, the amount of financial assis-
tance provided, the activities that are
encouraged or discouraged, and the ob-
ligations for continued service.

Eligibility. The typical academic sab-
batical requires: a certain period of prior
service to the institution (commonly six
years, but this can vary between three and
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); the completion of a report
at the end of the sabbatical year describ-
ing the faculty member’s activities; and
that not more than a given percentage of
the institution’s faculty (usually 5 to 7 per
cent) 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.

Duration and frequency. Sabbatical
leaves are normally granted for up to one
year in colleges and universities and are
available thereafter following periods
that are equal to the prior-service re-
quirement. 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

2. Id. at 304.
6. 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
stressed-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 14 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. 8, 1987, art. 16B (Sabbatical Leaves).
7. See, e.g., Eberle & Thompson, Sabbatical Leaves in Higher Education 6 (1973).
8. Association of American University Profes-
month sabbatical every seven years or a one-year sabbatical every 14 years at 70 percent of one’s salary).
11. H.R. 2020, 99th Cong., lst 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 is seriously ill). Subsequent bills on the topic followed.
the literature that leaves of less than six months do not provide the benefits deemed to be desirable.11

Financial assistance provided. A crucial distinction must be made between “sabbatical leaves” and “leaves of absence.” The former provides compensation; the latter does 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. 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 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.)

Activities that are encouraged or discouraged. Activities that are encouraged or discouraged depend on the perceived advantages of sabbatical leaves at the particular institution, including: 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. Many schools stress research projects; others stress graduate study in pedagogy or in one’s substantive field; some allow for a general broadening of one’s perspectives; and a few place no restrictions on the types of activities that one may undertake during the sabbatical leave. Teaching at another institution during the sabbatical, however, is generally discouraged.

Obligations for continued service. Virtually all academic institutions require that the faculty member return to the institution for a specified period. If the individual does not return, the institution is entitled to reimbursement of any compensation. This requirement is more an ethical one than an actual one, however, since few institutions actively seek reimbursement.

Sabbaticals in other areas
Business and industry. Because of the perceived advantages of sabbatical leaves in academia, the concept has spread to business and industry.12 Sabbaticals were first applied in a major way to blue-collar workers when, in 1961, the United Steel Workers won contracts giving senior production workers a 13-week “extended vacation” every five years.13 In the 1973 Bureau of Labor Statistics compilation of major collective-bargaining contracts in effect in business and industry, only 65 had educational-leave policies, and none had sabbatical-leave clauses.14 Today, approximately one out of every ten major companies has some form of sabbatical leave.15

As in academia, sabbatical leaves in business and industry range from the structured to the free-form. The structured sabbatical is most frequently used, and implies that the time away is pre-planned, such as taking courses, teaching, or providing a particular service. Xerox, for example, has long permitted its employees to take sabbaticals for “social responsibility” activities.16 From 1971 to 1981, more than 200 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.17

Unstructured sabbaticals are often referred to as freelance 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 15 years of service, with no restrictions;18 McDonald’s employees are given a fully paid eight-week leave of absence for every ten years of full-time service.

Some sabbatical activities are less directly productive than others. One executive, for example, spent his sabbatical leave playing the major golf courses of the world. Another spent half of his six-month sabbatical leave on a climbing trip in the Himalayas, walking 600 miles through 200 villages.

No matter what the form, however, in most instances the result of the sabbatical leave is a renewed sense of energy and enthusiasm.19 Sabbaticals routinely provide a “need for fresh thinking.”20 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.21

Irwin Miller, chairman of the Cummins Engine Company and a fellow of the Yale Corporation, has pointed out that typical successful businessmen

18. Goldston, supra n. 11, at 61.
20. Id. at 26.
21. Rountree, supra n. 12, at 69.
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 appetites will remain...

