

MINDFUL JUDGING

**Exploring the Impact of Intentional
Awareness on Judicial Officers**

Peter Jamadar, Elron Elahie, and Richard Jamadar

Table of Contents

Preface	4
Introduction	5
Judicial Perspectives on the Research	8
Why the Research?	13
Why this Particular Focus and Design?	21
The Imperative of Integrity	24
Court Performance Standards	27
The Design	29
The Practices	33
Methodology	37
Foundational Data	42
Data on the Practice	45
Detailed Analysis	52
Open Ended Inquiries About the Practices and Their Impact	104
Summary and Conclusions	109
Bibliography	121
Authors' Reflections	126
Appendix	129

© Peter Jamadar and Elron Elahie (2022)

All rights reserved. Except for use in review, no part of this publication may be reproduced, translated or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, any information storage or retrieval system, or on the internet, without permission in writing from the publishers.

Produced by: Peter Jamadar, Elron Elahie, Richard Jamadar

Design and layout: Elron Elahie

Preface

Judicial officers play a critical role in the administration of justice. In the dispensation of their multi-faceted role, they are required, and certainly mandated by the principles of integrity and fairness, to engage all faculties. Thus, a judicial officer's awareness must be a 360-degree one, that is to say, they must be aware of what is going on internally and externally, in the contexts of both themselves and their courtrooms. This exploratory research on mindfulness, or intentional awarenensing, examines the impact of a 27-day practice on the awareness of judicial officers in Trinidad and Tobago. The data shows that by practicing intentional awarenensing, which is premised on the principles of mindfulness, judicial officers become more aware of and attuned to what is going on within themselves and in relation to their behaviours, as well as what informs the court systems and processes and the reality of the unfolding dynamics in their courtrooms. Indeed, in relation to the discharge of core judicial functions, and as well in relation to the elements that constitute procedural fairness, the data demonstrates compelling beneficial effects of the practice.

These results thus significantly call for immediate attention to and deeper interrogation into intentional awarenensing as a tool to enhance the administration of justice. All three of us are convinced by this research that mindfulness, as intentional awarenensing, can be an aid to enhancing the in-court performance of the judicial function, and likewise by extrapolation the effectiveness of any and all decision makers actively involved in the process of engaged decision making.

Introduction

This research specifically explores the usefulness of **Mindfulness**, as *Intentional Awareness*¹, as an aid to judicial officers in the discharge of their judicial function in Trinidad and Tobago, and specifically for the exercise of this function in the courtroom.² Though the actual research was carried out with a relatively small number of judicial officers in Trinidad and Tobago, it has direct implications for all Anglo-Caribbean judiciaries and common law jurisdictions where judicial officers share similar contexts and responsibilities. As such, this research can contribute to the improvement of the judicial function across a wide variety of intra-judicial and inter-territorial jurisdictions, and it is offered with that intent. Certainly, the data offers a convincing case for the impact of *intentional awareness* on the dispensation of judicial function to be further and more widely probed. Indeed, its scope may even include all those who exercise judicial or quasi-judicial functions whether within formal court systems or otherwise.

Intentional Awareness is the term that we will use in this exploration and discussion for the process that was tested, though its historical and current underpinnings are in the practice of what is widely known as Mindfulness (a short historical overview of Mindfulness, which has its roots in Buddhism, is appended to this paper). Indeed, the term Mindfulness was used in the research project itself, and we acknowledge and uphold that value and the traditions from which it comes.

1 An alternative formulation can be Intentional Noticing, though we hold the view that 'noticing' does not quite capture the experiences and effects that Awareness does.

2 See also Peter Jamadar and Kamla Jo Braithwaite, *Exploring the Role of the CPR Judge* (Judiciary of the Republic of Trinidad and Tobago 2017) 62, which considers Judicial Mindfulness a skill that judges ought to acquire.

We have chosen this descriptor, *Intentional Awarenesing*, because it identifies the two core aspects of the practice tested, **intentionality** and **awarenesing**. Both of these may be considered innate qualities and capacities of the human mind, i.e. to be able to pay attention and to be aware. Indeed, these are universal human characteristics. In our opinion, the data strongly suggests that the regular practice of *Intentional Awarenesing* by judicial officers, can lead to improved and enhanced courtroom function and experience, with consequential constructive effects for judicial officers, court users, and the administration of justice.

In our research usage, **intentionality** refers to the positive and conscious intent that a judicial officer brings to bear on critical elements related to the discharge of their judicial functions. The value of 'intentional attention' has been recognised by the Caribbean Court of Justice in **Calvin Ramcharran v DPP of Guyana**: 'Sentencing deserves and demands placing specific focus, attention, effort and care on the process and outcomes of sentencing, immediate and long term, and as well for the parties and the wider society. Intentional attention to sentencing is vital.'³

Building on the insights of psychologist Roberto Assagioli, intentionality includes the harnessing of volition (the will of an individual) and gives direction to its focus and application.⁴ Intentionality, for us, is a conscious, clear, and focused purpose. It is thus teleological, having a known and desired endpoint. And it utilizes the power of attention to achieve these ends. In this research, intentionality was harnessed by participants by setting the intent at the beginning of each practice session, to practice *awarenesing* as required. Intentions can function as affirmations that animate and actualize volition and desire. In this sense they can add 'power' to purpose.

3 [2022] CCJ 4 (AJ) GY, [76]

4 Roberto Assagioli, *The Act of Will* (Wildwood House 1973); Roberto Assagioli, *Psychosynthesis* (Penguin 1977); Roy F. Baumeister and John Tierney, *Willpower: Rediscovering the Greatest Human Strength* (Penguin Books 2012)

In using the term ***awarenessing*** we create a verb form for the adjective 'aware' and the noun 'awareness'. It describes an active engagement of the faculty of perception that notices and participates dynamically and intrinsically, in a non-judgmental and non-labelling manner, with the object(s) of perception in the present moment. It can include an empathetic shifting of perception back and forth between subject and object that may lead to a felt-sense of gestalt. The attention co-opted in intentionality, flows into and through this dynamic process and activity of *awarenessing*, thus aligning intent with awareness in integrity.

The end result of *Intentional Awarenessing*, which is a continuously emerging and deepening process, is a more profound sense of knowing (which may include understanding) someone, something, a situation, or subject as it exists in the present moment, based on information received primarily through perceiving and experiencing. As will be shown in this discourse, the data suggests strongly that the cultivation of *Intentional Awarenessing* can facilitate the more effective discharge of judicial functions in the courtroom.

Judicial Perspectives on the Research

Sir Dennis Byron

This publication makes an important contribution to the development of judicial capacity. The scientific approach and exploration of the idea of training the judicial mind in the art of mindfulness has elevated the quality of judicial training. Certainly, mindfulness is a newly evolving concept. In the Caribbean region, Justice Peter Jamadar, of the Caribbean Court of Justice, has been its pioneer. I have often been on the same judicial education faculty with him, and over the last year or two, I have paid attention to his development of the theme that the art of developing judicial excellence could be influenced by concepts of mindfulness. Judicial officers must be mindful in the sense of being aware of what is going on internally and externally, in the contexts of both themselves and their courtrooms. It requires the ability to be fully present and aware of what we are doing, and understanding what we are experiencing, through our senses or through our state of mind by our thoughts and emotions. But if you have developed an appreciation of the capacity for mindfulness to positively impact judicial functioning as a fundamental quality of judging, one can wonder whether it is simply a natural and instinctive human phenomenon. This innovative study addresses this idea and through a well-documented process shows that mindfulness is a quality which can be developed as an “intentional awarenessing”.

It is fascinating to learn that this characteristic is a trainable feature of the judicial persona contributing to a more profound sense of perceiving and knowing. This fascinating work has demonstrated that the techniques it has explored using simple exercises, when properly understood, harnessed and practiced, would promote the development and improvement of judicial capacity. The scientific technique of developing training exercises and having judicial officers undertake them and record their impact on the exercise of their judicial function makes an important contribution to establishing the validity of the idea that this awareness can be developed by regular practice.

It is fascinating that this scientific exploration has been conceived and implemented in Trinidad and Tobago by our own Caribbean judicial educators. The study makes easy reading. I would certainly hope that the methodology which it describes will become standard usage in our judiciaries, form a part of judicial education programs and improve the delivery of justice.

Sir Dennis Byron is a former President of the Caribbean Court of Justice, former President of the International Criminal Tribunal for Rwanda, former Chief Justice of the Eastern Caribbean Supreme Court, and President of the Commonwealth Judicial Education Institute. He was knighted in 2000 and appointed a member of the Privy Council in 2004.

Justice Madan B. Lokur

Having been a judge for over 20 years in the courts in India and after retirement, in the Supreme Court of Fiji, it would be untrue to say that I was 100% alert while hearing every case. The cause of distraction would sometimes be the droning submissions of a lawyer or a boring subject matter and sometimes even the weather.

Mindful judging highlights some of the dangers of judges not being fully alert while hearing a case and how to overcome seeming or sometimes apparent disinterestedness. In this context, 'intentional awarenensing' is an interesting expression to describe a process through which judicial officers can improve their overall performance by being more alert or mindful, but more importantly deliver justice through enhanced and focused procedural and eventually substantive fairness. The key to understanding intentional awarenensing is its positivity and simplicity. A question sometimes asked relates to the role of a judge. Is she only an adjudicator or perhaps an umpire?

Is a judge expected to be a passive listener or a proactive defender of rights? The answer is usually provided by being aware in a positive way and on the ball (so to speak) while hearing a case and intentional awarenassing shows the way forward. Today, with the COVID-19 pandemic streaming across the globe, and online hearings being conducted by judges at all levels, the scope for the mind to wander off is immense. This research-study is therefore important not only for the present but also for the future since a hybrid of physical and online hearings may well become a way of life for judges and lawyers. Intentional awarenassing will certainly gain greater prominence in the years to come and we should be grateful to the researchers for facilitating the road ahead.

Justice Madan B. Lokur is a former Judge of the Supreme Court of India, former Chief Justice (Ag.) of Delhi High Court, and former Chief Justice of the Gauhati and Andhra Pradesh High Courts, He is presently a Judge in the Supreme Court of Fiji, and the only Indian to be appointed a judge of the Supreme Court of another country.

Justice Victoria L. Ghartey

As a Judicial Officer in the Immigration Court system in the United States, I have heard lectures about sensitivity to factors affecting our decisions or decision-making including biases, actions or behaviour in and outside the Courtroom and the impact of our surroundings. This book does a great job on listing these factors and grouping them in different categories bringing greater awareness to them in the decision-making process and in fact the total administration of justice. I like the use of the term “Intentional Awarenassing” rather than “Mindfulness” because it ‘hits the nail right on the head’ and brings clarity and focus to what is at stake in our role as Judicial Officers. The methodology used in the book opens our eyes and minds to how to practice or achieve intentional awareness and provides a clear answer and fills an existing vacuum on how to practise and achieve intentional awarenassing or mindfulness.

It however leaves open the question of the frequency of the practice to maintain intentional awarenensing. I look forward to enjoying subsequent research addressing that question. It has been an honour and utmost privilege to read a copy of the manuscript for this publication. I have found it to be scholarly, inspiring and practical. Above all, I highly recommend that it be read and used by Judicial Officers and all who are involved in the administration of justice in all jurisdictions, especially in these days of “questionable justice”.

Judge Victoria L. Gharthey is a United States Immigration Judge currently in Orlando, Florida. Judge Gharthey has been an Immigration Judge for the past twenty-six years. She is a former Senior State Attorney, in the Attorney-General’s Office, Ministry of Justice, Accra, Ghana, and a former Principal State Counsel in the Attorney-General’s Office, Ministry of Justice, Port-Harcourt, Nigeria. She is also is a member of the Massachusetts Bar and the Ghana Bar.

Judge Sandra E. Oxner

Judging is a listening profession. Even-handed justice cannot be achieved if the judicial officer is not listening fully to the evidence and submissions. This is even more so in those many courts where fact finding is done by a judge alone without the benefit of a jury or assessors. The quality (fairness) of the decision rendered will be determined by the judge’s ability to carefully listen and observe what is going on in the courtroom. They must also understand the reasons for their own reactions to what they hear and see. The research done to date on the science of fact finding made judges aware of the frailties of human observations as chronicled by experiments of Elizabeth Loftus and others. It showed us that witnesses often give inaccurate evidence because of their faulty perception - fully believing it is the truth. Scientific tests such as lie detectors and FMRI’s would record these false statements as true as the witness believes in their truth.

False impressions can also be caused by bias in the mind of the judge or the witness. Furthermore, trial judges who are also fact finders can suffer from burnout. They are human and it is human to lose attention when hearing fact situations and arguments heard often before. However, to the litigants the court hearing is often the first and only time they are involved in the situation. A court process that does not accord them an attentive judge is a faulty one and is perceived to be and is unjust- tarnishing the image of a fair court process.

This research on *intentional awarenensing* furthers the depth of research into the science of judging and extends it to the whole hearing. It is an important project because it not only identifies further human frailties in the judging process but proposes remedial action and programmes which judicial academies can embrace to support and improve judicial performance.

