

# So You're Sorry? The Role of Remorse in Criminal Law

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The role of remorse in judicial decisions in the criminal justice system has been addressed in scholarship and remains controversial. The purpose of this qualitative research was to examine the views of sitting criminal judges on remorse, its assessment, and its relevance in their decision-making. After approval of the study design by the institutional review board, 23 judges were interviewed in an open-ended format. Transcriptions of these audio-recorded sessions were analyzed phenomenologically by the research team, using the method of narrative summary. The results showed that the judges varied widely in their opinions on the way remorse should be assessed and its relevance in judicial decision-making. They agreed that the relevance of remorse varied by type of crime and the stage of the proceedings. The indicators of remorse for some judges were the same as those that indicated the lack of remorse for others. All the judges recognized that assessment of remorse, as well as judicial decision-making in general, must be altered for defendants with mental illness. The judges varied in their views of the relevance of psychiatric assessments in determining remorse, although most acknowledged a role for forensic psychiatrists.

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Legal scholars and courts appreciate the significance of remorse in criminal law. Remorse is held to be an appropriate consideration, particularly during the sentencing phase of criminal proceedings.<sup>1,2</sup> However, it remains a poorly formulated concept, lacking clarity and uniformity in both its definition and the characteristics that signal its presence or absence. The problem of remorse is further complicated in individuals with psychiatric illness because their behaviors and cognitions may deviate from the expectations that judges have. The purpose of this article is to present the results of a qualitative study that explored how some criminal court judges view remorse, its assessment, and its relevance in their adjudication of cases involving persons with and without psychiatric disorders.

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We concern ourselves initially with the topic of remorse in general and then with its presence in the setting of mental illness in particular. Psychiatric symptoms can influence both the experience and expression of remorse. Furthermore, knowledge that a defendant has mental illness may color observers' interpretations of that person's behavior.

## Background

The role of remorse in the legal system remains unresolved. In criminal proceedings, empirical studies have shown that remorse plays an important role in observers' judgments of defendants. When a person is identified as remorseful, his character is judged more favorably.<sup>3</sup> Furthermore, that person is perceived to be less likely to recidivate and to have a higher potential for rehabilitation.<sup>4,5</sup> Legal research has demonstrated that remorseful defendants are generally more likely to receive relatively lenient punishments, whereas remorseless defendants are more likely to receive harsher punishments.<sup>6,7</sup> In civil law, such as negligence cases in tort, it has been noted that convincing displays of remorse may affect the damages plaintiffs seek, and apology has been suggested as an alternative to purely monetary reparations.<sup>8,9</sup>

Despite these and other empirical findings, the relevance of remorse remains controversial in legal reasoning. Some contend, on both practical and theoretical grounds, that judges should take neither the presence nor the absence of an expression of remorse into account when determining a person's punishment. Duncan,<sup>10</sup> for example, highlights the difficulty of accurately discerning remorse in human expression and then differentiating it from other emotions.

Bagaric and Amarasekara<sup>11</sup> take the theoretical position that remorse cannot be justified in terms of either utilitarian or retributive theories of punishment. A utilitarian account typically holds that offenders should be punished just enough to deter them (specific deterrence) and others like them (general deterrence) from committing future crimes. Although remorseful offenders are assumed to be less likely to recidivate and therefore may require less punishment, there is no empirical evidence to support a correlation between remorse and decreased recidivism. The authors further argue that the retributivist theory of punishment requires congruence between the severity of the punishment and the severity of the wrongfulness of the act; in contrast, the degree of remorse, if any, is a characteristic of the offender.

