

# Judicial Wisdom: An Introductory Empirical Account

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For millennia, the notion of “wisdom” has been the purview of philosophers or religious scholars. Philosophers literally loved and sought wisdom; biblical scholars lionized King Solomon, wisest man of all.<sup>1</sup> More recently, however, psychologists have begun to investigate the concept of wisdom empirically. Beginning in the mid-1970s and proceeding apace,<sup>2</sup> social scientists have studied wisdom from a variety of perspectives, falling under two headings of implicit and explicit theories.<sup>3</sup>

## IMPLICIT THEORIES OF WISDOM

At least three different approaches have been taken to the development of implicit theories of wisdom. One thread of research, probably the most common, uses a three-step factor-analysis approach: one sample of participants is asked to generate a list of traits or characteristics of wisdom generally or of a wise person. Another sample rates that list of traits on, for example, how typical each is of wisdom or of a wise person, and the resulting ratings are then factor analyzed to identify and articulate the underlying dimensions.<sup>4</sup>

Such studies generally converge on a small set of qualities, dimensions, or clusters that are seen to represent aspects of wisdom or the wise person.<sup>5</sup> Almost all identify a strong cognitive component to wisdom—intelligence, reasoning ability, knowledge, experience, or problem solving. Over and above this intelligence, however, participants typically identify some sort of exceptional insight as a hallmark of wisdom. Most also identify a reflective component—introspection, intuition, ability to learn from mistakes, even temperament (with some of these qualities overlapping with the “exceptional insight” element). A fourth trait, which all these studies identify, is affective, dealing with interpersonal relations and a concern for others. Finally, at least two studies identify some real-world problem-solving abil-

ity—having good judgment, being able to apply it in real life, giving good advice.<sup>6</sup> This last is closely connected to Aristotle’s concept of *phronesis*, discussed briefly below.

A second implicit-theory approach asks participants to nominate wise people, typically but not necessarily those known to the participant, and then studies traits of the nominee or asks the nominee to engage in some sort of wisdom-related activity so that wise features can be identified.<sup>7</sup> A third, less common, approach experimentally manipulates aspects of wisdom or of wise people to tap participants’ intuitions. For instance, Francis Hira and Patricia Faulkender showed subjects videotapes of individuals speaking about wisdom-related life problems, varying the age and gender of the speaker but not the content of the presentation.<sup>8</sup> Participants in that study rated older men and younger women as more wise, implicating, perhaps, cultural stereotypes about the wise person rather than a particular idea of wisdom itself (although the authors attributed their findings in part to nonverbal cues enacted by the speakers).

## EXPLICIT THEORIES OF WISDOM

Two of the more prominent explicit psychological theories are the Berlin Wisdom Paradigm (BWP) and Sternberg’s Balance Theory.<sup>9</sup> Both emphasize elements of historical discussions of wisdom, and both emphasize a conception of wisdom as roughly analogous to expert functioning in a domain.

The former, growing out of a life-span-development approach that emphasizes successful aging, defines wisdom as “expert knowledge in the fundamental pragmatics of life that permits exceptional insight, judgment, and advice about complex and uncertain matters” and as “expertise in the conduct and meaning of life.”<sup>10</sup> The BWP defines wisdom in terms of a broader construct rather than a personality characteristic.<sup>11</sup> Wise individuals approximate the ideal of wisdom and serve as

## Footnotes

1. G. BRUGMAN, WISDOM: SOURCE OF NARRATIVE COHERENCE AND EUDAIMONIA 78-82 (2000).
2. Monika Ardel, *Foreword* to A HANDBOOK OF WISDOM: PSYCHOLOGICAL PERSPECTIVES, at xi (Robert J. Sternberg & Jennifer Jordan eds., 2005).
3. Susan Bluck & Judith Glück, *From the Inside Out: People’s Implicit Theories of Wisdom*, in A HANDBOOK OF WISDOM: PSYCHOLOGICAL PERSPECTIVES 84, 86 (2005).
4. Bluck & Glück, *supra* note 3, at 95; Ursula M. Staudinger, *A Psychology of Wisdom: History and Recent Developments*, 5 RES. HUM. DEV. 107, 109 (2008).
5. Bluck & Glück, *supra* note 3, at 95.
6. STEPHEN G. HOLLIDAY & MICHAEL J. CHANDLER, WISDOM: EXPLO-RATIONS IN ADULT COMPETENCE 31 (1986); Robert J. Sternberg, *Implicit Theories of Intelligence, Creativity, and Wisdom*, 49 J. PERSONALITY & SOC. PSYCHOL. 607, 613 (1985).
7. Paul B. Baltes et al., *People Nominated as Wise: A Comparative*

*Study of Wisdom-Related Knowledge*, 10 PSYCHOL. & AGING 155, 157-59 (1995).