Judge Sandra E. Oxner is a former Judge of the Nova Scotia Provincial Court and was Nova Scotia's first female judge, and is the Founding President of the Commonwealth Judicial Education Institute established as a Commonwealth NGO in 1998. She was awarded the Order of Canada in 2000. She established the Yogis & Keddy Chair in Human Rights Law at Dalhousie University in 2007.

Why the Research?

The Mandate of Procedural Fairness

This research on *Intentional Awarencing* broadens and builds on research done by the Judicial Education Institute of Trinidad and Tobago (JEITT) on procedural fairness, carried out under the direct guidance of Peter Jamadar (also one of the researchers in this project), who was chairperson of the Institute from 2009-2019. Another researcher in this research project, Elron Elahie, was also intimately involved in that JEITT procedural fairness research and reporting. That research was undertaken during the period 2015-2017. It produced the following direct outputs: a) Proceeding Fairly (Report), b) Procedural Fairness A Manual, and c) Reflections of an Interested Observer.⁵ It also influenced the following publication, Exploring the Role of the CPR Judge.⁶

In terms of intent, the purpose of this research was to explore and discover whether practicing Mindfulness, as *Intentional Awarencing*, could positively support judicial officers in the discharge of their judicial functions in the courtroom, with a special focus on enabling them to realize the standards of procedural fairness.

⁵ Peter Jamadar and Elron Elahie, *Proceeding Fairly: Report on the Extent to Which Elements of Procedural Fairness Exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago* (Judiciary of the Republic of Trinidad and Tobago, 2018); Kamla Jo Braithwaite, Peter Jamadar, Trisha Dassrath, and Elron Elahie, *Procedural Fairness A Manual* (Judiciary of the Republic of Trinidad and Tobago, 2018); Elron Elahie, *Reflections of an Interested Observer: Ethnographic Musings on the Court User's Experience in T&T* (Judiciary of the Republic of Trinidad and Tobago, 2017).

⁶ Jamadar and Braithwaite, *Exploring*.

The procedural fairness research revealed that in Trinidad and Tobago, court users considered that there are nine primary elements that impact their perceptions and experiences of fairness and justice, and which had a direct influence on public trust and confidence in the administration of justice, with consequential implications for compliance with court orders and directions, and for recidivism. These nine elements are: voice, respectful treatment, neutrality, trustworthiness, accountability, understanding, access to information, availability of amenities, and inclusivity.

In Trinidad and Tobago and globally, people are not only demanding not just access to justice, but access to fair, equal, and open justice, that is also accountable in more immediate and practical ways. Individual court users are keenly desirous of a ‘felt-sense’ of justice to be provided and experienced throughout the court process, from beginning to end, both inside and outside of the courtroom, and in relation to all court systems and personnel. International research, primarily from the United States, on procedural fairness (also known as procedural justice) confirms the Trinidad and Tobago research and validates four of the nine procedural fairness elements identified in Trinidad and Tobago (voice, respectful treatment, neutrality, and trustworthy authorities). The differences in the range of elements can possibly be explained by the degree of development of legal systems, as well as socio-historical factors, and also by the focus and methodologies of the research undertaken.⁷ Seen this way, the five additional elements discovered in Trinidad and Tobago (accountability, understanding, access to information, availability of amenities, and inclusivity) may be the products of an underdeveloped legal system existing in a post-colonial context. Whatever the explanations, they remain valid for court users in Trinidad and Tobago. What is important however, from a court user’s perspective, is that these four or nine elements can decisively determine whether the public considers a court system trustworthy, with knock-on effects for compliance and recidivism.

⁷ Peter Jamadar and Elron Elahie, *Proceeding Fairly*, Dylan Kerrigan, “Therapeutic Jurisprudence in Trinidad and Tobago,” in Daniel Nehring, Ole Jacob Madsen, Edgar Cabanas, China Mills, & Dylan Kerrigan (eds), *The Routledge International Handbook of Global Therapeutic Cultures* (Routledge 2020), pp. 446-458.

Thus, these elements can be considered measurable performance standards to be met for the achievement of procedural fairness, the sustainability of public trust and confidence in court systems, and as well as indicators of the effectiveness of a judicial system.

During the period of the research by the JEITT on procedural fairness and before the final reports were published, the Court of Appeal of Trinidad and Tobago, in **Ayers-Caesar v BS (A minor)** explained its understanding of procedural fairness in the context of the new Civil Proceedings Rules (CPR, 1998), as follows:

It is important to also point out, that post-CPR, 1998 and consistent with the constitutional values of equality, fairness, respect and dignity, the new role of the judge mandated by the imperative to 'deal with cases justly,' includes keen attention to procedural fairness. Thus, respect, equality of treatment and fairness must now colour all aspects of judicial behaviour both in court and throughout the management and hearing of all aspects of a matter. In concrete terms, there are four cardinal principles to be adhered to: (i) judges must be fair and experienced as such in all aspects of interaction with litigants and their attorneys; (ii) judges must treat all litigants and their witnesses (including attorneys and court staff) with utmost respect, having regard to their inviolable human dignity; (iii) judges are obligated to take care to ensure that parties clearly understand both what is to be expected, as well as what is actually happening in court proceedings, and all orders, directions and decisions must be carefully explained so that parties fully understand them and appreciate their consequences; and (iv) judges must permit parties to have a voice, that is to say, a meaningful chance to actually participate in their matter at all stages of the proceedings.⁸

In Trinidad and Tobago there is therefore both judicial authority and judiciary-led research supportive of the necessity for procedural fairness.

⁸ Civ App No 252 of 2015, [37]

The recognition of the value of and imperative for procedural fairness throughout court proceedings has also been recognised by the Caribbean Court of Justice (the apex court for Barbados, Belize, Dominica, and Guyana). The CCJ in 2022, in **Calvin Ramcharran v DPP of Guyana** and writing in the context of the desirability of separate sentencing hearings in criminal proceedings, opined:

Judges must ensure procedural fairness in all aspects of the sentencing process. Procedural fairness, or procedural justice, is a necessity. In Caribbean judicial spheres facilitating the nine elements of procedural justice is apposite in a sentencing hearing. That is, facilitating: (i) voice, (ii) understanding, (iii) respectful treatment, (iv) neutrality, (v) trust, (vi) accountability, (vii) access to information, (viii) inclusivity, and (ix) access to necessary amenities.⁹

In Caribbean judicial spheres these elements can help mitigate against the still present and inherited colonial anti-therapeutic ethos that all too often prevails in the criminal justice systems. The research is clear that when court processes are imbued with procedural fairness throughout, there is an increase in overall public trust and confidence in the administration of justice, and increased compliance with court orders and directives. As well, the research indicates that there is reduced recidivism. Indeed, the Court opined that in relation to a sentencing hearing: "Throughout the process the standards of procedural fairness must be met."¹⁰ A statement that is apposite for any and all court proceedings. To better understand why this research on *Intentional Awareness* was undertaken, it is vital to further explain the results of the research done on procedural fairness. This is even more so because the role of the judge in both civil and criminal proceedings is evolving from a model of passive 'umpire' into a more pro-active 'facilitator' of justice, in which judges now have more power over the control and shape of litigation. In-court engagement with court users is also becoming normative throughout the common-law world.

9 [2022] CCJ 4 (AJ) GY, [80], [81]

10 Ibid [117]

In Trinidad and Tobago, the introduction of new civil procedure rules (patterned after the 1999 Woolf reforms in the UK), and more recently new criminal procedure rules, has given formal recognition to and permission for these changing roles.¹¹ Indeed, ensuring that the public perception and experience of court systems is that of fairness, is now more than ever an unavoidable imperative of all judicial systems in democratic societies that uphold the rule of law. In Anglo-Caribbean states that have Westminster-influenced written constitutions, this adherence to fairness and a fair process has constitutional underpinnings. As we shall see, court users' perspectives and experiences are now considered intrinsic to any evaluation of procedural fairness.

Understanding the nine elements thus helps us appreciate what it is that court users expect from an impartial, fair, and just legal system. They are therefore to be read and appreciated from the perspective of a court user, standing empathetically in their shoes, as it were. Understanding their multiple perspectives fed into the rationale for and design of this research, focused even as it is on judicial officers. This is because judicial officers in the discharge of their in-courtroom functions, are one of the most impactful influencers of court users' experiences and perceptions of court systems.

A short explanation of the nine elements follows (an in-depth consideration of the procedural fairness resources mentioned above is encouraged):

- **Voice** - The ability to meaningfully participate in court proceedings throughout the entire process, by expressing concerns and opinions and by asking questions, and having them valued and duly considered (“heard”) before decisions are made.

¹¹ Jamadar and Braithwaite, Exploring

- **Respectful Treatment** - The treatment of all persons with dignity and respect, with full protection for the plenitude of their rights, ensuring that they experience their concerns and problems as being considered seriously and sincerely, and having due regard for the value of their time and commitments.
- **Neutrality** - The independent, fair, and consistent application of procedural and substantive legal principles, administered by impartial and unbiased decision makers and judicial personnel, without discrimination.
- **Trustworthy Authorities** - Decision makers, judicial personnel, and court systems that have earned legitimacy by demonstrating that they are competent and capable of duly fulfilling their functions, responsibilities and duties in an efficient, effective, timely, fair, and transparent manner; and by demonstrating to all court users compassion, care, and a willingness to sincerely attend to their justifiable needs and to assist them throughout the court process.
- **Accountability** - The need for decision makers and judicial personnel to fulfill their duties, to reasonably justify and explain their actions and inactions, decisions, and judgments and to be held responsible and accountable for them, particularly in relation to decisions, delays, and poor service.
- **Understanding** - The need to have explained clearly, carefully, and in plain language, court protocols, procedures, decisions, directions given, and actions taken by decision makers and judicial personnel, ensuring that there is full understanding and comprehension.
- **Access to Information** - The timely availability of all relevant and accurate information, adequately and effectively communicated in clear, coherent language, through open, receptive, courteous, and easily accessible decision makers, judicial personnel, and systems, particularly in relation to each stage of court proceedings.

Why the Research?

- **Availability of Amenities** - The need for all court buildings to be equipped with the necessary infrastructure (both structural and systemic) to enable court users full and free access to court buildings, efficient information systems, relevant operational systems, and the enjoyment of functionally and culturally adequate amenities.
- **Inclusivity** - The need for court users to feel that they are, and experience themselves as, an important part of the entire court process, rather than outside of or peripheral to it; non-alienation, by being made to feel welcomed and included in court proceedings and to participate throughout the process actively, easily, and effectively.¹²

Judicial officers are the most obvious face of justice. What happens in the courtroom most often shapes experiences and influences perceptions of justice in any culture. It is in courtrooms that people really have their lived experiences of ‘court’ and of ‘justice’. Thus, courtrooms may be considered the primary *sitz im leben*, the life setting, of the justice sector. However, experience and perception are also informed by what happens in the courthouse, as well as outside of it. Nevertheless, judicial officers bear a great responsibility for how court users experience the day-to-day delivery of justice. And, considering the procedural fairness research, the question that arises is: How can judicial officers better enable the satisfaction of the nine elements, especially in their courtrooms? It is this primary question that the current research on *Intentional Awareness* sought to explore.

¹² Ibid, 46-47

The Impetus of the Research

Significant research has been conducted in legal spheres amongst lawyers and judges that demonstrates the value of mindfulness for the practice of law and judging. For example, in 2013 Casey, Burke, and Leben, building on earlier procedural fairness research in the USA,¹³ argued for a link between ‘practicing more mindful decision-making that is consistent with the principles of procedural justice.’¹⁴ In 2002, Evan Seamone explored in great depth how mindfulness practices can lead to a state of what he describes as ‘judicial mindfulness’, and how this ‘would guard against ... bias when interpreting legal materials.’¹⁵ In 2015, Karelaia and Reb compellingly argue that mindfulness can improve the quality of decision-making.¹⁶ And in 2018, Rogers, McAliley, and Jha explored the value of mindfulness training for judges, concluding that there ‘is considerable evidence that mindfulness training benefits judges in their resilience, physical health, well-being, and cognitive functioning. Mindfulness practices can meaningfully enhance their capacity for attention and meta-awareness, their working memory, and thus their cognitive function.’¹⁷ Yet this is only the tip of the iceberg. This body of research and writing, against the background of the elements of procedural fairness which did not exist at even satisfactory levels for court users, confirmed in our minds that our explorations were necessary, and could make a significant difference to court users and the administration of justice in all jurisdictions. What is unique about this exploration is the focus on procedural fairness through a four-quadrant model which we explore next.