Proponents of a remorse principle acknowledge these weaknesses but emphasize the value of remorse in a social relational context. They maintain that remorse is a moral good worthy of civic recognition: when judges alter a punishment on the basis of remorse, they acknowledge a person's self-conception and honor his or her autonomy.<sup>12</sup> They also suggest that outside of the courtroom, the expression of remorse can have powerful reconciliatory healing effects for offenders and victims, and these effects can even extend to the community at large by reaffirming social norms and adding to the public's moral education.<sup>13</sup>

The debate is fueled in part by the elusive nature of remorse. The struggle of scholars across disciplines to delineate the essence, indicators, and relevance of this emotion is shared by judges in the courtroom. In the absence of clear guidelines, courts have been inconsistent and subjective in describing the relative importance of remorse in criminal justice, as well as its physical manifestations.<sup>14</sup> Recently, Proeve and Tudor<sup>8</sup> have sought to combine the wide range of intellectual inquiry concerning remorse into a more

precise and well-developed characterization that incorporates notions of distress, personal responsibility, moral wrong, regret, and restitution. Although their analysis represents an improvement in the current theory of remorse, much work remains, especially when considering it in conjunction with other cognitive and emotional states.

### Purpose of the Investigation

The legal debate concerning the relevance of remorse in criminal law aside, forensic psychiatrists are frequently asked to assess its expression, either directly or indirectly, in criminal cases. Forensic psychiatric evaluations that examine individuals' appreciation of wrongfulness, their insight into their own behavior, or even their appreciation of the charges against them often require defendants to reflect on the criminal act. During these discussions, offenders may reveal aspects of themselves pertaining to remorse that are hidden from other courtroom actors. Therefore, forensic psychiatrists are uniquely positioned to provide courts with a fuller description and understanding of the thoughts and feelings that give rise to remorse, not only in terms of its general psychology and presentation, but also as it applies to particular individuals whom psychiatrists are asked to evaluate.

Through qualitative methods and analysis and using a series of semistructured interviews with the judges, we seek first to present their views of the thus far nebulous concept of remorse: why and how much should genuine remorse (or its absence) affect the outcome of a case? How do judges gauge whether an offender is sincerely remorseful? Do judges view someone with mental illness differently with regard to remorse? Second, in this article, we intend to inform and aid psychiatric experts in the crafting of their own reports, as well as in consulting for and educating judges who seek their help.

### Methods

Thirty-two (26%) of 124 sitting judges in the Connecticut State Superior Court Criminal Docket were contacted through e-mail with an explanation of the investigation and a copy of Yale University's institutional review board (IRB) exemption. Of those contacted, twenty-three judges (72%) responded and agreed to participate. The participants

had between 7 and 30 years of experience as sitting judges. The sample comprised 19 men and 4 women.

For recruitment, we used a snowball sampling method, in which participants were asked to refer other individuals as potential participants.<sup>15</sup> Initial recruitment targeted judges with prior experience in collaborating with the Yale School of Medicine Department of Psychiatry. All were familiar with its mission of clinical evaluation, consultation, education, and research. Snowball sampling methods are frequently used in qualitative research for both their logistic convenience and their methodologic advantages. Logistically, direct references from peers allow researchers to gain access to otherwise insulated populations (such as judges). Methodologically, members of a group are often best positioned to identify other members who may contribute useful information.

All 23 interviews were conducted by the principal investigator (R. Z.) at times and places of the participants' choosing, usually in the judges' chambers. Informed consent was obtained before each interview, and the participants were told that their responses would be audio recorded and de-identified. Interviews ranged in length from 35 to 129 minutes; most lasted approximately one hour. Upon completion of the session, the participants were thanked and offered notification of the results. No reimbursement or other gratuity was offered.

The interview questions were developed by the authors in consultation with several legal scholars, including a judge, law professor, former prosecutor, and public defender. All interviews began with the following definition of remorse, adapted from the discussion of the topic by Proeve and Tudor:

Remorse may be defined as a distressing emotion that arises from acceptance of personal responsibility for an act of harm against another person. Often, with further reflection, the remorseful individual may desire that the act had never occurred at all and wish to make restitution toward the victim [summarized from Ref. 8].

The participants were asked whether they agreed with this definition and how they would change it. They were then asked a series of open-ended questions regarding their experiences with remorse in their legal practice, the role remorse plays in court cases and the courtroom setting, and how they assess and use remorse at various stages of the legal process. The interview concluded with questions regarding the evaluation of genuine versus feigned remorse and

the possible effect of mental illness on defendants' ability to experience and express it.