8. Francis J. Hira & Patricia J. Faulkender, *Perceiving Wisdom: Do Age and Gender Play a Part?*, 44 INT’L J. AGING & HUM. DEV. 85, 90 (1997).
9. Paul B. Baltes & Ursula M. Staudinger, *Wisdom. A Metaheuristic (Pragmatic) to Orchestrate Mind and Virtue Toward Excellence*, 55 AM. PSYCHOLOGIST 122, 123-25 (2000); Paul B. Baltes et al., *Wisdom and Successful Aging*, 39 NEBRASKA SYMPOSIUM ON MOTIVATION 123, 128-29 (1992); Robert J. Sternberg, *A Balance Theory of Wisdom*, 2 REV. GEN. PSYCHOL. 347, 349-50 (1998).
10. Baltes & Staudinger, *supra* note 9, at 124; M. Pasupathi et al., *Seeds of Wisdom: Adolescents’ Knowledge and Judgment About Difficult Life Problems*, 37 DEVELOPMENTAL PSYCHOL. 351, 351 (2001).
11. See Monika Ardel, *Wisdom as Expert Knowledge System: A Critical Review of a Contemporary Operationalization of an Ancient Concept*, 47 HUM. DEV. 257 (2004), for an excellent overview and critique.

guideposts, and the role of psychological theory is to study how people can be described as wise.<sup>12</sup> The BWP designers are more interested in the big-picture concept of wisdom as a “collectively anchored product”;<sup>13</sup> others seem more interested in identifying, among other things, the individual differences associated with wisdom, wise people, wise decision processes, and wise outcomes.<sup>14</sup> Of course, there seems no *a priori* reason not to study both.<sup>15</sup>

The second prominent explicit theory of wisdom is Sternberg’s Balance Theory, which involves a foundation of general knowledge or academic intelligence, on which is rested tacit knowledge or practical intelligence.<sup>16</sup> First, wisdom inheres in the interaction between a person and his situation. Sternberg’s take on whether individuals can be wise is not clear from this point; on the one hand, he seems to focus on wisdom as process-focused. On the other hand, he often does refer to “wise people,” “people who acquire wisdom,” and individual differences in both variables predicting wisdom and affecting the balancing process.<sup>17</sup> Second, an individual’s decision making is not wise or unwise (foolish) *per se*; rather, its “wisdom depends on the fit of a wise solution to its context.” Third, as a result, the same sort of balancing of decision-making processes may yield a wise solution in one context but not another. Accordingly, wisdom for Sternberg seems to inhere primarily in a decision’s fit to the situation, rather than in an individual as a personal characteristic (though this is not certain), in a decision-making process, or in an outcome *per se*. As noted below, this question of where to locate wisdom—as a trait, in a process, or in an outcome—is an important definitional issue but also an important one for developing further research.<sup>18</sup>

### PRACTICAL WISDOM (PHRONESIS)

In the discussion of judicial wisdom, phronesis or practical wisdom is important to note; three aspects are particularly relevant here. First, Aristotle saw phronesis as an executive decision maker, a “master virtue” that tied together and managed the others. But it is also more; it involves the skill to perceive a situation the right way in the first place, recognizing the need for action, and the skill to identify what features of a situation are most relevant and most deserving of further deliberation.<sup>19</sup> Perhaps most important, though, Aristotle saw the deliberation process, as does Sternberg, as having the “good”

as the ultimate objective; that is, phronesis involves deliberation or reflection about valuable goals.<sup>20</sup>

Second, Anthony Kronman built on Aristotle’s notion of practical wisdom in his efforts to recapture what he saw as the lost ideal of a lawyer-statesman.<sup>21</sup> Kronman saw practical judgment/practical wisdom/phronesis at the heart of this ideal; political and judicial skill depends on excellence in this character trait. He too emphasized balance and the importance of combining internal decision-making skills—reflective and perceptual elements. That is, practical wisdom was a skill or “capacity” for joining those elements together in the appropriate way.<sup>22</sup> The wisdom of a decision cannot be measured solely by its final result but only—as with Sternberg—by whether there is balance between the circumstances of the case and the reasoning about those circumstances.<sup>23</sup> A wise judge need not have particular personal qualities that lead him or her to be a wise judge; rather, he or she has certain dispositions that interact appropriately with the situation at hand and allow the judge to reason his or her way to the best outcome.<sup>24</sup>

Kronman makes two final points about practical judgment. He states that people’s practical-judgment skill can be developed and believes that an ideal setting for developing the means necessary for developing the skill is law school. The critical thinking, understanding of particulars, sympathy, imagination, and detachment necessary for thoroughly developing phronesis rest comfortably on the Socratic Method so typical of legal education. Kronman, then, sets out two criteria by which the wisdom of outcomes or decisions can be measured. The first is the degree of suitability or fit.<sup>25</sup> The second is the degree to which it “promote[s] political fraternity” by accommodating differing viewpoints and maintaining the coherence of a community with those different views.<sup>26</sup>

Perhaps the most direct application of phronesis to the judicial context is recent neo-Aristotelian work by Lawrence

**A wise judge . . . has certain dispositions that interact appropriately with the situation at hand and allow the judge to reason his or her way to the best outcome.**

12. Paul B. Baltes & Ute Kunzmann, *The Two Faces of Wisdom: Wisdom as a General Theory of Knowledge and Judgment About Excellence in Mind and Virtue vs. Wisdom as Everyday Realization in People and Products*, 47 HUM. DEV. 290, 292-93 (2004).