13 Kevin Burke and Steve Leben, “Procedural Fairness: A Key Ingredient in Public Satisfaction,” *Court Review: The Journal of the American Judges Association* 44 (2007)

14 Pamela Casey, Kevin Burke, and Steve Leben, “Minding the Court: Enhancing the Decision-Making Process,” *International Journal for Court Administration* 5, no. 1 (2013): p. 45, <https://doi.org/10.18352/ijca.8>

15 Evan R Seamone, “Judicial Mindfulness,” *University of Cincinnati Law Review* 70 (2002): pp. 1023-1103

16 Natalia Karelaia and Jochen Reb, “Improving Decision Making through Mindfulness,” *Mindfulness in Organizations*, 2015, pp. 163-189, <https://doi.org/10.1017/cbo9781107587793.009>

17 Scott L Rogers, Chris McAllen, and Amishi P Jha, “Mindfulness Training for Judges: Mind Wandering and the Development of Cognitive Resilience,” *Court Review: The Journal of the American Judges Association*, 2018, p. 669, <https://doi.org/10.1037/e565592013-006>

Why this Particular Focus and Design?

Utilising a Four-Quadrant Model

What the procedural fairness research reveals is that in the new procedural dispensations of justice (e.g. in the new civil and criminal procedure models), judicial officers must now have internal (“inside”) and external (“outside”) 360-degree awareness in the courtroom. In other words, they must be simultaneously aware of:

- a. what is happening within themselves, their thoughts, feelings, attitudes, biases;
- b. how they are conducting themselves and behaving in court moment by moment;
- c. what is happening all around them in the courtroom, including the behaviours of persons present and the impact of the layout and structure of court spaces on the hearing, and
- d. systemic, cultural, sociological, and ideological influences that may affect the hearing.

This all appears almost unreasonable for a single person to do – and to do so all at once! A seemingly impossible task. Yet, this is what the nine elements of procedural fairness demand of judicial officers, and what modern justice systems are expected to deliver to its customers. Ken Wilber offers a framework of a quadrant model for interpreting and analysing reality. We have found this a useful practical model for undertaking the design and interpretation of this research. It has allowed us to develop and test *Intentional Awareness* in the context of a complex operating system – the courtroom, and to develop a working practice that may be applicable and effective for aspiring to achieve the standards demanded of judicial officers by procedural fairness requirements. What the quadrant model allows, within its terms, is to analyse in the context of the nine elements, the whole as well as the parts of the judicial function in a courtroom setting. And to do so from four fundamental perspectives.

This quadrant approach is premised on the basis that any reality can be observed, interpreted, and analysed from four basic perspectives. These four perspectives cover four dimensions since ‘any occasion possesses an inside and an outside, as well as an individual and a collective, dimension. Taken together, this gives us the inside and the outside of the individual and the collective.’¹⁸ Because it facilitates a 360-degree assessment and analysis it is considered an integral approach. Its relevance to this research is summed up in the following: ‘These four facets of your own awareness are so close and self-evident they’re easy to miss! Many conflicts or misunderstandings – personal, political, cultural, business-related, and even spiritual – result from neglecting to consider one or more of the four quadrants.’¹⁹ It is exactly the avoidance or mitigation of procedural fairness shortcomings that *Intentional Awarenessing* is designed to address, and in this research, to do so pragmatically by utilizing the four-quadrant integral model.

Here’s another way of explaining the model, one that informs most closely the design of the research undertaken in this project:

*The quadrants refer to four dimensions of your being-in-the-world: your **individual interior** (i.e. your thoughts, feelings, intentions, and psychology), your **collective interior** (i.e. your relationships, culture, and shared meaning), your **individual exterior** (i.e. your physical body and behaviours), and your **collective exterior** (i.e. your environment and social structures and systems).²⁰*

18 Ken Wilber, *Integral Spirituality: A Startling New Role for Religion in the Modern and Postmodern World* (Boston, MA: Integral Books, 2007), 33

19 Ken Wilber et al., *Integral Life Practice* (London: Integral Books, 2008), 27

20 Ibid

Why this Particular Focus and Design?

A diagrammatic representation aids explanation and understanding:

INDIVIDUAL INTERIOR (thoughts, feelings, intentions, and psychology)	COLLECTIVE INTERIOR (your relationships, culture, and shared meaning)
INDIVIDUAL EXTERIOR (your physical body and behaviours)	COLLECTIVE EXTERIOR (your environment and social structures and systems)

Fig 1

From a judicial officer's perspective, they are expected to always be aware of what is going on in all four-quadrants while in the courtroom - and to always behave and respond in procedurally fair and appropriate ways! From a court users' perspective, they are always perceiving and experiencing proceedings in all four-quadrants – and making assessments about the procedural fairness elements (that matter to them). This research suggests that developing the skill of practicing Intentional Awareness is a way in which judicial officers can more effectively and consistently fulfill the 360-degree demands of procedural fairness. The research also indicates that Intentional Awareness is a skill that can be taught, learned, and cultivated. This means it can be the subject of judicial education programmes. Training that could improve competence, efficiency, and effectiveness in the discharge of the judicial function, individually and institutionally.

The Imperative of Integrity

The Whole as well as the Parts Matter

Article 1 of the Universal Declaration of Human Rights (1948) asserts that all human beings are born free and equal in dignity and rights. This recognition and affirmation of the centrality to the human condition of freedom, equality, dignity, and rights, is fundamental to the judicial process and function; to how judicial officers conduct themselves, proceedings before them, and how they come into relationship with all stakeholders involved in any such processes and proceedings.

Between April 2000 and November 2008, a United Nations initiative set about to identify and articulate universally accepted core judicial values that underpin the judicial function. The purpose was to bolster sustainable public trust and confidence in global judicial systems. The result was the construction of six core judicial values and principles, as follows: independence, impartiality, integrity, propriety, equality, and competence and diligence. These values and principles were agreed to at a meeting of the Judicial Integrity Group²¹ held in Bangalore, India, in February 2001, and have been known and referred to since as the Bangalore Principles of Judicial Conduct.²² They are considered in both common law and civil law jurisdictions as the authoritative statement on the core values and principles that must inform all judicial conduct. They are accepted globally as essential for ensuring sustainable public trust and confidence in the administration of justice. They have inspired and spawned numerous local codes of judicial conduct, including that of Trinidad and Tobago.²³

21 <https://www.judicialintegritygroup.org>

22 The Bangalore Principles of Judicial Conduct (Judicial Group on Strengthening Judicial Integrity 2002), <https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf> accessed 06 July 2021

23 Statements of Principle and Guidelines for Judicial Conduct (Judiciary of the Republic of Trinidad and Tobago 2017)

According to the Bangalore Principles, integrity is essential to the proper discharge of the judicial function. The Trinidad and Tobago formulation states: ‘Integrity is essential to the proper discharge of the judicial function and is vital to maintaining public trust and confidence in the judiciary.’²⁴ In the Region’s most recent revision of a court’s code of conduct for judicial officers, the CCJ’s May 2020 revised code states the principle as follows:

*Integrity is vital to the proper discharge of the judicial office and to maintaining public trust and confidence in the judiciary. It demands ongoing re-evaluation and reform of inner values and outer behaviours; especially, to ensure that these values and behaviours correspond appropriately to evolving notions of justice, equality, fairness, competence, and respect for human dignity.*²⁵

Notice the resonances with Article 1 of the UDHR, as well the reverberations with procedural fairness standards, and the correspondences with the individual inner and outer dimensions of the four-quadrant model. Integrity is thus very much at the heart of the judicial function, a tie-rod, as it were. But what exactly is and what are the contours of integrity in the context of procedural fairness? And how does one understand and apply it as an institutional and evaluative tool in the context of Wilber’s Quadrant approach? We suggest that the answers to these questions lie in the 360-degree nature and the 360-degree objectives of procedural fairness. In the ‘whole-system’ requirements and demands of procedural fairness.

Taking an etymological and philosophical approach, deepens insight. The English noun “integrity” has its roots directly in the Latin *integritatem*, meaning “soundness, wholeness, completeness”, which in turn is derived from the Latin *integer*, meaning “whole” or “intact” or “complete”.

²⁴ Ibid

²⁵ Code of Judicial Conduct (Caribbean Court of Justice 2020) 20

Incidentally, and not irrelevantly, in mathematics an integer is a whole number and is often used in contradistinction to a fraction, or a part of a whole number, literally “a breaking” (from the Latin *fractionem*). More philosophically, integrity when applied to objects, refers to the wholeness, intactness, or purity of a thing. Hence its usage in relation to say, the integrity of an ecosystem, or of a wilderness region, or even of a defence system; meaning that these systems or regions are intact as such and are uncorrupted.²⁶

Thus, in the context of procedural fairness, and because the very nature of the thing is a 360-degree entity, and as well because it describes a judicial “eco system”, to speak of integrity in this context is to refer to the wholeness, completeness, and purity (the incorruptness) of the process and system as a whole. It includes the integrity of the entire judicial system, as well as the integrity of each individual judicial officer operating within that system, and where the inner and outer dimensions of each individual are aligned congruently in integrity with the inner and outer dimensions of the judicial collective, itself operating in integrity. Further, because procedural fairness has its ultimate *raison d'être* in the centrality of freedom, equality, dignity, and rights to the judicial process and function, integrity is in fact the loadstar at the heart of how judicial officers conduct themselves, proceedings before them, and how they come into relationship with all stakeholders involved in any such processes and proceedings. Integrity thus encircles the entire system, even as it demands alignments within and among its parts. We consider it as always interpenetrating and interanimating the system.

This research into the usefulness of *Intentional Awarenessing* as a capacity creating aid to judicial officers in the proper discharge of their judicial function, is thus also ultimately in service of the core judicial value and principle of Integrity as a 360-degree actualising principle and value. In this way, it is also integral.

26 Damian Cox, Marguerite La Caze, and Michael Levine, “Integrity” Stanford Encyclopedia of Philosophy (Stanford University 2017), <<https://plato.stanford.edu/archives/spr2017/entries/integrity/>>

Court Performance Standards

What We Measure Matters

The International Framework for Court Excellence 2012 and the Global Measures of Court Performance 2020, outline eleven core performance measures that ‘have been adopted and adapted in various ways by many courts and court systems...’²⁷ Court Performance Measurement and Management (“PMM”) is defined as the discipline and the process of monitoring, analysing, and using organizational performance data...for the purposes of improvements in organizational efficiency and effectiveness, in transparency and accountability, and in public trust and confidence in courts and the justice system.²⁸ The intention and purpose of PMM is as ‘an effective, practical tool that helps organizations get results that focus on mission and goals.’²⁹ Indeed, PMM fits well into a broad vision of judicial leadership of self-governed, well managed, effective, and operationally efficient courts.³⁰ Ultimately performance matters, and therefore counting (measuring) what counts also matters. The end game is public trust and confidence: ‘court systems are essential institutions for good governance and stable society.’³¹ In this regard the measurement of procedural fairness standards aligns with fundamental PMM objectives.

27 International Consortium for Court Excellence, ‘Global Measures of Court Performance’ (Sydney, 15 October 2020) <https://www.courtexcellence.com/_data/assets/pdf_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf> accessed 06 July 2021

28 Ibid, 6

29 Ibid, 6-7

30 Ibid, 8

31 Ibid, 12, see also Daron Acemoglu and James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (Crown Business 2012)

First and foremost amongst these core PMM measures (Measure 1) is **Court User Satisfaction**. This is defined for the purposes of PMM as: ‘The percentage of court users who believe that the court provides procedural justice, i.e. accessible, fair, accurate, timely, knowledgeable, and courteous judicial services.’³² Procedural Justice as described, is virtually the same as procedural fairness, and the overlaps in the content of both are self-evident. For the Global Measures of Court Performance “core” means that the measure is overarching, superordinate, or strategic, not just operational.³³ Thus the four or nine procedural fairness standards described above, are also core measurement standards in relation to assessing court performance, and as such, place court users at the centre of achieving court excellence.

To the extent that *Intentional Awarenessing* can positively impact achieving and sustaining these procedural fairness standards, it is likely to be a useful, if not important, tool in achieving both court excellence and consequently public trust and confidence (together with all the benefits that flow from these). We suggest that it can also be critical to facilitating the achievement and sustainability of Integrity.

32 International Consortium, 22

33 International Consortium, 11

The Design

Mindfulness, as Intentional Awareness, through a Four-Quadrant Model

The central research question was whether cultivating an independent practice of *Intentional Awareness* specifically designed to focus intention and awareness in the four-quadrants, consistently and continuously for at least twenty-seven days, could improve and enhance a judicial officer's awareness in the courtroom in these domains, while actively engaged in hearing court matters and discharging the associated judicial functions.