Interviews were transcribed and analyzed according to the phenomenologic method. This mode of analysis is usually applied to narratives (stories), reorganizing and condensing raw text into narrative summaries that are coherent accounts of personal subjective experience, written in the first person and adapted from the respondents' language.<sup>16</sup> Of note, the present research was not designed to understand judges' experience of remorse as a subjective phenomenon, *per se*. That is, summaries were not constructed with the singular goal of recounting episodic events. Instead, the summaries were organized according to major themes pertaining to remorse. The summarization process eliminated excess text and extracted useful meaning from the frequently wide-ranging interviews.

Before the analysis phase, the research team received training from the methodology expert in the construction of narrative summaries. Then, the principal investigator and one other rater from the team, consisting of a forensic psychiatrist, forensic psychologist, social worker, and two law professors, composed narrative summaries of each interview transcript. The common methodology training promoted consistency in generating the narrative summaries. However, the research team was intentionally composed of scholars from different disciplines to capture a variety of viewpoints and minimize rater bias stemming from idiosyncrasies of personal experience or training. The summaries were roughly 2 pages in length (condensed from an average transcript text of 14 pages) and provided thematically organized synopses of the respondents' substantive views. Once the summaries were completed, the raters met under the direction of the member of the research team (L.D.) with special expertise in qualitative methodology. This meeting provided a forum for the raters not only to reach consensus regarding potential interrater inconsistencies, but also to conduct an analysis of common themes among interviews.

## Results

The judges generally concurred with the proposed definition of remorse, with some revisions and expansions: remorse is a "blending of emotions and belief or reason" or a "fundamental regret for self-accusatory consciousness of guilt"; it includes "an

appreciation of the impact on the victim”; it can be directed toward others beyond the victim (e.g., the defendant himself, the defendant’s family, and bystanders); and a remorseful individual “wishes to modify his or her behavior so that similar acts do not occur in the future.”

Beyond the initial definition, the judges expressed no uniform view about remorse or about the nature and extent of its role in judicial decisions. We briefly summarize the range of their responses regarding the legal relevance of remorse in criminal justice, the effect of the type of offense and stage in the criminal justice process on the role it plays in decisions, and its assessment.

### **Legal Relevance**

The judges disagreed about whether an offender’s remorse or its absence is an appropriate consideration in the criminal justice process. Views ranged from regarding remorse as centrally pertinent to irrelevant to the legal process. Those who deemed it relevant justified its role in different ways, ranging from finding it relevant to all four standard theories of punishment (deterrence, incapacitation, rehabilitation, and retribution) to finding it relevant only in terms of retribution.

Many viewed remorse as indicative of personal character and therefore predictive of future behavior in terms of likelihood of rehabilitation versus recidivism. However, one judge stated that remorse is a “weak counterbalance” to the various external pressures that push people toward additional criminal activity.

The judges differed significantly in their views regarding the absence of remorse. Some believed its absence indicates sociopathy and increased criminality, making the person more dangerous, more likely to recidivate, and less amenable to rehabilitation and thus warranting harsher punishment. Others emphasized that the absence of remorse should never justify additional punishment because due process guarantees defendants the right to assert their innocence, and defendants cannot be expected to show remorse if they do not admit the crime.

### **Time and Place for Remorse**

The judges varied in their views regarding the impact of remorse on judicial decisions across type of crime and stage in the criminal justice process. Notably, some of them placed greater importance on it

in more serious cases. Others stated that leniency stemming from remorse would be more meaningful in cases involving less serious crimes because it could alter the structure of a sentence (e.g., probation versus prison). Many of the judges observed that remorse is more common and has more influence in crimes involving victims, whereas others considered it more relevant in property and financial crimes, where there is an opportunity to make meaningful restitution. However, some of them disagreed: “Paying one’s way out of a problem is not necessarily evidence of true remorse.” Finally, some indicated that they considered remorse more relevant in crimes of negligence, recklessness, and impulsiveness than in premeditated crimes. The only agreement was with regard to heinous crimes, especially murder and rape, in which the seriousness of the offense was seen as the overriding consideration in sentencing, and remorse was viewed as having no impact.