13. Baltes & Staudinger, *supra* note 9, at 130.

14. Ardel, *supra* note 11, at 259-60.

15. See Monika Ardel, *Where Can Wisdom Be Found?*, 47 HUM. DEV. 304, 306 (2004).

16. Sternberg, *supra* note 9, at 353.

17. Robert J. Sternberg, *Words to the Wise About Wisdom? A Commentary on Ardel’s Critique of Baltes*, 47 HUM. DEV. 286, 287 (2004).

18. James E. Birren & Cheryl M. Svensson, *Wisdom in History*, in A HANDBOOK OF WISDOM: PSYCHOLOGICAL PERSPECTIVES 3, 25 (Robert J. Sternberg & Jennifer Jordan eds., 2005).

19. Blaine J. Fowers, *Reason and Human Finitude: In Praise of Practical Wisdom*, 47 AM. BEHAV. SCIENTIST 415, 415-16 (2003); NANCY

SHERMAN, *THE FABRIC OF CHARACTER: ARISTOTLE’S THEORY OF VIRTUE*, 58, 123 (1991).

20. Ricardo Parellada, *Aristotle’s Theory of Practical Wisdom*, 83 MOD. SCHOOLMAN 1, 1-3, 6-9 (2005).

21. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 43-44 (1993).

22. Anthony T. Kronman, *Practical Wisdom and Professional Character*, 4 SOC. PHIL. & POL’Y 203, 210 (1986).

23. *Id.* at 55.

24. Chapin Cimino, *Private Law, Public Consequences, and Virtue Jurisprudence*, 79 U. PITT. L. REV. 279, 294-95 (2009).

25. Kronman, *supra* note 22, at 219.

26. KRONMAN, *supra* note 21, at 97; Carlos Silva Marques, *Anthony Kronman on the Virtue of Practical Wisdom*, 15 RATIO JURIS 328, 338-39 (2002).

**The virtuous judge possesses multiple judicial virtues—courage, impartiality, incorruptibility, intelligence, and others—but also possesses the ability to manage them.**

Solum. Quite simply, judicial wisdom is phronesis; it is practical wisdom, as applied to the decisions a judge makes.<sup>27</sup> The virtuous judge possesses multiple judicial virtues—courage, impartiality, incorruptibility, intelligence, and others—but also possesses the ability to manage them.<sup>28</sup> The wise judge knows what goals to pursue and how to arrive at those goals.<sup>29</sup> According to Solum, phronesis is “the ability to respond appropriately to the particular situation,” to identify what is morally relevant about a

particular situation, and to craft a just resolution. Indeed, for Solum, this synthesis or balancing becomes an exercise of Aristotelian equity: the “tailoring of the law to the demands of the particular situation.”<sup>30</sup>

The review here details the philosophical and legal writing on practical wisdom, potentially or actually applied to the judicial context. However, very little work has been conducted to translate those theories into empirical testing. One of our goals here is to connect this line of legal and philosophical thinking to empirical work in psychology and lay the groundwork for a fuller program of research synthesizing it all. Thus, we turn briefly now to some of the existing empirical work on wisdom, recognizing a lack of empirical work on judicial wisdom.

### PRIOR PSYCHOLOGICAL RESEARCH

First, as mentioned, researchers have studied laypeople’s implicit theories of wisdom.<sup>31</sup> These studies have elicited broad consensus as to the various components of wisdom—the five elements identified above—and consensus that wisdom involves some sort of integration, synthesis, or balance of those capacities.<sup>32</sup> There also seems to be broad agreement in implicit conceptions of wisdom that wise people are usually

old,<sup>33</sup> but there is less agreement, perhaps surprisingly, that men are more typically wise than are women.<sup>34</sup>

Second, more “top-down” work has focused on explicit theories, on conceptualizing and measuring the wisdom construct. One approach has focused on “general wisdom,” with the paradigmatic examples being the Berlin approach and Sternberg’s model. Another approach has focused more on “personal wisdom,” viewing it as a construct that reflects personal growth, life experience, dealing with life challenges, or ego and identity development.<sup>35</sup> Researchers taking the latter approach have sought to develop and validate self-report scales to measure their notion of the wisdom construct. On the one hand, there is often overlap in their theoretical constructs; on the other hand, to the extent personal wisdom involves a substantial amount of self-reflection, self-report may not be the best evaluative measure. Instead, promising efforts have been made to look at “performance-based” measures.<sup>36</sup> For judicial-wisdom purposes, general wisdom constructs seem more appropriate to pursue.