Does it seem odd that painting and poetry and music and suffering and great events - spending his time backpacking through Nepal, India, and other Asian countries. He described this as a "humbling, provoking and in some 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."25

On the value of sabbatical leaves for lawyers, another 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 do without the sabbatical to keep abreast of his narrow specialty within the great tide of developing law.26

It was important, he thought, "to brush the sediment from encrusted habits and practices, to provide new associations and ideas, and to enlarge perspective and renew the spirit."27 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.28

Government. Sabbatical leaves are also available in government, both locally 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."29 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 service, or performance or efficiency rating.30 Further, the agency head may authorize travel expenses that are "determined to be essential for the study or experience."31

The purposes of these sabbatical leaves are to "help to meet organizational needs for managerial improvement and increased productivity";32 to help members of the Senior Executive Service "keep up-to-date in professional, technical, managerial, sociological, economic and political areas";33 and to "meet the individual needs of [Senior Executive Service] members for growth and development - intellectually and personally."34

The sabbatical is available after seven years of service at the senior executive level,35 and after every ten years of service thereafter,36 but is unavailable if the appointee is eligible for voluntary retirement with a right to an immediate annuity.37 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.38 If the person does not return, he or she is liable to the United States for payment of all expenses of the sabbatical, including salary.39 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."40

Another 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."42

Sabbaticals 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. One of the first issues to be explored is the need for judicial sabbaticals, including morale, incentive, and health problems.

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.43 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.44 Then-Chief Justice Warren Burger addressed the inadequacy of compensation for federal judges in his 1985 Year-End Report on the Judiciary:

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 per cent. The gap between private practice income and judicial salaries has widened so that today the average pay of partners in large law firms is more than three times that of the federal judge before whom they appear.45 Chief Justice Burger referred to a recent survey that indicated that 80 per cent of the 553 federal judges responding said they were unable to live on their judicial compensation alone.46 He also noted that “[m]ore judges have resigned since 1970, when salary erosion accelerated, than during the entire proceeding [sic] 180 years.”47 Chief Justice William Rehnquist, too, has 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.”48

If judicial salaries continue to lag, arguably judges should be entitled to sabbatical leaves as an earned privilege, as are most law professors and many lawyers. 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.

Health. At least as important as the morale and incentive factors is that of stress on the bench, for at the same time that judges are suffering from this "quiet crisis"49 of inadequate 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."50 Are sabbaticals leaves therefore an appropriate way to deal with other problems and concerns that are faced by judges and the judiciary?

Virtually every article or commentary on judicial sabbaticals mentions stress or "burnout"—what Judge Wade McCree, Jr. called the "judicial blahs"51 and Oregon Justice Ralph Holman referred to as life in a "decisional squirrel cage."52 This should not be surprising, for, in terms of stress-related illnesses, judges are in a hazardous occupation.

These impressions have been confirmed empirically. In a recent study of 92 general-jurisdiction judges from 25 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),53 71 per cent 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.).54 None of the judges were completely free of Type A behavior, and only 2 per cent of the judges were rated as relatively stress-free.55

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 per cent said that they did not know how to handle that stress.56

According to Menninger, the sources of judicial stress include workloads, sentencing, dealing with incompetent attorneys, finances, and family problems.57 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.58

Isaiah Zimmerman, a clinical psychologist who specializes in judicial stress,

47. Burger, supra n. 45, at 14.
49. Burger, supra n. 45, at 14; see The Quiet Crisis, supra n. 45.
50. Burger, supra n. 45, at 3.
52. Holman, An experience in judicial administration, 51 JUDICATURE 125 (1967).
54. Id. at 84.
55. Id.
58. Middleton, supra n. 56, at 1100.
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."59

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."60 These characteristics include an overdeveloped capacity 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.61 Like Zimmerman, Suran finds that many judges focus on external-achievement orientation, rather than on internal self-examination.62

Clearly, a sabbatical leave is one major means by which to minimize stress.63 George Sipel, a former Palo Alto, California 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 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.64

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

Judges' proposals for 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."65

Chief Judge Robinson recommended a fully paid sabbatical of "no less than 6 months, ideally 12 months,"66 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. The sabbatical would be fully paid.