All the judges agreed that the impact of remorse varies according to the stage of the legal process and that it is generally not a factor during trial, where a defendant’s right to maintain innocence predominates. Moreover, any expression of remorse would have no bearing on the duties that the trial judge must perform, including ruling on evidence and instructing the jury.

The judges disagreed about the relevance of remorse at other stages of the legal process. Some argued that it should not be considered at arraignment or affect the bail decision, since strict legal requirements (e.g., the severity of the crime and the defendant’s criminal history) dictate that decision. Furthermore, at that initial stage, defendants’ intense emotions would interfere with an accurate assessment of remorse. In contrast, others considered remorse at arraignment to be predictive of a defendant’s ability to follow court orders and therefore, highly relevant. Moreover, the chances of ultimately being sentenced to jail would be much lower if a defendant demonstrates good behavior while out on bail.

Many of the judges identified the type of plea as an indication of the presence or absence of remorse: “straight guilty is the best way to indicate remorse.” They differed in their views of remorse when defendants resort to the *Alford* plea, a variant of a guilty plea in which defendants do not admit factual guilt but concede that the prosecution is likely to convince the jury of their guilt.<sup>17</sup> Some of the judges under-

stood that an *Alford* plea is a “tactical decision” that “serves its own purpose and is not an indicator of the presence or absence of remorse, in and of itself.” Others viewed an *Alford* plea as “the opposite of remorse, a face-saving mechanism, a calculated way to minimize punishment driven principally by self-interest but [having] nothing to do with feeling sorry or regret.” Notably, these judges did not acknowledge that an *Alford* plea might well be the result of deference to a lawyer’s advice rather than reflective of the defendant’s actual feelings.

Most of the judges agreed that sentencing “is the Big Kahuna,” “the time when remorse comes into play,” and “the best and most evident opportunity for someone to make a statement of remorse.”

### **Expressions of Remorse: “More an Art Than a Science”**

The judges varied in their level of confidence in assessing remorse, ranging from a high degree of confidence to no confidence that genuine remorse can be distinguished from that which is feigned. Those confident in their abilities often cited their experience: “I do not find it difficult to judge remorse. I get people.” “After 40 years of dealing with people, it is not hard for me to make a call about remorse. I am pretty good at picking out the fakers. I am in the credibility business.” In contrast, other judges emphasized the difficulty of determining true remorse: “[The signs of remorse] can all be faked. Go to the theater or the movies—people make a living out of it!” One judge strongly opposed the incorporation of remorse in judicial decisions, in part because of the complexity of assessing it:

[Assessment of remorse] is very difficult, especially for judges who are just seeing bits and slices when the person appears in these very formalized, stylized settings. For judges to think, sitting up on the bench, that they can really figure out whether this guy is remorseful, is remorseful enough, and is it real, it is the height of arrogance.

In the assessment of remorse, the judges disagreed widely with regard to indicators of genuine remorse as opposed to insincere expressions or its absence. Many of the behaviors that indicated the presence of remorse to some of the judges indicated the absence of it to others. The responses can be classified into six categories: statements, nonverbal cues, attitude or demeanor, actions or conduct, corroborating sources, and Gestalt. The judges ascribed various meanings and degrees of reliability to each.

Statements consisted of oral or written communications that indicated a “recognition of wrongdoing,” “acceptance of responsibility” (as in “I did it; I am sorry”), or articulations of “the beliefs and the understanding of why an act is harmful or in what way you’ve really damaged or hurt somebody.” Apologies (letters or direct address in court) and empathic statements also fit within this category. Conversely, defendants may remain silent, make denials, or endorse their crimes. They may speak in a way that “minimizes the consequences to themselves” or suggests that they “do not care about the consequences of their actions.” They could blame or threaten the victim, witnesses, lawyers, or courtroom personnel. They could lie, recite “rote remorse” “in the language of [their] attorney” as if “looking at a 3 by 5 card in the sky.” One judge stated that greater levels of detail were often indicative of greater levels of sincerity, and another claimed that indirect statements (e.g., “I am sorry about what happened”) were less sincere than those made in the active voice (e.g., “I am sorry for what I did”).