To test this, the working hypothesis was based on the capacity of mindfulness practices to improve and enhance attention and awareness in relation to an object of focus. Jon Kabat-Zinn, founder and director of the Stress Reduction Clinic at the University of Massachusetts Medical Centre and Associate Professor of medicine in the Division of Preventative and Behavioural Medicine, is very much the leading pioneer in the West of the scientific investigation and verification of the efficacy of mindfulness, particularly in the domains of health and wellness.³⁴

34 See generally, Jon Kabat-Zinn, *Full Catastrophe Living: Using the Wisdom of Your Body and Mind to Face Stress, Pain, and Illness* (Bantam Books Trade Paperbacks 2013); Jon Kabat-Zinn, *Wherever You Go, There You Are Mindfulness Meditation in Everyday Life* (Hachette Books 2014); Jon Kabat-Zinn, *Mindfulness for Beginners: Reclaiming the Present Moment and Your Life*, Sounds True (Sounds True 2016). And see also, Henepola Gunaratana, *Mindfulness in Plain English* (Wisdom Publications 2019)

Kabat-Zinn describes mindfulness as our inborn capacity for wise and openhearted attention, and explains the efficacy of mindfulness as follows:

*When properly cultivated, such awareness can discern, embrace, transcend and free us from the veils and limitations of our routinized thought patterns, our routinized senses, and routinized relationships, and from the frequently turbulent and destructive mind states and emotions that accompany them.*³⁵

Within the context of the role of judicial officers, mindfulness has been defined as the ‘ability to be fully present to what is happening at every moment’ in relation to court processes ‘with an attitude of openness and receptivity (non-judgmentally), and with the intention to deal with each case justly, fairly, effectively...’³⁶

Seen through the procedural fairness lenses of court users’ expectations for voice, respectful treatment, neutrality, trustworthiness, accountability, understanding, access to information, availability of amenities, and inclusivity, the promise of mindfulness (*Intentional Awareness*) is self-evident. If judicial officers could consistently, especially in high stress courtroom situations, discern, embrace, transcend, and free themselves from the unfair and often compulsive influences of their habitual (and addictive) thought patterns, feelings, agendas, conduct and biases, and from the inappropriate and injudicious mind states, emotions, prejudices, prejudgments, and patterns of behaviour that often accompany them, it is more likely that the standards of procedural fairness will be met more reliably.

35 Jon Kabat-Zinn, *Coming to Our Senses, Healing Ourselves and the World through Mindfulness* (Hyperion Books, 2010) 10

36 Jamadar and Braithwaite, *Exploring*, 62

A little honest self-reflection will reveal that as judicial officers, we are all, to greater or lesser degrees, captive to these kinds of unjudicial influences. That being the case, the only relevant question is whether we can change; and if so, how? Hence the research question that we set out to explore. Change is premised on choice, and choice is facilitated by awareness.

To this end, mindfulness was defined as: ‘moment-to-moment, non-judgmental awareness, cultivated by paying attention in a specific way, that is, in the present moment, and as non-reactively, as non-judgmentally, and as openheartedly as possible’.³⁷ For the purposes of the instructions to participants in this research, it was defined simply as **paying attention in a particular way, on purpose, in the present moment, non-judgmentally**. Followed by the short explanation that **it is basically being intentionally fully aware moment-to-moment without any judgment of, on, or about the object(s) of one’s awareness**.

Mindfulness, increasing Awareness, facilitating Choice, Compelling Change

Research on mindfulness suggests that accessing and increasing awareness, even for a moment, allows for a “shift” in our relationship with our on-going experience.³⁸ And it is this shift in our relationship with the on-going experience that ‘gives [us] more degrees of freedom in [our] attitude and in [our] actions in a given situation...’³⁹

37 Kabat-Zin, *Coming to Our Senses*, 108; see also 11 “... being present and awake here and now...”; 24 “... an openhearted, moment-to-moment, non-judgmental awareness.”

³⁸ Ibid 74

³⁹ Ibid

As Jon Kabat-Zinn poignantly explains:

Every moment in which we are caught, by desire, by an emotion, by an unexamined impulse, idea, or opinion, in a very real way we are instantly imprisoned by the contraction within the habitual way we react, whether it is a habit of withdrawal and distancing ourselves, ... or of erupting and getting emotionally 'hijacked' by our feelings...⁴⁰

The research suggests further that, if we are aware as we are experiencing these moments, there is a “shift”. And it is this “shift” in relationship to the experience that allows, potentially, for us not to fall into our habitual reactions. Or to recover “more quickly” if we have been caught by them. Thus, Intentional Awarenessing was chosen as the underpinning practice for this research, as it seemed to offer the possibility of facilitating conscious choice, even compelling change, through practices that increased awareness in the subject.

⁴⁰ Ibid

The Practices

Mindfulness, as Intentional Awarenessing, in the Four Quadrants

The practice involved two components, broken into two discrete practices. Richard Jamadar, also one of the researchers in this project, was instrumental in refining the details of these practices, drawing on his long practical and intellectual involvement with Buddhism. The first component was intentionality. Built into both practices was a step to cultivate the setting of intent, of an aim or orientation to direct the mind and will during the actual *awarenessing* aspect of the practices. The second component was *awarenessing*. Both practices involved specific instructions on how to pay attention in a particular way, on purpose, in the present moment, non-judgementally, but each with a different focus of attention. In one practice, the focus was internal, inside the individual, and in the other it was external, on outside phenomena.

These different foci were deliberately designed in order to accustom and habituate the participants' minds to *awarenessing* Wilber's 'inside' and 'outside' dimensions, and so prepare for the four-quadrant *Intentional Awarenessing* that we actually wanted to test in the courtrooms. There were also general preparatory instructions, referred to as 'pre-practice'. Thus, the practices can be thought of as *Intentional Awarenessing* conditioning events/experiences/exercises that we wanted to use to develop a corresponding capacity in judicial officers, as what we really wanted to test and determine was whether by doing so they could have a measurable impact on qualitative and quantitative aspects of 360-degree *awarenessing* by judicial officers in the courtroom.

The actual practice instructions were as follows:

Pre-practice

1. Find a place/space where you will not be disturbed for the duration of the practice (15 mins).
2. Sit in a posture/position in which you are comfortable and alert (and can remain so for the duration of the practice). Sitting with your back comfortably upright is generally recommended.
3. Identify and state your intention: to practice mindfulness as required for 15 mins, for the purpose of this research.

Practice 1

Close your eyes and relax. Become generally aware of the movements of your body that accompany your breathing. Now become fully aware of where in your body you feel this movement the most. Remain fully aware of this feeling (the sensation of bodily movement that most accompanies each breath), for the duration of the practice (15 mins).

Whenever you realise that your awareness is no longer on the bodily sensation of the movement of your breath, gently and intentionally return to this awareness. Continue to return as often as is required for the duration of the practice (15 mins).

It is normal to experience your awareness repeatedly moving away (being distracted) from the bodily sensation of the movement of your breath. The practice requires returning your awareness, over and over, as often as necessary, to the sensation of your breath whenever you discover that you have been distracted.

Practice 2

Keeping your eyes open, relax. Become fully aware of whatever you are seeing at this moment (whatever your sight happens to fall upon). Keep your awareness on whatever you are seeing without labelling, describing, analysing, or thinking about in any way whatsoever what you are seeing. If your sight shifts to another object, become fully aware of that new object (keeping your awareness on it as before). Continue for the duration of the practice (15 mins).

Whenever you realise that you are labelling, describing, analysing, thinking about what you are seeing, or are otherwise distracted, gently and intentionally return to just being fully aware of the object of your sight.

It is normal to find yourself (automatically and spontaneously) labelling, describing, analysing, and thinking about what you are seeing, or otherwise being distracted from just being fully aware of what you are seeing. The practice requires returning your awareness, over and over, as often as necessary, to just being fully aware of whatever you are seeing whenever you discover that you have been distracted.

NOTE: In these practices a '**distraction**' occurs whenever the object of attention wanes to the background of one's awareness, is completely forgotten and/or one's awareness becomes occupied with anything else.

Mindfulness Defined: 'Paying attention in a particular way, on purpose, in the present moment, non-judgementally.' (Jon Kabat-Zinn) It is basically being intentionally fully aware moment-to-moment without any judgment of, on or about the object(s) of one's awareness.

It was recommended that each practice be done once per day, at separate times (resulting in two 15-minute sessions per day). The period for the duration of the practice was 27 days. This period was selected as a scientifically researched and reasonable time for the short-term formation of new habits. Habit formation research suggests that for long term effects time periods vary depending on context. This research only sought to investigate short-term effects.

41 Jeremy Dean, *Making Habits, Breaking Habits: How to Make Changes That Stick* (Oneworld 2013); James Clear, *Atomic Habits: An Easy & Proven Way to Build Good Habits & Break Bad Ones* (Penguin Random House, 2018); Phillippa Lally, Cornelia H. M. van Jaarsveld, Henry W. W. Potts, Jane Wardle “How Are Habits Formed: Modelling Habit Formation in the Real World,” 2009 *European Journal of Social Psychology* 40, 998-1009

Methodology

Judicial officers were first asked to complete an entrance survey before engaging in any of the mindfulness (*Intentional Awareness*) practices. All judicial officers of the Judiciary of the Republic of Trinidad and Tobago (JRTT) were invited to participate, with a target of twenty being assigned. This target was met.

After completing this initial (baseline) questionnaire, the twenty judicial officers were then sent the mindfulness (*Intentional Awareness*) practices, described above, to be engaged. As explained, twice daily for twenty-seven days, these judicial officers were to dedicate 15 minutes to these practices. Intermittent reminders were sent over the 27-day period so that judicial officers would be prompted and encouraged to do the practices. Upon the end of the 27-day practice period, the participating judicial officers were sent an exit survey. This exit survey contained the same questions as the entrance survey, and a few additional questions that assessed their experiences of the practices. These two surveys formed the basis of the data collection for analysis and review. The design was intended to capture a pre-practice (baseline) profile of the group and so allow for a comparative analysis with a post-practice profile and data generated by the exit survey.

The Data Collection Tool

The survey questionnaire which participants completed before and after the practice period sought to ascertain judicial officers' assessment of their awareness in four different areas or dimensions.

The survey was designed to capture these assessments based on the four-quadrant model, as explained below and as shown in Fig 2:

Internal Individual – refers to the individual’s inner influences, experiences, consciousness, and values.

Internal Collective – refers to the inner shared cultures, values, norms, experiences, and purposes of a community, including its inner ideological and actualising systems and structures.

External Individual – refers to the individual’s outer and overt conduct, expressions, behaviours, habits, and practices.

External Collective – refers to the outer and overt systems, structures, processes, forms, and environment of a community, including the conduct, expressions, and behaviours of the community.

	INTERNAL	EXTERNAL
INDIVIDUAL	Influences Experiences Consciousness Values	Expressions Behaviours Habits Practices
COLLECTIVE	Shared Cultures Shared Values Shared Norms Shared Purposes	Systems Structures Processes Behaviours

Fig 2

Questionnaire Salience

Introductory questions captured relevant biodata. These were followed by questions that expressly investigated general degrees of awareness (mindfulness) in the four areas or dimensions described above, using a 7-point Likert scale model to capture nuance. For example, questions inquired about the state of a participant's 'ordinary and general awareness of':

- a. internally and personally, their own thoughts, emotions, bodily sensations, and inner reactions to changing circumstances, as well as their biases, stereotypes, social context assumptions, habitual patterns of behaviour, preferences, aversions, triggers;
- b. externally and personally, their own behaviours, facial expressions, tones of voice, gestures, non-verbal signals towards and eye contact with others, and self-management in relationship with others;
- c. internally and collectively, prevailing local, social, and cultural values, biases, stereotypes, and discriminating considerations; and
- d. externally and collectively, what is happening in the environment, changes occurring, emotional states and behavioural patterns of others, and the existence and impact of systems, structures, and behaviour on others.

Next, were questions investigating specific degrees of awareness (mindfulness) with a focus on judicial officers in the courtroom, the courthouse, and outside of the formal court environment. Again a 7-point Likert scale was employed. Here the questions were principally aimed at the procedural fairness elements. For example, questions were asked inquiring about judicial officers' awareness of:

- a. the presence, needs, and activities of court users, court staff, and other persons in the courtroom;
- b. the environment in the courtroom, including layout, security measures, security risks, and changes occurring that could impact the integrity of the judicial process;

- c. prevailing local, social and cultural values, biases, stereotypes and discriminating considerations generally, and those that can impact the integrity of the judicial process;
- d. personal values, biases, stereotypes, and discriminating considerations generally, and those that could impact the integrity of the judicial process;
- e. how changing emotions, behaviour, facial expressions, tone of voice, gestures, and non-verbal signals could impact the integrity of the judicial process; and
- f. how their speech and behaviours towards court users, court staff, witnesses, litigants, attorneys, and the public could impact their professional integrity, the integrity of the judicial process, and perceptions about the administration of justice.

To investigate into even deeper layers of awareness, further questions were asked, this time using a 9-point Likert scale model. Here the focus was on judicial officers' perceptions, interpretations, and applications of facts and the law, as well as on the treatment of parties, witnesses, attorneys, and on the conduct and outcome of proceedings, and the degrees of awareness of how these can be influenced by:

- a. internal mental, emotional, and psychological states;
- b. internal values, beliefs, biases, stereotypes, and discriminating considerations;
- c. personal likes, dislikes, attractions, aversions, assumptions, and expectations, and
- d. contextually prevailing local, social, and cultural values, beliefs, stereotypes, and discriminating considerations, as well as generally held community likes, dislikes, attractions, and aversions.