Third, researchers have studied the development of wisdom and wisdom-related knowledge over the life span, again distinguishing between general and personal wisdom. Much of this literature has looked to determining whether one type of wisdom might precede the other (apparently not; the development of personal and general wisdom seems to be a dynamic process where either can “take the lead”). Other literature has suggested a model that synthesizes personality correlates of both types of wisdom (creativity, fluid and crystallized intelligence, openness to experience, and others), experiential factors, and sociocultural factors, all of which combine to facilitate the development of wisdom.<sup>37</sup>

Perhaps surprisingly, neither type of wisdom is directly correlated with age; simply growing older is not sufficient to grow wiser.<sup>38</sup> Older individuals produce higher wisdom-related performance in response to dilemmas typical of older age; younger individuals score higher on young-adult-type dilemmas.<sup>39</sup> Nor is general wisdom-related performance correlated with well-being,<sup>40</sup> but negative life events might conduce to increases in personal wisdom.<sup>41</sup>

Fourth, of importance for judicial-wisdom issues,

27. Lawrence B. Solum, *Virtue Jurisprudence: A Virtue-Centred Theory of Judging*, 34 *METAPHILOSOPHY* 178, 192 (2003).

28. Lawrence B. Solum, *A Tournament of Virtue*, 32 *FLA. ST. U. L. REV.* 1365, 1376-77 (2005).

29. Lawrence B. Solum, *The Virtues and Vices of a Judge: An Aristotelian Guide to Judicial Selection*, 61 *S. CAL. L. REV.* 1735, 1746 (1998).

30. *Id.* at 1754.

31. Bluck & Glück, *supra* note 3, at 89-90.

32. Ursula M. Staudinger & Judith Glück, *Psychological Wisdom Research: Commonalities and Differences in a Growing Field*, 62 *ANN. REV. PSYCHOL.* 215, 218 (2011).

33. Lucinda Orwoll & Marion Perlmutter, *The Study of Wise Persons: Integrating a Personality Perspective*, in *WISDOM: ITS NATURE, ORIGIN, AND DEVELOPMENT* 160, 170-71 (Robert J. Sternberg ed., 1990).

34. Carolyn M. Aldwin, *Gender and Wisdom: A Brief Overview*, 6 *RES. HUM. DEV.* 1, 5-6 (2009).

35. Staudinger & Glück, *supra* note 32, at 224-26.

36. JESSICA DORNER & URSULA M. STAUDINGER, *SELF-CONCEPT MATU-*

*RITY—A NEW MEASURE OF PERSONALITY GROWTH: VALIDATION, AGE EFFECTS, AND FIRST PROCESSUAL EXPLORATIONS* 226-28 (2010); Charlotte Mickler & Ursula M. Staudinger, *Personal Wisdom: Validation and Age-Related Differences of a Performance Measure*, 23 *PSYCHOL. & AGING* 787, 787-88 (2008).

37. Ursula M. Staudinger et al., *Wisdom and Personality*, in *A HANDBOOK OF WISDOM: PSYCHOLOGICAL PERSPECTIVES* 191, 210 (Robert J. Sternberg & Jennifer Jordan eds., 2005).

38. Staudinger & Glück, *supra* note 32, at 219; Joel R. Sneed & Susan Krauss Whitbourne, *Identity Processing and Self-Consciousness in Middle and Later Adulthood*, 58 *J. GERONTOLOGY B PSYCHOL. SCI. & SOC. SCI.* 313, 317 (2003).

39. Ursula M. Staudinger et al., *Wisdom-Related Knowledge in a Life Review Task: Age Differences and the Role of Professional Specialization*, 7 *PSYCHOL. & AGING* 271, 277 (1992).

40. Ute Kunzmann & Paul B. Baltes, *Wisdom-Related Knowledge: Affective, Motivational, and Interpersonal Correlates*, 29 *PERSONALITY & SOC. PSYCHOL. BULL.* 1104, 1113 (2003).

41. Mickler & Staudinger, *supra* note 36, at 792.

researchers have examined the “plasticity” of wisdom, *i.e.*, how and whether it might be facilitated or taught. One useful means of facilitating wisdom-related performance as measured in the Berlin paradigm was to discuss the problem at hand with a confidant; this was effective even when that confidant was imagined.<sup>42</sup> There is an interesting but underexplored connection here with Kronman’s suggestion that the Socratic Method is useful for developing *phronesis*; perhaps even the imagined Socratic dialogue can help individuals exhibit increased wisdom. More direct means, such as instructions to “try to give a wise response,” have generally been found to be ineffective,<sup>43</sup> perhaps suggesting some difficulty in introspecting about and tapping into one’s own wisdom-related capabilities. Sternberg is more adamant that wisdom, or at least wisdom skills, can be taught: first, study classic works of literature and philosophy; second, encourage dialogical thinking (perceiving ideas from multiple points of view) and dialectical thinking (recognizing that ideas evolve over time); third, encourage students to self-reflect and develop their own values; fourth, develop all these modes of thinking with an eye to the common good; fifth (again connected with earlier points), encourage a Socratic teaching style; and sixth, have teachers act as role models for wisdom. Sternberg and colleagues developed a curriculum for teaching wisdom in middle schools, laying out an approach and a series of evaluative measures; however, we have not seen published follow-up to these efforts.<sup>44</sup>