Nonverbal cues are aspects of the defendant’s behavior in court that judges may interpret. The participant judges assessed a defendant’s emotional state (e.g., being overwhelmed, breaking down, not paying attention, or being distant) as cues to the presence or absence of remorse. Some looked for specific behaviors, such as crying, facial expression, leering, sneering, remaining expressionless, tone of voice, eye contact, lack of eye contact, head hanging, putting one’s head down, looking up, looking down, looking around, and fidgeting. There was, however, little consistency among the judges as to what a specific behavior could mean. For example, both the presence and absence of eye contact indicated remorse to different judges.

Attitude or demeanor was perceived as a global indicator of remorse. Respect (or lack thereof) for the judicial process and court personnel was often cited: “Someone stands up straight during the proceedings, speaks respectfully, that means one thing. If you are standing with your head at a cocky angle, with a ‘let’s get this over with’ look on your face, that will impact me.” The judges identified arrogance, narcissism, belligerence, hostility, defiance, aggressiveness, and lack of interest or caring as unfavorable: “They will stand there with one hand on the hip, looking at you like, ‘Why you are bothering me, judge, with these questions?’ That attitude that ‘I can’t be both-

ered, I have places to go, I have things to do.” In fact, “criminals, especially at the higher level, understand the rules. If they are acting out in front of you—negative body language, turning around in their chair, speaking out loud, getting aggressive—they are acting out in defiance of the rules.” Another judge saw a “forthright disposition, calm, cold, cool, and collected” as being consistent with a remorseful stance.

Actions or conduct refers to behavior beyond the courtroom that indicated remorse or its absence. The judges examined past criminal records and how defendants “live their life”; compliance with or violation of current court orders; behavior in jail or lock-up; making restitution; enrollment in treatment for drug, alcohol, or psychiatric problems; community service; and volunteering. Two judges exemplified this sentiment with the comment, “It is not just talking the talk; it is walking the walk.”

Corroborating sources were recognized by some of the judges as offering useful information about remorse. Surrogates, such as family members, significant others, clergy, Alcoholics Anonymous or Narcotics Anonymous sponsors, or coaches, were mentioned as potentially influencing the judge’s belief or disbelief in a defendant’s claims of remorse.

Finally, several of the judges relied on a Gestalt impression, described variously as: a “gut instinct, general feel for people”; “your intuition, your experience, your common sense”; a “holistic approach”; “looking at defendants from every possible point of view”; an examination of “all the facts and circumstances”; a “sense from the totality of the circumstances”; a “composite of what you say, how you say it, and the attitude you exemplify when you say it”; and “you know it when you see it.” They alluded to the fact that “it’s more of an art than a science” or that “it’s not a science,” and “there is no tool, no radar” that can unerringly discern genuine remorse.

It is noteworthy that across the participants, the same indicator could be interpreted in opposite directions. For instance, silence was perceived as an indication of shyness, fear, poor public speaking skills, or mental illness on the one hand, or remorselessness, disengagement, or distraction on the other. Some of the judges believed that putting one’s head down or hanging one’s head was a sign of respect. Others said that it indicated an absence of remorse. Similarly, eye contact or lack thereof could be con-

strued as respectful or disrespectful. The judges had particularly polarized views of letters of apology:

Being able to put yourself into the victim’s shoes is an important intellectual exercise. It is also useful if the offender expresses disappointment or regrets what he has done to his own family.

I am very big on apologies because it is restorative justice. Particularly in the juvenile delinquency setting, I will order defendants to write a sincere letter of apology so the victim will know that he has manifested sorrow for what he did. That might be of some solace to the victim.

I never order a person to write a letter of apology. Why would you ever order that? It makes no sense whatsoever. If someone wants to apologize, they apologize.