Finally, and also using a 9-point Likert scale, judicial officers' awareness of frequency, sensitivity to, and the extent of being distracted and attentive during court processes was investigated. The exit survey mirrored the entrance survey. It added questions about consistency and ease of the practice. Open ended questions were also included to allow for increased engagement with and comments from participants. These questions allowed for more open-ended sharing and with it, potentially greater insights.

They were intended to capture even more subjectively qualitative data. Also, specific general comparative questions were included, for example, about how the practices impacted awareness of thoughts, emotions, and bodily sensations; and awareness of the external environment and people encountered; and then, if awareness in relation to these had increased, whether it was considered useful.

The design was thus intended to inquire into deeper and deeper levels of judicial officers' 360-degree awareness. And as well to permit a comparative analysis, by using the survey assessments before and after the practices, of whether, and if so to what degree, judicial officers awarenensing may have changed. The design also specifically targeted the nine elements of procedural fairness and sought to assess whether a conscious practice of *Intentional Awarenensing* could have positive impacts on judicial officers' responsibilities in this regard.

Limitations

The number of survey and practice participants for this survey is small and varies in the pre- and post-practice responses. However, the importance of the findings remains significant and certainly raise a compelling call for further attention and action in this area. Additionally, for clearer comparative analysis, percentages were rounded to the nearest whole number.

Foundational Data

Twenty judicial officers completed the pre-practice entrance survey and were sent the practices to be completed in the 27-day period. Notably, seventeen judicial officers responded to the exit survey. As such, the response rate for the practice was 85%. This was considered significant given the sample size.

For the bio and information data that are presented below, the figures reflected are from the exit survey as it captures participants who completed both surveys. Where the data shows pre-practice and post-practice responses, the relevant percentages based on the number of participants in the pre- and post-practice surveys are reflected. As mentioned earlier, percentages are presented to the nearest whole number.

Jurisdictions Represented

Judicial officers from different jurisdictions within the JRTT took part in this exploratory research. The majority (47%) of judicial officers who participated were Judges of the High Court. Judges of the Court of Appeal made up 23% of the participants, while Masters of the High Court, Assistant Registrars, and Deputy Marshals all made up 12% of respondents. Notably, only 6% of participants were Magistrates (See Fig 3 below). This sampling reflects a balanced representation of the composition (of judicial officers) of the Supreme Court but is under-representative of judicial officers of the Magistrates' Court.

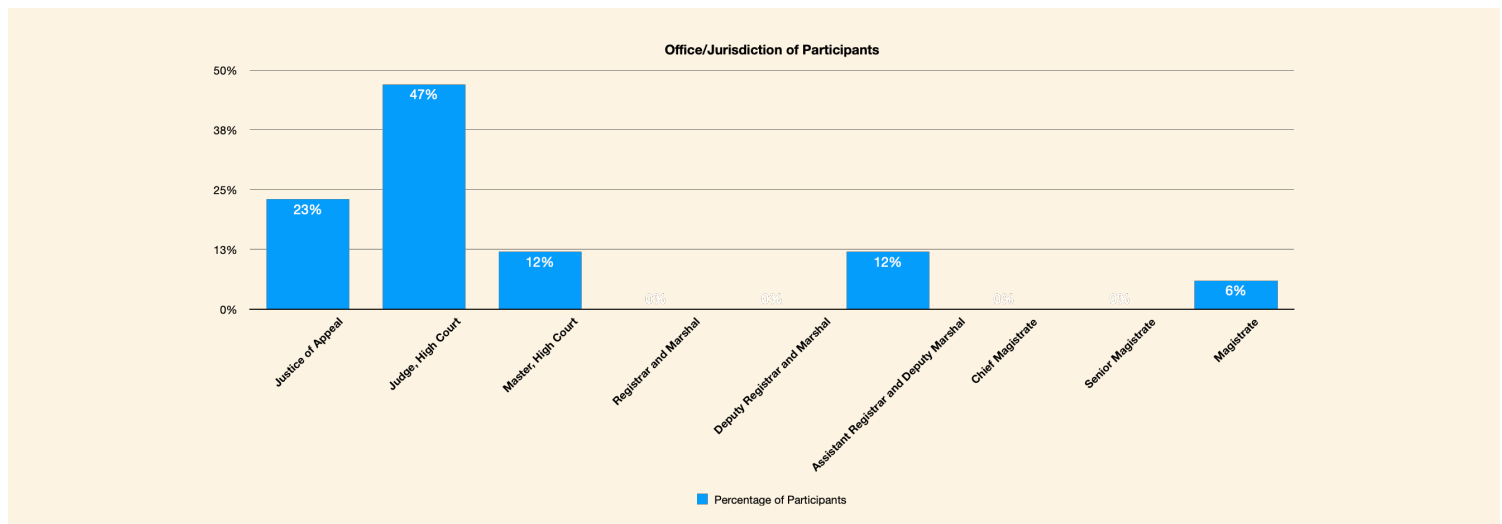


Fig 3

Gender and Age

The gender identity of participants was not far from being evenly distributed: 59% of the participants identified as women, and the remaining 41% as men (See Fig 4 below). As for the age ranges of participants, 82% were 45-64 years old, 6% were 35-44 years old, and 12% were 25-34 years old (See Fig 5 below).

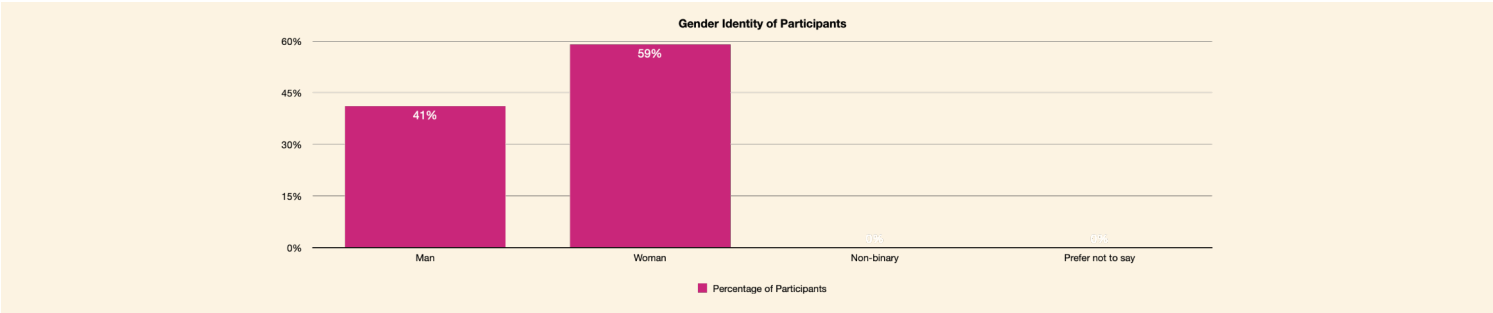


Fig 4

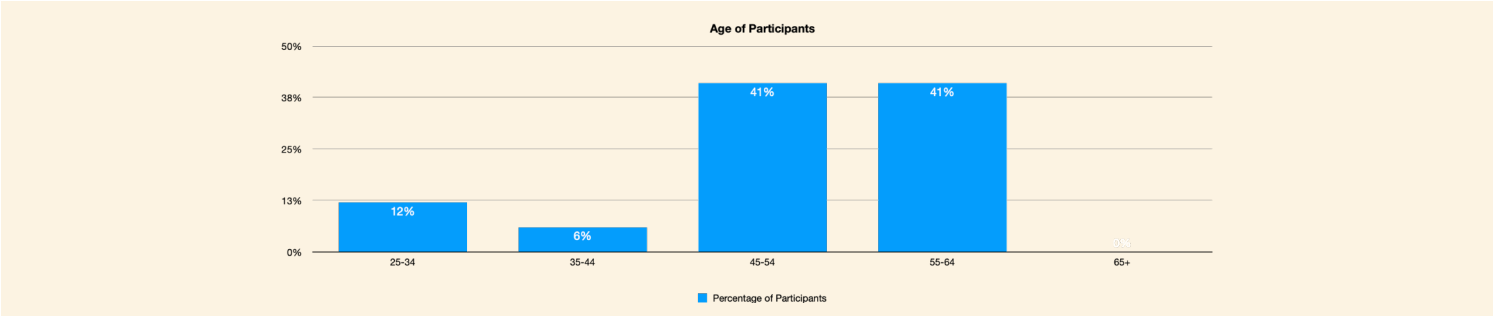


Fig 5

Data on the Practice

At the end of the 27-day practice period and upon completion of the exit survey, it was discovered that none of the participants had completed the practice in full (fifteen minutes twice daily for 27 days). Notably, however, 41% of the participants rated their practice participation at seventy-five percent, while 35% rated their practice participation at fifty percent. Thus, 76% of participants practiced to the extent of at least fifty percent. Fig 6 shows the breakdown of judicial officers' practice.

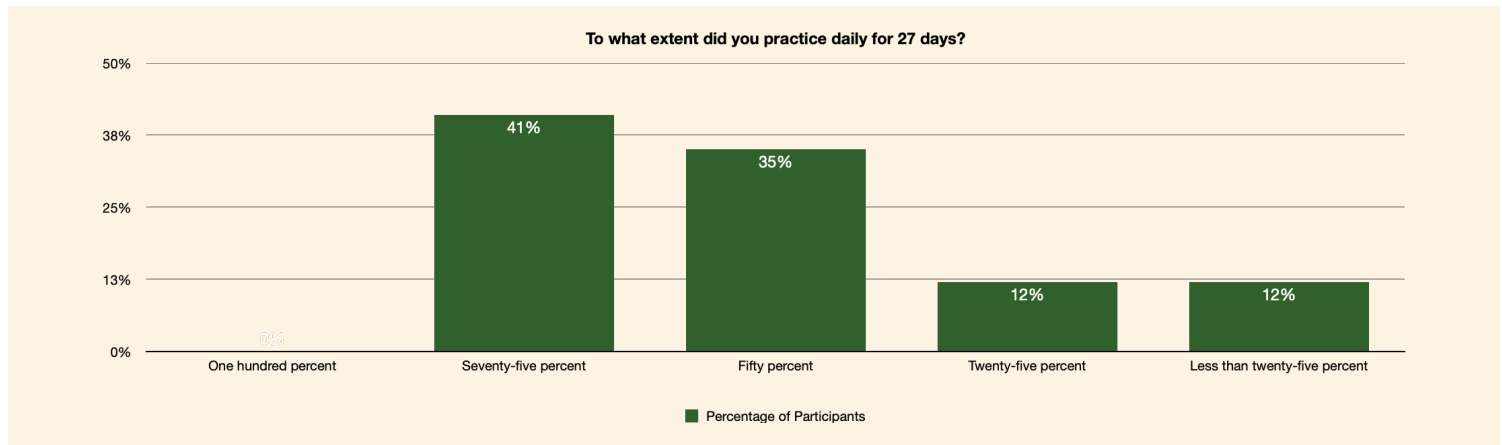


Fig 6

Experience of the Practice

The exist survey asked participants to state whether they found the practice easy, somewhat easy, and not easy, as well as whether it was challenging, somewhat challenging, and not challenging at all. Notably, 27% of the participants stated that the practice was easy while 55% said it was not. 18% said it was somewhat easy. Correspondingly, 53% stated that the practice was challenging while 18% were of the view that the practice was not challenging (see Figs 7 and 8).

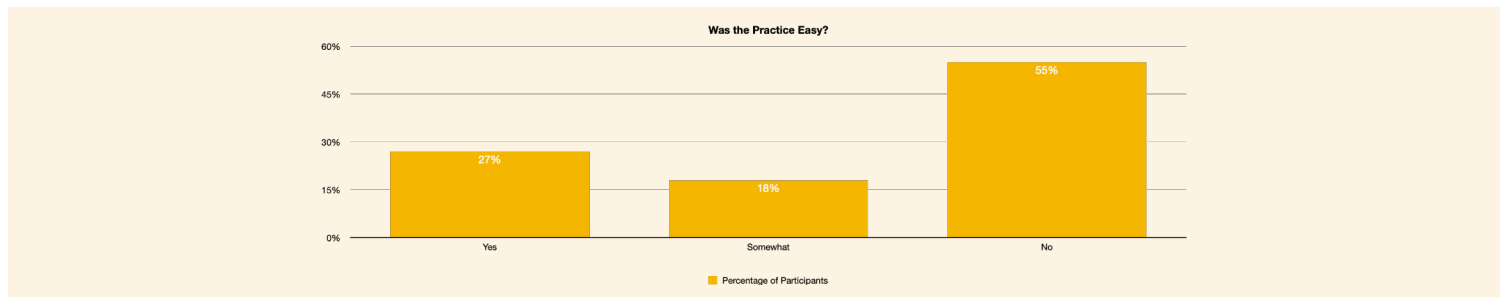


Fig 7

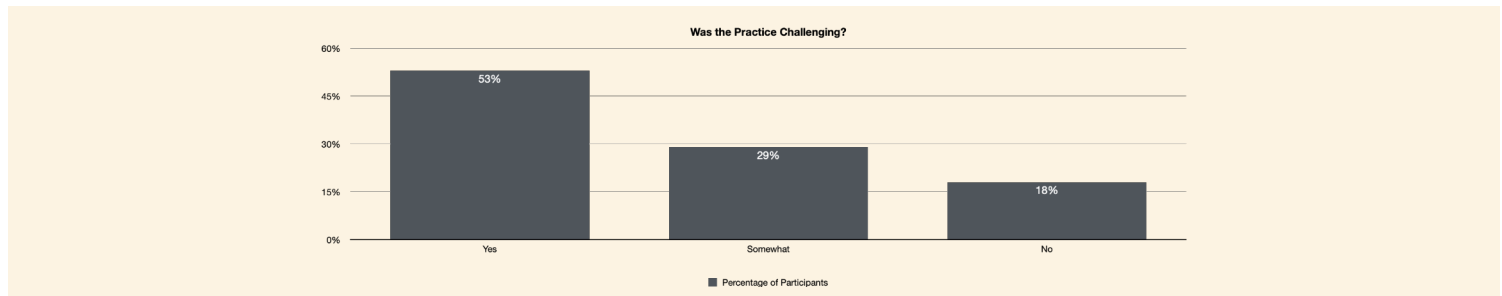


Fig 8

Thus, while not considered easy and considered challenging by a majority, more than 75% of participants sustained the practice to an extent of at least fifty percent (41% to an extent of seventy-five percent). Additionally, over 85% would recommend the practice to their colleagues as shown in Fig 9.