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."67 "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."68

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 to remedy the "judicial brain drain."69 He wrote that one of the virtues of judicial sabbaticals would be rejuvenation of the person, and, therefore, the retention of judges who would be more complete individuals. 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."70 Judge McCree would not encourage judges to take a position "that would be constructive and serve them well back on the bench, but that would...leave them in need of an immediate second sabbatical."71

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."72
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.

**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 12 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 (Oregon, Alaska, and Puerto Rico) allow for them in some meaningful form.

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 20 to 30 working days). In the other 34 states, the amount of annual vacation that may be taken is within a judge’s discretion.

"The length of the vacation varies from two weeks to six weeks and depends on factors such as pending workload, local court policy and the availability of a substitute judge to manage the vacationing judge’s workload." 73

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 4 to 20) 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 vacation.

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.

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.

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 brief description of each of these programs and proposals follows.

**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.”

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, and only if it is “satisfied that the administration of justice in Oregon will be enhanced by granting the leave.” 80

Although the provision that the leave be without pay differs from Chief Judge Robinson’s proposal discussed earlier, 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.” 81 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.

To manage the caseload of the judge who is on leave, a senior judge (i.e., one who retires after 12 or more years of service as a judge of the district court, circuit court, Oregon tax court, court of appeals, or supreme court) is assigned or a judge pro tempore (i.e., an active judge of one of the aforementioned courts) is appointed.

Since the enactment of the statute in 1965, at least six judges or justices have been granted leaves of absence. Each of the 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 provides some financial remuneration.

The Alaska experience. Alaska also provides extended leaves of absence for judges, 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, for a plan that is "related to the administration of justice," such as formal education programs and teaching at educational institutions.

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

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.

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 no state in the United States allows for 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.

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.90

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 funds."91 But a set of sabbatical rules—Reglamento para 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.92

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.93 Article 3 lists the specific activities that are covered: postgraduate study or research in law and similar 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.

Article 4 deals with the formation, composition, and duties of the "Sabbatical Committee," which would evaluate the applications and make recommendations to the administrative director of the courts. The committee would also compile information on interesting sabbatical opportunities for judges.

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. 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.

The sabbatical leave could be granted for up to one year, depending on the needs of the judiciary and the particular proposal. 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, nor would it extend the term of one's appointment, although it would count as time in service for all other purposes.

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, but the compensation would never be less than 10 per cent 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.

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

Apart from the sabbatical-leave provisions, judges in Puerto Rico are permitted to take leaves of absence without pay.94

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.95 During the leave, which could not exceed one year,96 the judge could engage in legal-education-related teaching or study that would “enhance his legal expertise, administrative capabilities, or judicial skills.”97 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.98

The chief justice of the Ohio Supreme Court would designate a substitute judge to serve in place of the judge who was on leave,99 and the leave of absence would not create a vacancy in the office of the judge.100 Moreover, the leave would not extend the term of the judge.101

During the leave of absence, the judge would not be entitled to receive any compensation, including salary and fringe benefits,102 although the judge could pay the entire cost of maintaining health benefits for the period of the leave103 and could purchase service credit for purposes of the public-employees retirement system.104

House Bill 1009 was reported out of the House Judiciary and Criminal Justice Committee on November 12, 1986, by a vote of 10 to 1,105 but no further action was taken.106

The IJA 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.107

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. 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. Applications would not be approved automatically, but would be referred to the state's chief justice for final determination.

Among many other beneficial and enriching activities for 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.

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,108 returning to their courts more productive and better prepared to handle the complex demands of the judicial role.

Questions to consider

In any serious discussion of sabbatical leaves or leaves without pay for judges, the following questions, among others, must be addressed:

- Who should be eligible to receive sabbatical leaves? If leaves were to be made available to active federal district and circuit court judges,109 for example, should provisions also be made for non-Article III judges (i.e., bankruptcy judges and magistrates) who would otherwise be qualified?110
- What period of prior service should be required before the granting of the first sabbatical leave? What intervening period should be required before the next leave?