Other things that may seem like remorse are not, like letters of apology to victims, which can be counterproductive. Those are frowned upon because victims find them to be intimidating. Sometimes they can be worded with meaning within meaning.

Some of the judges doubted the veracity of expressed remorse when the defendant had an apparent change of heart: “It is really timing. If they hang tough through the whole thing, like at a trial, and then when they get convicted and all of a sudden they find God. They think that is going to make an impression on me.” Furthermore, “sociopaths can very easily change their demeanor to hopefully get a particular outcome.” Other judges acknowledged that people can genuinely reform while awaiting disposition, often because their behavior improves with proper management:

People. Can. Change. If somebody has acted like a complete jerk every time he has been in front of me and then suddenly changes into this incredibly polite, nice man, I have to think he might be acting. But it can also be because they are given the right medication, or they have been detoxed from alcohol and drugs, or they have had counseling.

### **Remorse and Mental Illness**

Although one judge professed not to have “the slightest idea” about the nature of the relationship between mental illness and remorse, most believed that in the presence of mental illness, the consideration and relevance of remorse are essentially altered: “When you get into mental illness, it is a whole different ballgame.” “Your ability to be able to put yourself in someone else’s shoes is clouded by your mental illness.” “If somebody is severely mentally ill, then their thought processes might be skewed, and their judgment, ability to understand, and differentiate from reality and non-reality might be impaired.” Mental illness “will deeply affect someone’s ability to communicate and may affect their whole world-

view.” A mentally unstable person is “not even going to be appreciating what is going on around them.” The judges tended to view mental illness as a categorical factor—a person is either mentally ill or not—and once mental illness was present, neither its type nor its severity influenced the judges’ assessment of its effect.

Most commonly, the judges made statements to the effect that mental illness “almost neutralizes” remorse. That is, they would disregard or discount both the presence and absence of remorse: “I would almost throw remorse out the window.” “It becomes a non-issue.” Rather, mental illness requires a “whole different” approach, looking “through a different lens,” and “changes the dynamics of the analysis” so that it becomes the dominant factor in decision-making. The matter of psychiatric medications similarly eclipsed other considerations: “I will first ask, ‘What drugs are you on?’ and that is a powerful factor that takes precedence over remorse.” “You could be medicated with side effects, in zombie-like states.”

Those judges who viewed remorse as relevant for a defendant who is mentally ill indicated that they adjust their expectations: “Expecting them to act in a certain way would be unfair; you have to have lesser expectations for them to show remorse.” “If a person is so mentally impaired that he or she is incapable of expressing remorse, I certainly cannot hold that against an individual.” Nevertheless, if remorse was expressed, some of the judges would regard it in the same way as they would for a normal individual: “I would not think, by virtue of the mental illness, that the expression of remorse was more or less reliable.” “I would not hold their mental illness against them if they appeared to be genuine in their expression.” Meanwhile, others questioned the validity of remorse in a person with mental illness:

Do they remember what they did? Do they have any real current understanding of what happened before to the point where they can honestly show remorse? Or is it that they are sorry for what they did and they would not have done it if they have been well? I do not know. I do not know whether that is being feigned or if it is true because now they are better.

The judges disagreed about whether psychiatrists would be helpful in assessing remorse. Some believed that psychiatrists’ training and experience could be effectively leveraged in this regard: “Given psychiatrists’ training, they may have a better sense of whether expressed remorse is the real McCoy.” These judges credited psychiatrists with a heightened abil-

ity to detect “real versus unreal” remorse and the “genuineness of emotions.” Indeed, psychiatrists “are supposed to have good bullshit detectors,” and “they have heard it all.” Furthermore, unlike judges, psychiatrists have an opportunity to perform their evaluations “in a different, less confrontational setting.” Therefore, remorse “would be a good thing to know about in a psychiatric evaluation” because “remorse clearly plays a role in terms of the stuff that a psychiatric evaluator would want,” and “a psychiatrist would deem remorse to be a factor in their analysis of someone.”