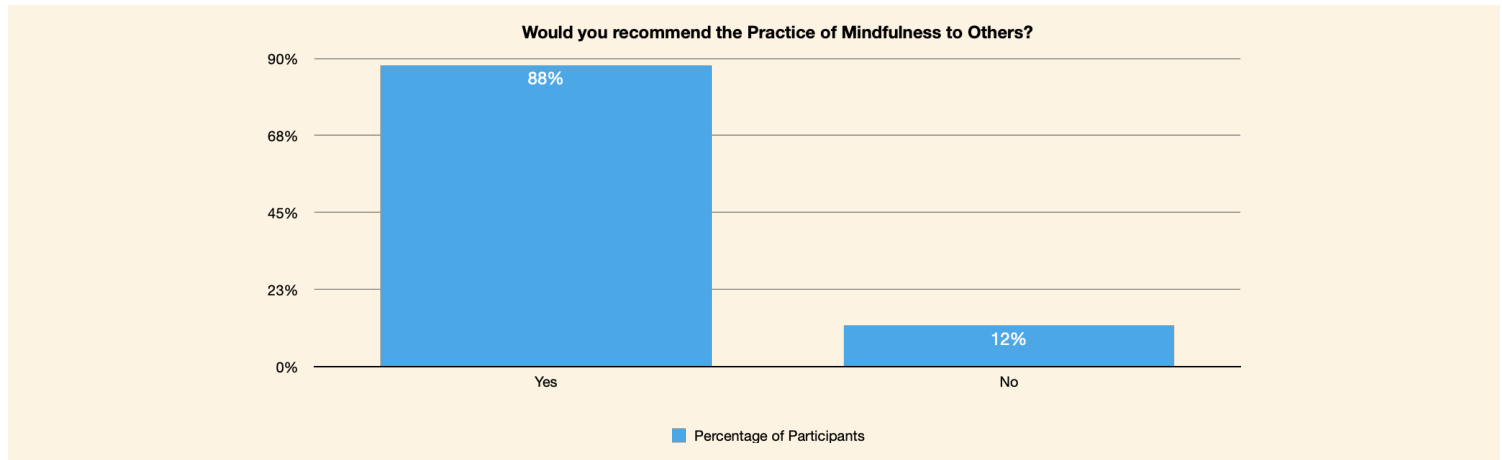


Fig 9

General Effects

Participants, at the end of the practice period, were asked to state whether they experienced any increase, decrease, or inertia in a range of different areas of their awareness.

When asked how the practice impacted on their **awareness of their thoughts**, 88% of participants stated that they saw an increase. The remaining 12% said there was no change in their awareness. The results were similar for the other areas of awareness that were assessed. When asked about the **awareness of their emotions** 71% recorded an increase while 29% said it stayed the same. 81% said their **awareness of their bodily sensations** increased. 82% stated that their **awareness of their external environment** increased. And 76% noted an increased in their **awareness of others**. Notably, none of the participants recorded a decrease in their awareness of any of the areas assessed. Figs 10-14 graphically present these findings.

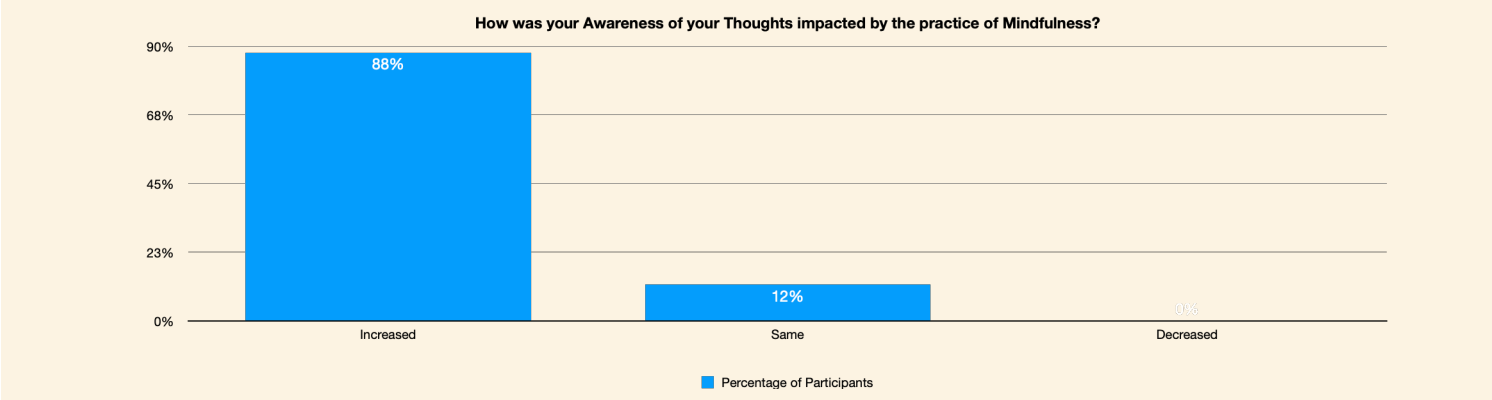


Fig 10

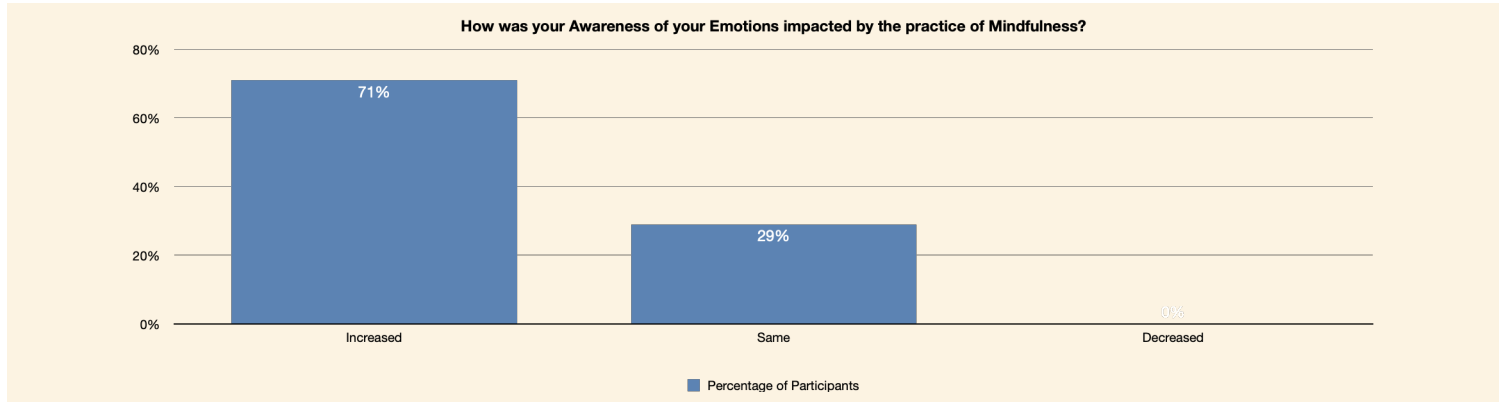


Fig 11

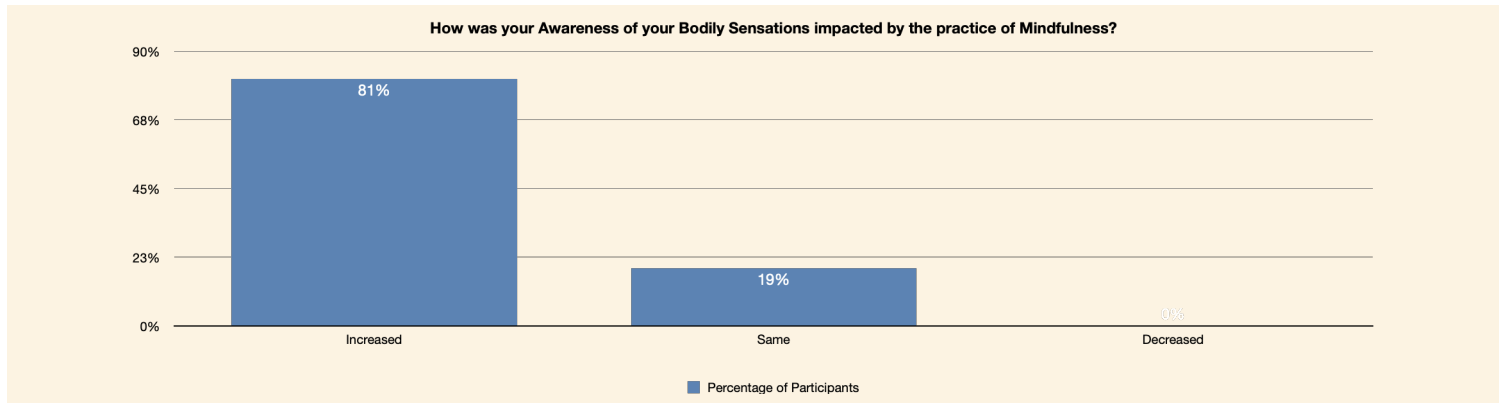


Fig 12

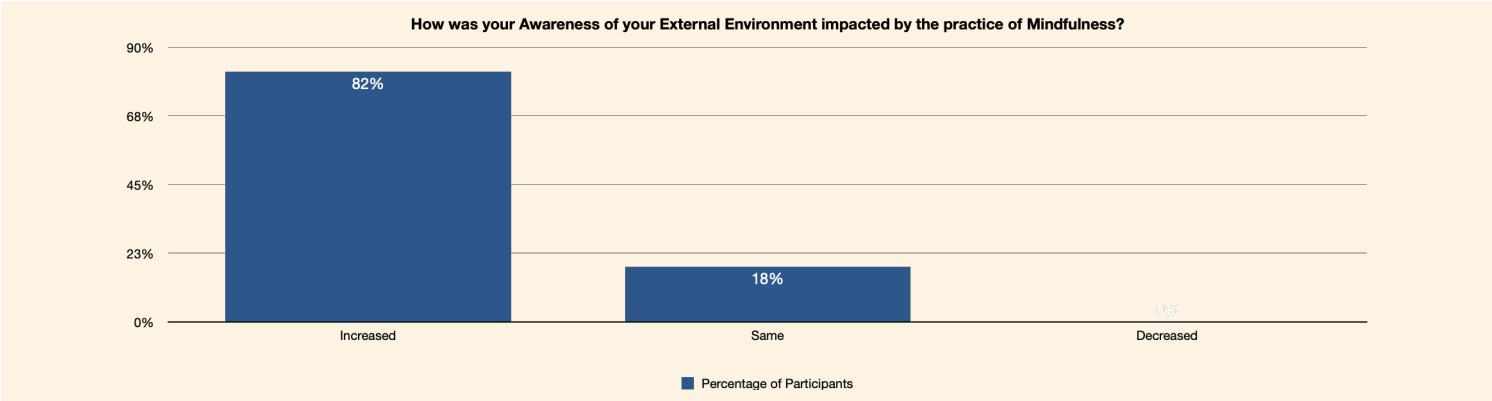


Fig 13

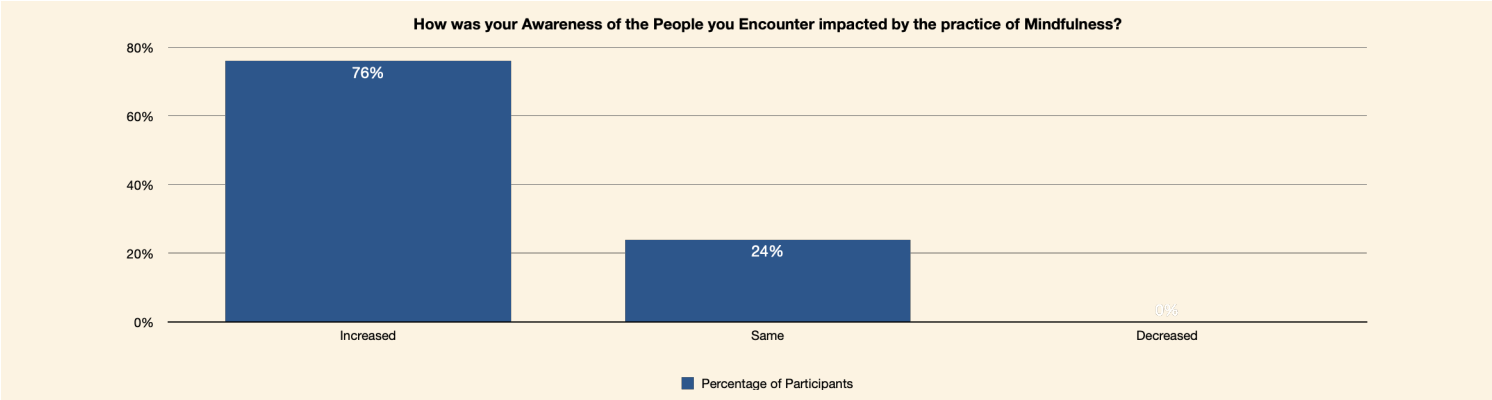


Fig 14

What is significant about these findings is their potential impact on judicial officers' procedural fairness responsibilities. The four-quadrant model divides experiences into internal and external, and procedural fairness requires judicial officers to be aware of both what they are experiencing internally, "inside" themselves, and as well what is happening "outside", externally, in the courtroom environment. The practices were designed to focus and cultivate *awareness* in both dimensions. Thus, findings that in both dimensions over 70% of participants observed an increase in awareness is considered salient.