Finally, this last point about the educability of wisdom has been extended in applied fields, with researchers exploring the relevance of these explicit theories of wisdom in education and in leadership contexts—management, business, etc. Indeed, Sternberg has developed a model of leadership that synthesizes creativity, intelligence, and his Balance Theory of wisdom.<sup>45</sup> An appropriate balance will help leaders build on certain strengths and balance the leader’s own capabilities as well as the capabilities of those being led, all to achieve a common good in the relevant field. Other applications to leadership have emphasized situational factors, asking what situations conduce to wise leadership.<sup>46</sup> Still others emphasize that a wise leader will know what situations call for what leadership style and act appropriately.<sup>47</sup> More specifically, wise decision making has been studied in the contexts of medicine, nursing,<sup>48</sup> business,<sup>49</sup> clinical psychology,<sup>50</sup> and politics,<sup>51</sup> sometimes drawing explicitly on the models sketched above.

Strangely, perhaps, despite application in these settings, there is no published empirical work examining wisdom in the applied setting of judging—of judicial wisdom—despite the traditional image of the judge as an archetype of wisdom. The only empirical work we have found directly implicating judicial wisdom was an unpublished doctoral dissertation, in which the author administered an existing wisdom scale (Ardelt’s [2003] 3D-WS) to Missouri judges.<sup>52</sup> She also noted potential implications for using this or other wisdom scales as a tool in (s)electing judges. The studies presented here aim to empirically establish scales of judicial wisdom drawing on the work done by previous philosophers and psychology researchers alike.

**[J]udges were asked to generate characteristics of wise judges. Then, law students rated these characteristics on whether they accurately reflected judicial wisdom.**

## STUDY 1

### Methods

The first study was done in two parts, following the most common approach in wisdom research. In the first part, judges were asked to generate characteristics of wise judges. Then, law students rated these characteristics on whether they accurately reflected judicial wisdom.

## STUDY 1A

### Participants

Forty federal magistrate judges (27 men and 13 women) completed questionnaires during a voluntary session at two judicial-education conferences in 2009. Twenty-three judges participated in Session 1 (first conference) and seventeen in Session 2 (second conference). Judges signed up for a session on “Judicial Decision-Making,” during which they completed a questionnaire and were debriefed. They then heard a general presentation regarding theoretical and empirical research into judicial decision making and engaged in discussion and a question-and-answer session with the presenters. Thirty-four participants self-identified as white, four self-identified as black, and two did not provide an ethnic identification.

42. Ursula M. Staudinger & Paul B. Baltes, *Interactive Minds: A Facilitative Setting for Wisdom-Related Performance?*, 71 J. PERSONALITY & SOC. PSYCHOL. 746, 755-56 (1996).

43. Judith Glück & Paul B. Baltes, *Using the Concept of Wisdom to Enhance the Expression of Wisdom Knowledge: Not the Philosopher’s Dream but Differential Effects of Developmental Preparedness*, 21 PSYCHOL. & AGING 679, 685 (2006).

44. See Robert J. Sternberg, *Why Schools Should Teach for Wisdom: The Balance Theory of Wisdom in Educational Settings*, 36 EDUC. PSYCHOLOGIST 227 (2001).

45. Robert J. Sternberg, *A Systems Model of Leadership: WICS*, 62 AM. PSYCHOLOGIST 34, 39 (2007).

46. Michael J. Limas & Robert O. Hansson, *Organizational Wisdom*, 59 INT’L J. AGING & HUM. DEV. 85 (2004).

47. Leon C. Malan & Mark P. Kriger, *Making Sense of Managerial Wisdom*, 7 J. MGMT. INQUIRY 242 (1998).

48. Andrew McKie et al., *Exploring Clinical Wisdom in Nursing Education*, 19 NURSING ETHICS 252 (2012).

49. Limas & Hansson, *supra* note 46.

50. BLAINE J. FOWERS, *VIRTUE AND PSYCHOLOGY: PURSUING EXCELLENCE IN ORDINARY PRACTICES* (2005).

51. PETER J. STEINBERGER, *THE CONCEPT OF POLITICAL JUDGMENT* (1993).

52. Kathleen A. Mehl Chadwick, *A Study of the Measurement of Wisdom in the Missouri State Judiciary* (July 2007) (unpublished Ph.D. dissertation, Capella University). The author also stated that she had found no studies examining the wisdom of legal professionals.