Other judges did not value psychiatrists’ input about remorse. Oftentimes, they viewed the role of psychiatrists as answering specific questions: “If I get a psychiatric report, it is on the question of competency to stand trial, and on that question, the presence or absence of remorse would have no bearing.” “In psychiatric evaluation reports, I give observations of remorse little or no consideration; I read them for background information and psychiatric diagnosis information, but I am not looking for remorse.” Other judges doubted whether psychiatrists’ training was of any use in determining remorse: “You do not need a professional degree to judge remorsefulness; it is more based on experience.” “Having a psychiatrist evaluate whether someone is remorseful is not something that would really sway me; you really need to see it from someone’s actions and what they say themselves.” Finally, some of the judges believed that a psychiatric interview is an inadequate setting for the assessment of remorse: “I would be a little uncomfortable with somebody saying, ‘I met this kid for an hour and I can tell you, he is really sorry, and it is a deep-seated, sustained remorse.’”

I look at expert testimony with a wary eye because they just do not have that much time with these people; whether I give weight to psychiatrists’ observations of remorse depends on the neutrality of it, the nature of the observations, how long [the observations] were, [and] when they were.

## Discussion

The key finding in this study was that the judges did not express uniform views about remorse, its assessment, or its relevance to the judicial process. Nevertheless, they all had strong views about it, and all recognized that the question of how it should affect legal decisions is a relevant one. The variation in their answers mirrors many of the controversies expressed in the literature.

Although the judges generally agreed with the definition stated by Proeve and Tudor,<sup>8</sup> they disagreed about whether remorse is relevant, why it is relevant, for what types of crimes and at what stages in the process it is relevant, what constituted its genuine expression, how mental illness affects it, and whether psychiatrists have anything to offer. Ambiguous behavior, such as eye contact, that one judge viewed as a show of remorse might be deemed by another to show the opposite. The judges also tended to view the absence of signs of remorse as evidence of its absence. In other words, although a few recognized that an expressionless person conveys no information at all, many took the failure to endorse remorse as a sign that the person is not experiencing it internally. Most of the judges expressed an effort, at some point in the proceedings, to look beyond the law and the specifics of the crime to determine something about the person before them. Consistent with previous research, the judges often conflated remorse with overall character.<sup>3</sup>

The relationship between remorse and character extended to other conclusions and predictions. Remorseless persons were seen to possess character flaws, deserving greater punishment, not only to punish the intrinsic immorality of remorselessness, but also because remorselessness suggests further deficiencies that may predispose a person to future criminality. Conversely, remorseful people were seen to possess a virtuous character, meriting less punishment by the state. A remorseful person was frequently construed as an otherwise normal individual who has made a mistake and is therefore a candidate for leniency and rehabilitation. In this way, remorse contributed to the classification of offenders into (career) criminals versus unfortunate regular Joes.

One surprising finding was that many of the judges made scant reference to the impact of the legal process on the defendant's behavior. In particular, many held that an *Alford* plea is indicative of remorselessness and might then be taken into account in sentencing, despite the possibility in Connecticut that an *Alford* plea may be strategic and pursued on advice of counsel with minimal input from the defendant.

A relatively consistent finding was that the judges viewed the presence of mental illness as requiring an alteration of their usual assessments. They were willing to make allowances for mental illness, but their responses suggest a categorical view; that is, defen-

dants are either mentally ill or not. If they are, then they merit a wholly different judicial approach, but if not, then they are treated in the usual manner. Few indicated that they recognize either a spectrum of severity of mental illness or the differences in the types of psychiatric disorders (e.g., mood, psychotic, anxiety, personality, autism spectrum, etc.). The judges' all-or-nothing representation of psychiatric disorders suggests that many defendants whose mental illness is not yet diagnosed or those who wish not to be identified as having a psychiatric disorder will not be afforded a more lenient assessment of their expression of remorse and, therefore, their character.