Detailed Analysis

Changes in General Awareness, Specific Foci

These general indications of increased awareness were corroborated by the responses to more specific and focused inquiries. As explained above, we consider this significant. The 7-point Likert scale choices were: *always aware, very aware, often aware, sometimes aware, not usually aware, rarely aware, and never aware*. We repeat, change is premised on choice, and choice is facilitated by awareness. Thus increased capacity for *awarenessing*, increases the likelihood of choice-making aligned with intention or purpose, and hence growth and development towards building greater degrees of integrity.

Internal Dimensions

In **relation to thoughts**, the *awarenessing* of which can allow a judicial officer to take stock of what they are thinking about in court and exercise choice to make changes, the data is very promising. With increases up to 65% and 29% (from 60% and 20%) respectively, participants reported being *very aware* and *often aware* of their thoughts. Significantly, no one of the 20% who reported being *always aware* of their thoughts in the entrance survey (or any others), maintained or asserted that position in the exit survey.

Before practicing *Intentional Awarenessing* several participants believed that they were *always aware* of their thoughts. However, after the practice period these participants realised that this was not so. **This in fact appears to show an increase in awareness brought about by the practices: the practices led to increased *awarenessing*, which in turn led to the realisation that participants were not actually always aware of their thoughts.**

This conclusion is supported by the fact that in the entrance survey no one believed that they were ‘*sometimes aware*’ of their thoughts or any of the other lesser degrees of awareness. However, on the exit survey 6% stated that they were *sometimes aware*. Again, reflecting an increase in sensitivity to the degree of awareness after the practice. Fig 15 graphically represents this data.

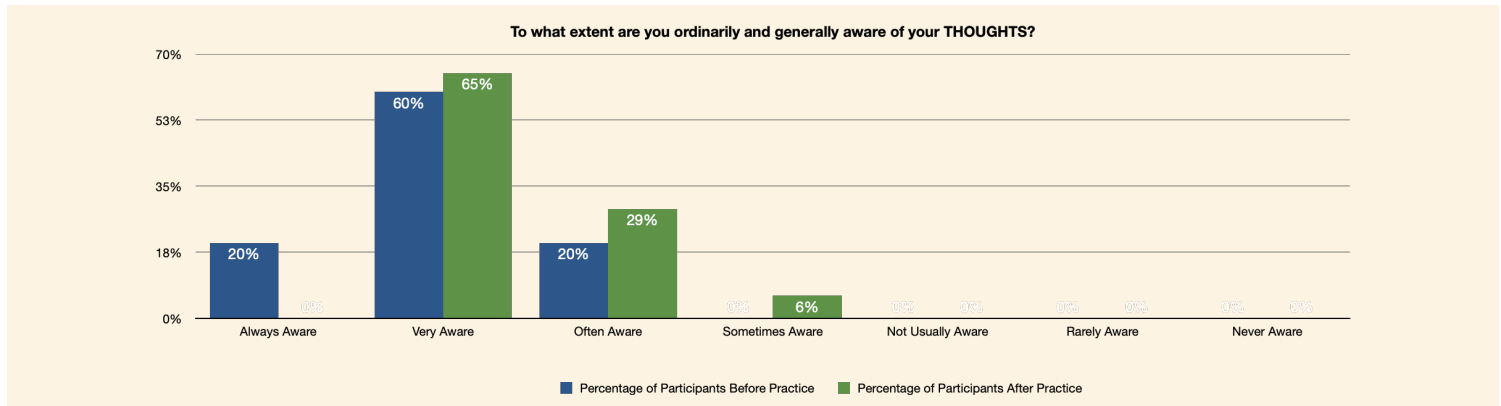


Fig 15

A reasonable conclusion that can be drawn from this data, is that in **the internal individual dimension, the capacity for *awareness* of thoughts was increased as a consequence of the practices.**

Similar results were shown in relation to ***awareness* of emotions, bodily sensations, and inner reactions to changing circumstances.** However, the increases were quite substantial: increases for emotions, bodily sensations, and inner reactions, up to 70%, 41%, and 65% (from 45%, 25%, and 35%) respectively for being *very aware*; and in the case of bodily sensations and inner reactions, increases from 20% to 53% and from 20% to 24% respectively for being *often aware*. Figs 16-18 graphically present these findings.

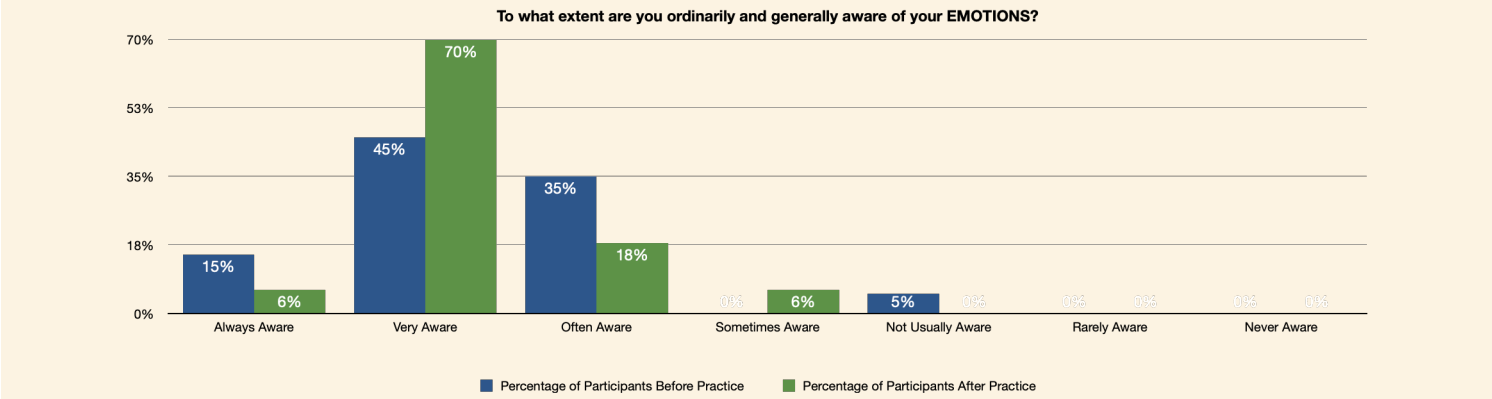


Fig 16

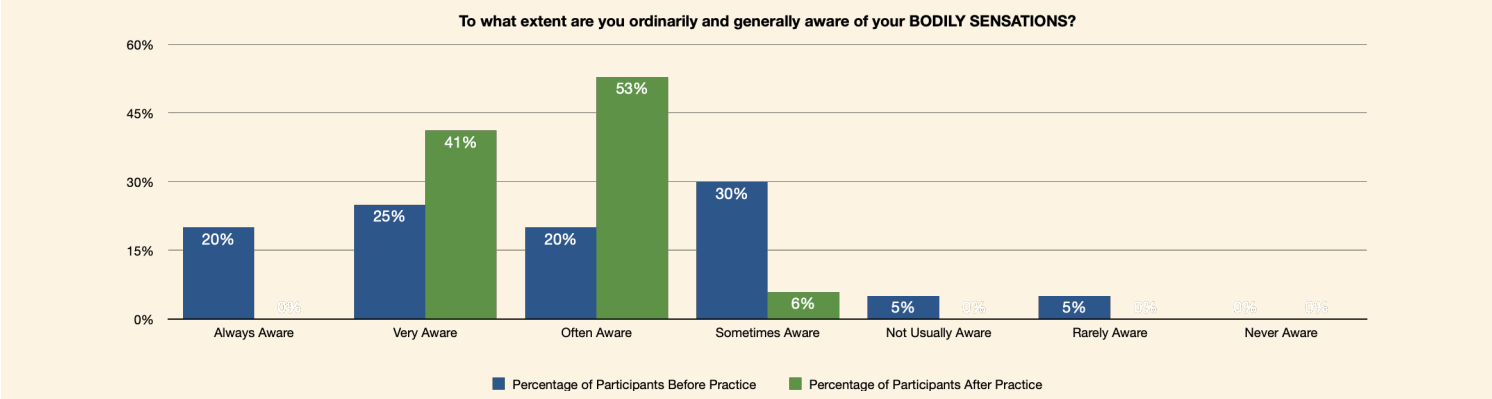


Fig 17

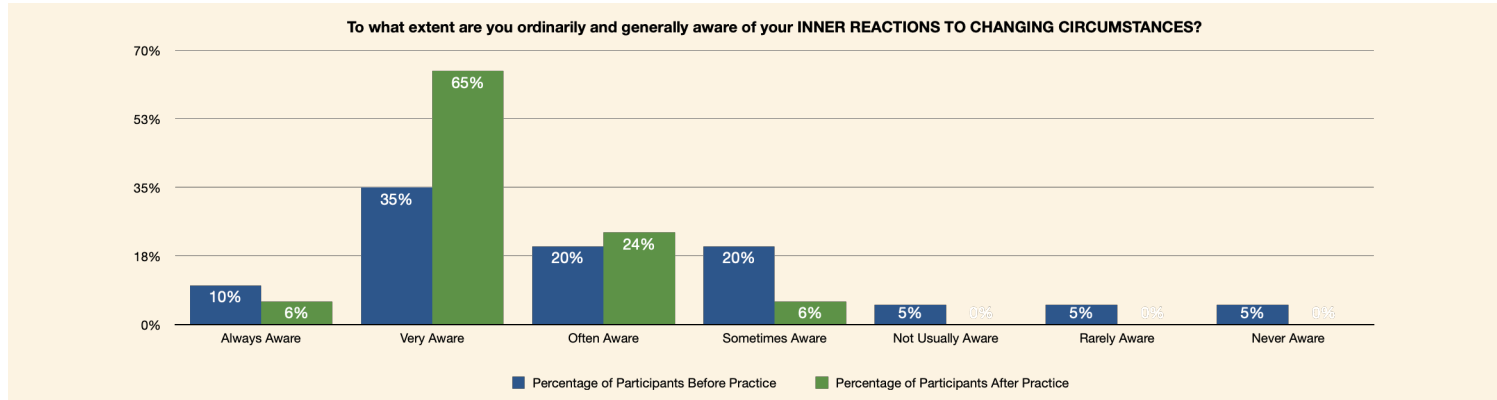


Fig 18

Taken in the round, the increased *awareness* shifts in emotions, bodily sensations, and inner reactions were remarkably higher than for thoughts. This may be explained by the fact that judicial officers focus dominantly on cognitive processes while in court, and less on the other aspects of their experiencing. They are therefore probably actually and habitually more in tune with their thoughts. Hence, with specific practices designed to heighten inner awareness with a focus on non-cognitive phenomenon, sensitivity in these domains increased as indicated. This further points to the potential efficacy of the practices for the purposes of increasing levels of inner awareness in judicial officers, with a potential application while in the courtroom.

It is important to pause and reflect on an aspect of this data. That is, the relatively low levels of awareness that judicial officers appear to ordinarily have (without any intentional and conscious development) in relation to **emotions, bodily sensations, and inner reactions to changing circumstances**.