## The analysis yielded four categories of judicial wisdom.

### Procedure

Half of the participants were asked to list (among other things) “characteristics of a wise judge.” To assess whether their perceptions involved not wisdom per se but rather competence or skill, the

other half were asked to list “characteristics of an excellent judge.” Participants were asked to provide a variety of demographic and professional information, including age, gender, education, ethnicity, religious affiliation, political-party affiliation, political orientation, number of years in service as a judge, and the federal circuit within which they sat. Judges identified 130 discrete features of a “wise judge” and 142 of an “excellent” judge.

### STUDY 1B

#### Participants

Participants were 286 incoming first-year law students.

#### Procedure

Participants were given packets of surveys including the 130 discrete features of a wise judge identified by the judges in Study 1A. Participants were asked to rate each one of the characteristics on a Likert scale (1, not at all, to 7, very), as to how accurately the feature captures judicial wisdom.

#### Results

The first goal was to establish a reliable scale of characteristics of a wise judge. To do this, independent raters grouped the 130 features judges listed in Study 1A by dividing them into 32 categories, with all raters coming to an agreement. The data-analytic strategy used in these analyses includes exploratory and confirmatory factor analyses. Briefly, both types of analyses test the similarity between groups of items.<sup>53</sup>

Confirmatory factor analysis was then used to derive the most representative feature for each of the 32 categories. Using a confirmatory factor analysis tests whether the items in the

group are related based on a predetermined factor structure. In the next set of analyses, we use the 32 representative characteristics to further classify the characteristics (32) into broader themes of judicial wisdom.

After conducting an exploratory factor analysis, 19 of the original 32 characteristics loaded onto four factors. This procedure reduces the 32 characteristics into categories of similar themes. During this procedure, only items that are highly related are retained (.4 factor loading).<sup>54</sup> The exploratory factor analysis resulted in 19 characteristics of judicial wisdom having a loading of .4 or greater. The remaining items did not reach this threshold. Five of the items that could have been confusing to participants were dropped from analyses. With one such feature, for instance (“willingness to learn, to challenge and be challenged”), participants could have agreed with the former part of the statement but not with the latter. Two items were dropped due to cross loading<sup>55</sup> among two or more factors (e.g., “knowledge of the law”), and six items were dropped due to poor loading (e.g., “balances interests of all parties, including judge’s own interests”). These items may have been too broad to be applied to the specific content of what makes a wise judge.

The analysis yielded four categories of judicial wisdom. We interpret the factors broadly as consistent with previous findings described in the implicit-theories literature. Factor 4 reflects the *cognitive*, decision-making skill typically identified. Factor 3 is consistent with the *reflective* characteristic, and Factor 2 with the *interpersonal* or *affective* characteristic. We also identified Factor 1, a quality reflecting wisdom-related skills particular, if not unique, to judges. This may reflect the real-world problem-solving ability that some researchers have found,<sup>56</sup> or, more interestingly, something over and above conventional perspectives of wisdom that reflects judicial wisdom specifically.<sup>57</sup>

### STUDY 2

#### Method

The goal of the second study was to confirm the structure

53. A factor analysis is a statistical strategy that finds relationships between observed variables. In this case, the observed variables are the characteristics of wise judges. Through correlations among the observed variables, the factor analysis determines commonalities among the items; those assessing the same construct will be grouped together. The formation of this group is called a factor or unobserved variable. In this paper, we discuss two kinds of factor analysis—exploratory and confirmatory factor analysis. An exploratory factor analysis does not require *a priori* hypotheses about how items would be grouped together or how many factors will be derived. As such, this is often the first step in determining how data are organized. The confirmatory factor analysis makes use of *a priori* hypotheses (either derived from a theoretical framework or a previous factor analysis). For our purposes, we used the factor structure obtained in Study 1B as the *a priori* hypotheses about the structure of the data in Study 2.

54. To determine the items that are grouped together in this analysis, one must examine the factor loading for each item, which indicates the strength of its association with the group as a whole. Factor loadings can be thought of as a correlation, and the con-

ventional cutoff is .40. Therefore, those items that have a strong correlation (>.40) with the factor itself are kept with that factor, whereas ones with a weak correlation (<.40) are dropped from that factor. Reasons for low factor loadings can include items assessing a different construct from the factor or an item being worded poorly.

55. Some variables or items may load or be grouped together with multiple factors. This may be an indication of an item being too broad, encompassing multiple constructs. There are many ways of dealing with this both statistically and theoretically. For our purposes, we took a theoretical approach, analyzing each item separately to determine whether it was too broad to fit with the construct.

56. Holliday & Chandler, *supra* note 6, at 62; Sternberg, *supra* note 6, at 613.

57. The full results and detailed statistical analyses can be found in Jeremy A. Blumenthal & Daria A. Bakina, *Judicial Wisdom: An Empirical Account and Research Agenda* (2008) (unpublished article), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2129792](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129792).

of the wise-judge-characteristic scale and to establish the structure of the excellent-judge scale.