Our results can inform the work of psychiatric consultants and experts. Currently, unless specifically requested, an assessment of remorse is not regularly included in most forensic psychiatric reports. Indeed, some judges explicitly stated that they would ignore a psychiatric opinion about a defendant's remorse, perhaps viewing that opinion as impinging on a type of personal ultimate question and therefore beyond the scope of psychiatry. Moreover, skeptics might wonder whether psychiatrists are any better than judges at making a determination of remorse. Without an agreed-on definition or structured rubrics of measurement, psychiatrists could be subject to the same biases and peculiarities of personal experience as other types of evaluators. Thus, any evaluation would necessitate caution and careful review.

Nevertheless, many of the judges indicated that they welcome forensic psychiatric assessments. We believe that the present research helps to clarify what form these assessments should take. Psychiatrists possess the skills and knowledge necessary to inform judges' understanding of the defendant's attitude toward the offense. Psychiatrists' training exposes them to a wide range of human expression, as well as to the effects of mental illness, and they must often judge truthfulness versus malingering, especially in forensic populations. Although remorse, with all of its attendant definitional and operational ambiguities, may remain difficult to address, psychiatrists can describe a defendant's mental condition and the manner in which it may affect an expression of or feelings of remorse (e.g., its absence in someone who delusionally believes that the victim attacked him). Furthermore, a psychiatrist can explicate the ways that a person's mental illness or condition affects his presentation. This focus on the influence of mental disorders on presentation, as well as the effects of psy-

chotropic medications on demeanor, would enable psychiatrists to assist judges while still allowing courts to make the final assessment of whether these considerations merit recognition as remorse or should affect the defendant's disposition.

## Conclusion

The results of this study allow us to conclude that judges are thoughtful about remorse. Most of our respondents considered it a relevant and even essential factor in their decisions about sentencing; most expressed some doubts in their confidence in assessing genuine remorse; and most saw a role for forensic psychiatric expertise. Although more research is needed, one lesson from this study is that remorse is an area of interest and relevance in the criminal justice system, and forensic psychiatry can contribute to its assessment. An improved dialogue about this topic can help defendants with and without mental illness obtain greater justice.

## Limitations

The present research implemented a qualitative interview method that relied on snowball sampling. Several methodological limitations were inherent in the study. First, the interviews were all conducted by one researcher and were heavily dependent on his interviewing skills. Furthermore, interviews, by their nature, rely on reflective self-report. Although the judges had much experience in detailing their own decision-making process, they nonetheless remained vulnerable to the biases of self-report. For example, they could not report unconscious influences, they may have been reluctant to divulge inappropriate thoughts, their responses were based on memory, and their stated intentions and actions may have differed from actual practice.

The snowball sampling method also exposed the study to bias. When relying on peer references, those with opposing views could be systematically overlooked due to preferential selection of likeminded individuals. However, as the results showed, our sample of judges gave a wide range of responses that were often in direct opposition with each other. In generating the narrative summaries, the raters were not blinded to the study design. Also, the summaries were subject to the particularities of each rater. Nevertheless, we attempted to minimize this problem by having everyone undergo the same training and meet

together as a group to discuss the summaries. Finally, the generalizability of our research may be limited, given that we sampled only one state, and our sample size was limited. The judges, however, tended to express concepts central to criminal law that are most likely applicable to a wide range of jurisdictions.

## Future Research

Our study was designed to examine the range of criminal judges' views about remorse, and we were able to identify a host of behaviors that judges deem important in their assessments. A next step may be to create quantitative survey instruments and systematically investigate the degree of agreement between judges. Such a study would require a much larger sample of judges, ideally taken from several jurisdictions.

A second avenue of inquiry would be to probe the use of remorse in civil courts, where injuries stemming from negligence or recklessness are common, and one would expect remorse to figure prominently. Indeed, one study has already shown that the timing of defendants' expressed remorse in mock medical malpractice cases can have an impact on the amount of money awarded to plaintiffs.<sup>18</sup> Any research on the role of remorse in civil cases would have to take into account differences between the civil and criminal contexts, such as the role of nonprofessional juries rather than judges as decision-makers.

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