94. Letter from Judge Angel G. Hermida, supra n. 91.
96. 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).
97. Id.
98. Id. §§2701.031(C)(1), 2701.031(C)(2)(b), (c).
99. 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. The substitute would receive the same compensation, fees, and fringe benefits as would the other judges of the court. Id.
100. Id. §2701.031(E)(3). 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. §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. §2701.031(E)(1).
101. Id. §2701.031(E)(3).
102. Id. §2701.031(H).
103. Id. §2701.031(H).
104. Id. §2701.031(H).
106. The bill was introduced too late in the 1985-1986 legislative session to receive serious considera-

sion. 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 John M. Miller, secretary to Ohio Rep. Jo-Lynn Boster (who introduced H.B. 1009) (June 11, 1987).
108. 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.
109. I do not argue that the need for sabbatical leave is greater for district judges than it is for circuit judges, or vice versa. As discussed throughout this article, there are many good reasons to support judicial sabbaticals—not simply to relieve some of the intensity and stress at the trial level, or some of the treadmill at the appellate level. (This comment is by no means to imply that there is a lack of treadmill at the trial level or of intensity and stress at the appellate level. The question is simply one of degree.)
110. The question of sabbatical leaves or leaves of absence for Justices of the United States Supreme Court is beyond the scope of this paper. Cf. McKay, The Judiciary and Nonjudicial Activities, 35 Law & Conr. 778 (1970). Also beyond the scope of this paper is the question whether, at some point, sabbatical leaves should be made available to all employees of the judicial branch.
• How long may the sabbatical leave last? Must the time that is taken be continuous?
• 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?
• 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?
• Who will handle the caseload of the judge who is on leave?
• Should sabbatical leave be available automatically to judges who are eligible, or should there be a formal application process? If it is the latter, what procedures should be established for the review of sabbatical applications?
• 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. For the longer term as well, should there be a maximum number or percentage of judges 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? If a judge satisfies all of the criteria, may a sabbatical nevertheless be denied if the chief justice or chief judge believes that the leave would seriously burden the court? If so, how should that burden be defined?

• 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?

The most difficult issues: cost and case coverage

From a judge's perspective, 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, 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.

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 sabbatical—may be less than it appears 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 per cent of the teacher's salary, as usually many of the individual's duties can be handled in-house.

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.

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.'" 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." If this is true, then, to the extent that a sabbatical-leave program reduces attrition of judges, the costs to the judicial system are lessened. 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. Finally, some writers argue that the institution also benefits indirectly from sabbatical-leave programs because they "eliminate the [individual's] need to feel indispensable."

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. 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.

111. 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. Flicker, supra n. 107, at 50-51.
113. See Daugherty, supra n. 8, at 32-34.
114. Long, supra n. 11, at 750; see also supra n. 72 and accompanying text.
117. See English, supra n. 15, at 79.
118. See, e.g., Long, supra n. 11, at 750.
Case coverage. Besides the financial cost of the sabbatical leave, another major concern is how to handle the caseload of the judge who is on leave. Depending on the number of judges who are on sabbatical at any given time, the creative, well-coordinated use of active judges, magistrates, senior judges, visiting judges, and judges sitting by designation may go a long way toward managing the caseload.

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

The problem of caseload coverage is probably the greatest administrative obstacle to judicial sabbaticals. If sabbatical leaves for judges are found to present substantial advantages, however, then creative case management and careful coordination of judges on leave will be necessary.

"Mini-sabbaticals"

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, or the unlikelihood of legislative approval. 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 statutory authorization.

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 years or from two or 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 or chief justice. Consider the following paragraph from the Minutes of the 1985 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.

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

Conclusion

In this article, 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;
- 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.

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

Regarding his recommendation for judicial sabbaticals to cure "judicial blues" 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." 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.

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 judiciary today. Like teachers, judges have enormous influence both in our society and on our society. 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."