**Participants**

Participants were a group of 247 incoming first-year law students.

**Materials**

**Wise Judge.** Nineteen items were presented assessing characteristics of a wise judge (e.g., “A wise judge is a good listener.”). Items were rated on a Likert scale from 1 (not at all characteristic) to 7 (very much characteristic).

**Excellent Judge.** Items were taken from Study 1A, and three independent raters grouped the original 142 features into 38 categories. The most representative item in each category was then chosen, resulting in 38 items that were then rated on a Likert scale from 1 (not at all characteristic) to 7 (very much characteristic).

**Results**

A confirmatory factor analysis was performed on the retained 19 items to find support for the four-factor structure established in Study 1B. This specific data-analytic strategy was chosen to replicate the pattern of abstract concepts (e.g., intelligence, interpersonal skill) through sets of related con-

crete characteristics. The hypothesized model for the factors of judicial skill, people skill, open-mindedness to change, and intelligence were tested as latent factors. In line with previously established work on implicit theories of wisdom, multiple aspects of wisdom were found in this data. Because the same items were clustered together in Study 2 as in Study 1B, the four-factor model was found to be the most appropriate for understanding judicial wisdom.

**Excellent Judge Exploratory Factor Analysis**

Exploratory factor analysis was conducted on the data obtained for excellent judges. There were initially 38 features identified that resulted in five general categories of characteristics of an excellent judge. Seventeen items were dropped due to poor loading<sup>58</sup> or cross-loading. The explanation for poor loading of these items could be that they were either confusing to understand (e.g., “involves clients when necessary”), too broad (e.g., “attends to detail”), or double-barreled (e.g., “respects precedents and the rule of law”). It is also possible that the dropped items did not encompass qualities or characteristics unique to excellent judges (e.g., “thoughtful,” “practical”). These 17 items were dropped from the analyses. The final result provided five general categories for characteristics of an excellent judge. A confirmatory factor analysis was performed on a random subset of the data and supported the five-factor solution.

WISE JUDGE, FACTOR ANALYSIS FINAL MODEL				
Item	FACTOR LOADINGS			
	1	2	3	4
A wise judge is honest.	0.680			
A wise judge is conscientious about following the law.	0.505			
A wise judge is ethical.	0.718			
A wise judge is diligent in studying evidence.	0.622			
A wise judge is active in the community.		0.567		
A wise judge is interested in the community.		0.445		
A wise judge is caring.		0.507		
A wise judge is spiritual.		0.620		
A wise judge has political skill, in the sense of working well with people.		0.487		
A wise judge is genuinely interested in people.		0.573		
A wise judge is open-minded.			0.620	
A wise judge is willing to admit mistakes.			0.411	
A wise judge is always prepared.			0.428	
A wise judge has empathy.			0.562	
A wise judge is capable of making hard decisions.				0.400
A wise judge is rational.				0.517
A wise judge knows how to think.				0.505
A wise judge has superb intelligence.				0.598
A wise judge is intuitive.				0.697

Note: The table summarizes the characteristics of a wise judge in terms of how similar they are to each other within the groups. Each group is called a factor. In this data, we found that there were four broad categories of judicial wisdom: judicial skill (Factor 1), people skill (Factor 2), open-mindedness to change (Factor 3), and intelligence (Factor 4). The factor loading is a correlation between the item and the factor, with a conventional cutoff of .40. Any item that has a factor loading of .40 or higher is retained.

58. Poor loading refers to items that fail to reach the conventional .40 cutoff. This is an indication that the item does not fit with the rest

of the items within the factor. Some items may not fit on any factors and are removed permanently from analyses.

## DISCUSSION

This paper summarizes some of the first empirical work to address judicial wisdom, beginning with two studies trying to identify lay conceptions of what makes a wise judge. Consistent with past research, respondents seem to conceive of judicial wisdom as similar to the wisdom construct more generally but seem to include a quality particular to judges as well.

Our findings are useful in a number of contexts. First, they help lay groundwork for a sustained program of research into judicial wisdom. Second, they help us move toward developing an explicit theory of judicial wisdom, one that is better, and empirically, informed. The pattern of results obtained for characteristics of a wise judge replicate the theoretical approaches to studying wisdom. The studies presented here apply wisdom theories, both psychological and philosophical, to the specific context of judicial wisdom. The four factors identified through the data—judicial skill (Factor 1), people skill (Factor 2), open-mindedness to change (Factor 3), and intelligence (Factor 4)—not only reflect how others perceive what a wise judge is but also provide support for previously established theoretical models of wisdom. What is more, the characteristics of wise judges were generated by judges themselves, providing greater applicability and generalizability of the data.

