

INJUDICIAL SLEEPINESS: THE CASE OF JUDGE NODD AND JUSTICE SNOOZEBURG AND MORE *by Steven Grenard RRT, RPSGT*



The justice system is no stranger to sleep disorders, with regular media reports of sleeping judges, sleeping lawyers (on both sides), sleepy jurors, sleepy defendants and even perps who decide to stop for a nap while burglarizing a premises and getting nabbed as a result. And there are a few well-publicized cases on the books of murderers whose defense was that they were asleep when they committed the deed - the ultimate parasomnia. Appeals have been launched and convictions even reversed when a convicted felon can successfully prove one or more parties to their original trial were asleep during the proceedings, including themselves. One allegedly sleeping defense lawyer defended himself by saying he was not asleep, merely sitting with his eyes closed. Unfortunately he couldn't provide an EEG to back up his assertion. And another was snoring so loud he was interrupting testimony and had to be roused. Will polysomnography plus an MSLT help this not so tireless attorney? Should MWTs be required for judges and trial lawyers? Must jurors be excused for EDS or replaced with an alternate if they are observed sleeping in the jury box? The answer is yes, but how often this happens and goes unnoticed, overlooked or unchallenged is impossible to say. It is yet another serious problem that is caused by one or more sleep disorders that cause excessive sleepiness during the day.

Drs. Ronald R. Grunstein (Australia) and D. Banerjee (U.K.) unearthed some well publicized cases of sleeping justices and published the results in the May 1, 2007 edition of the Journal

SLEEP, the official publication of the APSS: Grunstein RR; Banerjee D. The case of "judge nodd" and other sleeping judges-media, society, and judicial sleepiness. SLEEP 2007; 30(5): 625-632

The authors were inspired to conduct this inquiry following lengthy media frenzy in Australia involving a Judge named Dodd whom jurors nicknamed "Judge Nodd." The case of Judge Dodd is labeled as the "index case." Judge Dodd hit the headlines in March 2005 for repeatedly falling asleep during witness testimony and legal argument. Judge Dodd often fell asleep during trials and it didn't matter which kind. He fell asleep during corporate fraud trials, rape trials, drug smuggling trials and shooting trials. He not only fell asleep during numerous legal proceedings he was overseeing, he snored loudly also as a consequence. In a 6 week time frame one Australian newspaper published 18 articles, 3 editorials and 3 cartoons about Judge Dodd's sleeping on the bench. The Judge subsequently received a medical retirement. The medical reasons for his retirement were not disclosed but they were not his sleep apnea, which allegedly was identified, treated and brought under control by treatment.

Grunstein and Banerjee did a diligent media search for other cases where sleeping judges were identified and found some surprising examples: Defendants at the International War Crimes Tribunal at The Hague appealed convictions based on the allegation that their presiding judge was asleep during substantial parts of their trial. The Appeals Chamber found that the appellants failed to establish the judge being asleep in spite of the fact that there was video evidence of the judge asleep for periods ranging from 10 to 30 seconds and for as long as 30 minutes (on 1 occasion). The judge was also snoring. The judge's term was not renewed and he returned to his native Nigeria, however.

The judge presiding over the case of attempted robbery of diamonds from London's Millennium Dome was alleged to have fallen asleep during the 2004 trial and missing a vital part of the evidence. Sentenced to 18 years for their attempt to steal the two hundred million pound cache of gems, the defense contended a lesser sentence may have been handed out if the judge managed to stay awake during the defense. The judge admitted falling asleep and there were witnesses of his sleeping and snoring. The sentences were reduced on appeal and the judge retired shortly thereafter.

The authors detailed a further dozen or so cases including judges asleep in the following courts and jurisdictions: NY Appellate Div, 1st Department, Supreme Court of Arizona, Pinellas County Court in Florida, the Supreme Court of Louisiana, the Rockingham Superior Court in New Hampshire, the U.S. Court of Appeals, 10th Circuit, Kane County Court, Illinois and Court of the Queen's Bench in Alberta. There are, no doubt, many more undisclosed cases.

Beyond any doubt the the most famous judicial sleeper in recent times is Ruth Bader Ginsburg, an Associate Justice of the United States Supreme Court. According to the information unearthed by Grunstein and Banerjee the Associated Press released the story in March 2006 although it dealt with a Texas re-districting case three years earlier. According to the AP Ginsburg fell asleep

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for about 15 minutes during the oral argument. Justices Souter and Alito who were to her left and right looked at her but did not nudge the judge into wakefulness. The Court's sketch artist even drew a caricature of the hearing showing Ginsburg "with her forehead planted firmly on the bar in front of her seat." Ginsburg, a liberal, drew immediate and widespread reaction from conservatives. One columnist, Joseph Farah, nicknamed her Justice Snoozeburg and suggested she resign from the court so "she can take as many mid-day naps as she likes."

In addition to detailing the other judges guilty of judicial sleepiness a logical discussion of the problem follows the case histories, and they are case histories in every sense of the term. It is pointed out that the monotonous and unbearably boring aspects of many judicial proceedings increases the likelihood of sleepiness in judges who are either exposed to sleep deprivation or who have diagnosable and treatable sleep disorders. And like sleepiness in the general workplace and the community the costs rapidly begin to mount with judicial sleepiness as well. Trials are expensive, appeals are expensive and re-trials are expensive. And like sleepiness on the highways and in dangerous occupations, accidents are bound to occur and these result in injuries and deaths. A similar analogy could be made for judicial sleepiness. The "accidents" may be guilty parties going free and innocent parties found guilty and all that this entails both for life and liberty as well as redress for victims. The authors state that "Clearly, judicial sleepiness threatens the integrity of the judicial system, and there would seem to be a need to develop preventative or monitoring strategies in judicial systems to prevent its occurrence." The author's cogent discussion of the problem should be required reading for every chief judge if not every judge and attorney functioning in democratic judicial systems everywhere in the world.

It's clearly time that the judiciary wakes up to the fact that the system can not tolerate sleeping judges or sleeping lawyers or other relevant parties to any proceeding. The fact that there aren't more examples of what may be a common every day occurrence is, according to these authors, a culture of unbridled tolerance and respect for judges.

What many aware of this problem don't realize is that by bringing this to the judges' attention including information that they may have a serious medical problem that can be diagnosed and treated before it kills them is not insulting but is really doing these judges a huge favor.



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