Synthesizing both implicit and explicit theories helps us derive an idea of the ideal wise person.<sup>59</sup> Once there is some broad consensus about this, we might be able to assess how close to such an ideal particular people come. If so, then perhaps it is not unreasonable to use such constructs as evaluation tools for prospective judges. Third, relatedly, developing robust implicit theories of judicial wisdom helps researchers understand what lay participants in the legal process expect of judges. Do they have a sense of judges as reflecting an archetypal wisdom, insightful and equitable and perhaps willing to bend the rules and administer the spirit of the law rather than the letter, or do they see the wise judge as bound by strictures of the rule of law, or perhaps something in between? Combining such findings with existing research into public perceptions of the judiciary may be of use. For instance, Bybee and others have documented that the public views the U.S. Supreme Court justices as political actors and believe that political factors influence court decisions more than they ought.<sup>60</sup> One of several questions to connect these lines of findings is whether such perceptions correlate with a view of judges as “wise” or with a particular view of what judicial wisdom is. Connecting with the point above, another question might be to examine whether judges are seen as particularly

EXCELLENT JUDGE, EXPLORATORY FACTOR ANALYSIS					
Items	FACTOR LOADINGS				
	1	2	3	4	5
An excellent judge is articulate.	0.620				
An excellent judge is knowledgeable.	0.550				
An excellent judge is experienced.	0.437				
An excellent judge has excellent writing skills.	0.574				
An excellent judge is highly intelligent.	0.472				
An excellent judge is fair to all parties.		0.404			
An excellent judge is neutral and unbiased.		0.667			
An excellent judge listens to all sides.		0.668			
An excellent judge is humble.			0.445		
An excellent judge is kind and caring.			0.869		
An excellent judge is sympathetic and compassionate.			0.801		
An excellent judge has a sense of humor.			0.476		
An excellent judge is ethical.				0.704	
An excellent judge has integrity.				0.766	
An excellent judge is honest.				0.414	
An excellent judge is just.				0.507	
An excellent judge treats all parties with respect.					0.500
An excellent judge has an ability to understand biases and prejudices.					0.435
An excellent judge exercises courtesy in judicial matters.					0.648
An excellent judge has the ability to make decisions.					0.436
An excellent judge is willing to learn and grow.					0.553

Note: This table summarizes the findings regarding characteristics of an excellent judge. Each characteristic is grouped with other similar characteristics forming five distinct factors: intelligence (Factor 1), fairness (Factor 2), compassion (Factor 3), ethics (Factor 4), and respect (Factor 5). Items assessing qualities of an excellent judge were analyzed separately from the wise-judge characteristics. The factor loading is a correlation between the item and the factor, with a conventional cutoff of .40. Any item that has a factor loading of .40 or higher is retained.

59. Ardel, *supra* note 2, at xiv.

60. Keith J. Bybee, *The Rule of Law Is Dead! Long Live the Rule of Law!*, in *WHAT'S LAW GOT TO DO WITH IT? WHAT JUDGES DO, WHY THEY DO IT, AND WHAT'S AT STAKE* 306, 307 (Charles Gardner Geyh ed.,

2011); John M. Scheb & William Lyons, *Judicial Behavior and Public Opinion: Popular Expectations Regarding the Factors That Influence Supreme Court Decisions*, 23 *POL. BEHAV.* 181, 188-89 (2001).

wise when they act politically, or, perhaps, when they do not follow the law strictly, or when they do uphold precedent despite what might be seen as an “unjust” outcome.

Judicial excellence was a secondary focus of this paper, in which we establish an initial model of how people think about characteristics of excellent judges. Through examining judicial wisdom and judicial excellence separately, we find that there are different characteristics highlighted in each, with some overlapping attributes. For example, interpersonal skill seems to be important for both excellence and wisdom. However, according to this data, to be considered an excellent judge, it is expected that one is additionally ethical and respectful, even more so than a wise judge.

### **CONCLUSION AND FUTURE DIRECTIONS**

As noted above, our work begins a research program with the ultimate, broader goal of pulling together threads of psychological research and philosophical and legal discussions of judicial wisdom. With the empirical groundwork laid for assessing both judicial wisdom and judicial excellence, future research should refine the connection between these two important qualities of judges. We have raised a number of questions to be developed as the research progresses, some to be addressed empirically, and others that will integrate those empirical findings with our own (and previous) theoretical work.

*Jeremy Blumenthal, J.D., Ph.D., was a professor of law at Syracuse University. Professor Blumenthal passed away on December 19, 2014, before the completion of the current article that he planned to submit to Court Review. His co-author continued their work after Professor Blumenthal’s untimely death to provide this article to the Court Review audience. From the Syracuse Law website: “Professor Blumenthal taught and wrote in the areas of property law and law and the social sciences, incorporating empirical research and data into legal issues. His work explored decision-making by judges and juries, paternalism, the reasonable woman standard, victim impact statements, behavioral law and economics, emotions in the legal system, and lay perceptions of crime. Recent publications focused on integrating empirical psychological research into property law; reviewing the field of law and emotions; and speculating about the implications of treating lawsuits as private property. He was also a co-editor of the treatise *Modern Scientific Evidence*.”*



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