Could this be the result of an occupational de-sensitisation, an under-development in these areas as a consequence of disproportionate emphasis on cognitive functions? Whatever the causes, if procedural fairness standards are to be met and sustained, 360-degree awareness is necessary, and awareness of these three internal non-cognitive domains is essential. The idea that the cognitive function is somehow superior, and other intelligences are of a lesser value for the discharge of the judicial function, is now an out-dated and dysfunctional mind set – a sort of “flat-earth” consciousness.⁴²

Also, and beyond thoughts, emotions, sensations, and inner reactions, the changes in *awareness* around **internal mind-sets** (biases, social context, preferences, emotive triggers, causes of disinterest and sympathy, and prevailing local, social and cultural biases, stereotypes and discriminating considerations) were very significant. Some were truly remarkable. For example, in relation to biases there was an *awareness* increase from 30% to 82% and for stereotypes from 30% to 70%, in the category of being *very aware*. Similarly (in the *very aware* category), there were increases in *awareness* around assumptions about social context (25% to 70%), habitual patterns of behaviour (30% to 59%), preferences (53% to 65%), emotive triggers (50% to 65%), causes of disinterest (35% to 50%), causes of interest/empathy (45% to 70%), causes of sympathy (35% to 53%), and prevailing local, social and cultural biases, stereotypes and discriminating considerations (25% to 53%). These are very substantial shifts in increased degrees of self-awareness, in areas that can have a real impact on procedural fairness considerations. Figs 19-28 graphically present these findings.

42 Emotional Intelligence - Daniel Goleman, *Emotional Intelligence: Why It Can Matter More Than IQ* (Bantam Books 1995); Daniel Goleman, *Working With Emotional Intelligence* (Bantam Books 1998); John D Mayer, Peter Salovey, and David R Caruso, “Emotional Intelligence: Theory, Findings, and Implications,” *Psychological Inquiry* 15, no 3 (2004) <<https://www.jstor.org/stable/20447229>>; Travis Bradberry and Jean Greaves, *Emotional Intelligence 2.0* (TalentSmart 2009). Social Intelligence - Daniel Goleman, *Social Intelligence: The New Science of Human Relationships* (Bantam Books 2006); Karl Albrecht, *Social Intelligence: The New Science of Success* (John Wiley & Sons 2009); Daniel Kahneman, *Thinking, Fast and Slow* (Penguin 2012); Daniel Kahneman, Olivier Sibony, and Cass R. Sunstein, *Noise: A Flaw in Human Judgment* (Harper Collins 2021); Karen Jensen, *Three Brains: How the Heart, Brain, and Gut Influence Mental Health and Identity* (Mind Publishing 2016); Grant Soosalu, Suzanne Henwood, and Arun Deo, “Head, Heart, and Gut in Decision Making: Development of a Multiple Brain Preference Questionnaire,” *SAGE Open* 9, no. 1 (2019), <https://doi.org/10.1177/2158244019837439>; Marvin Oka and Grant A. Soosalu, *Mbraining: Using Your Multiple Brains to Do Cool Stuff* (CreateSpace Independent Publishing Platform 2012)

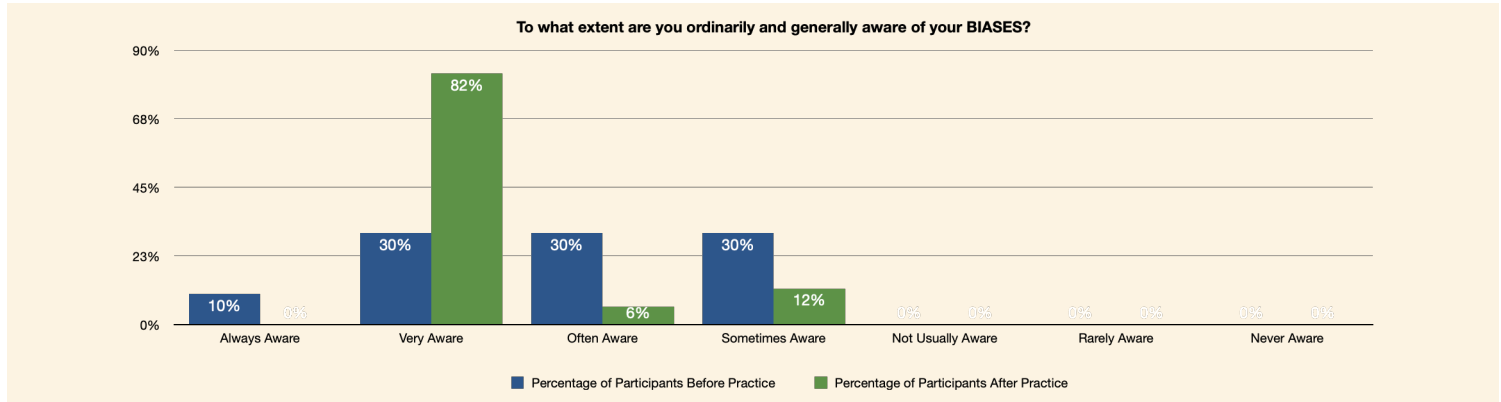


Fig 19

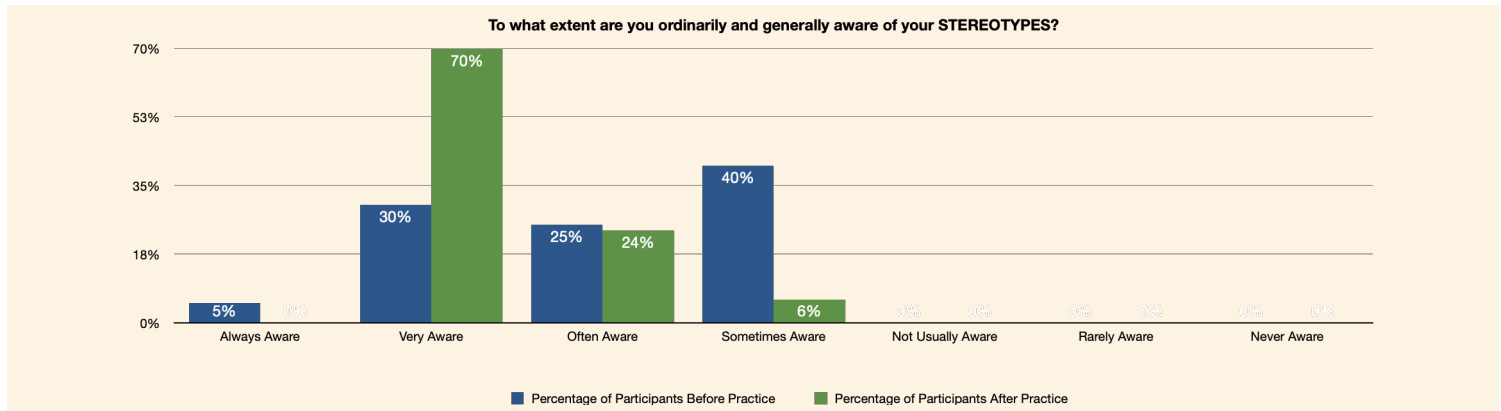


Fig 20

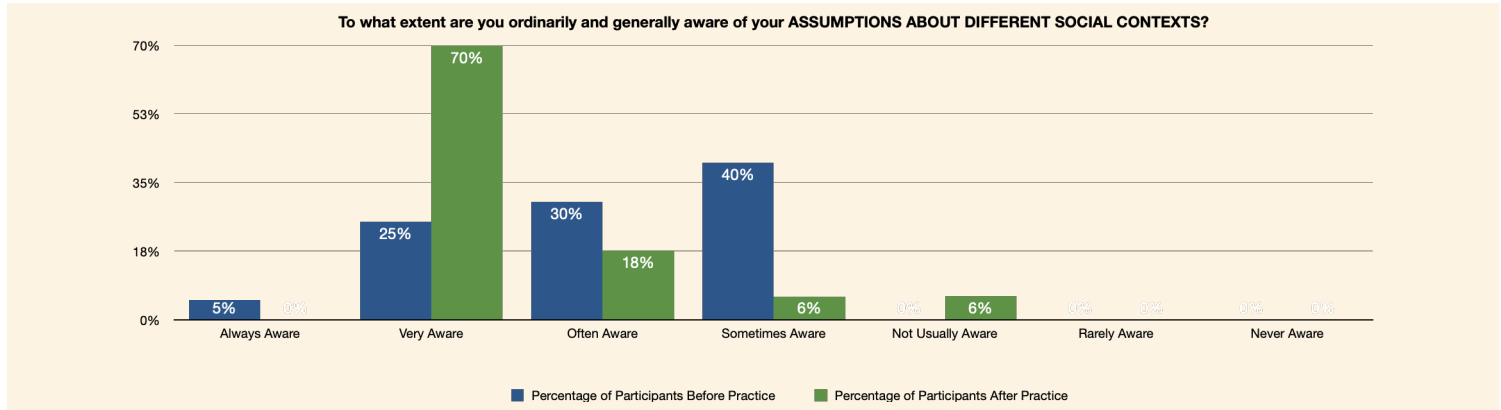


Fig 21

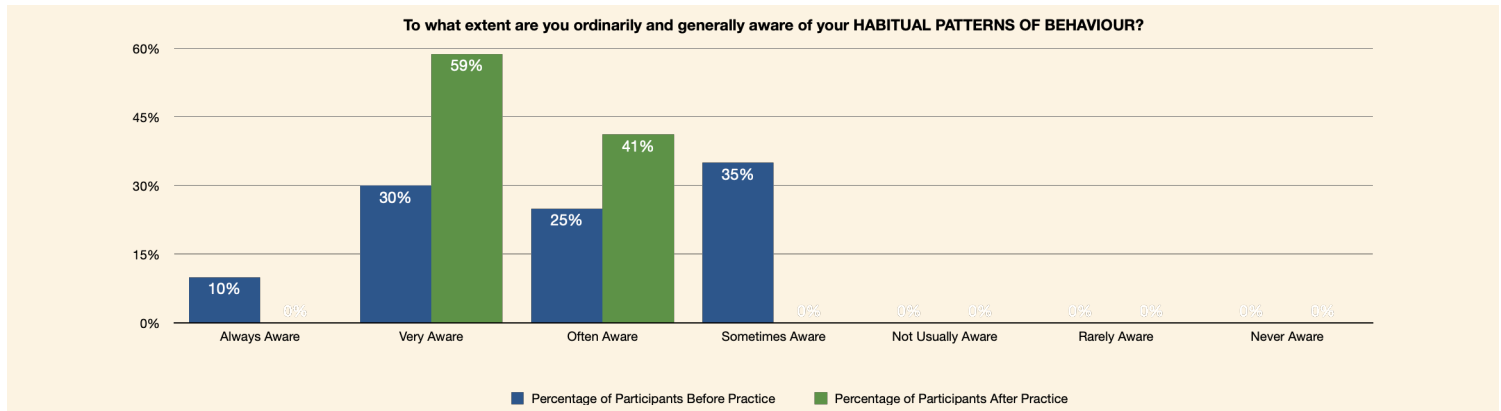


Fig 22

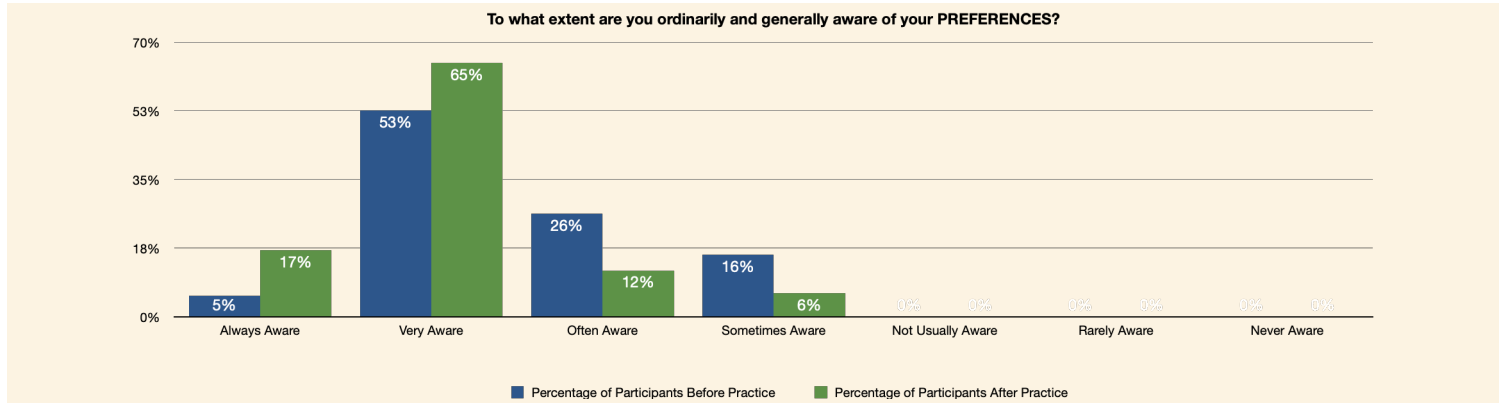


Fig 23

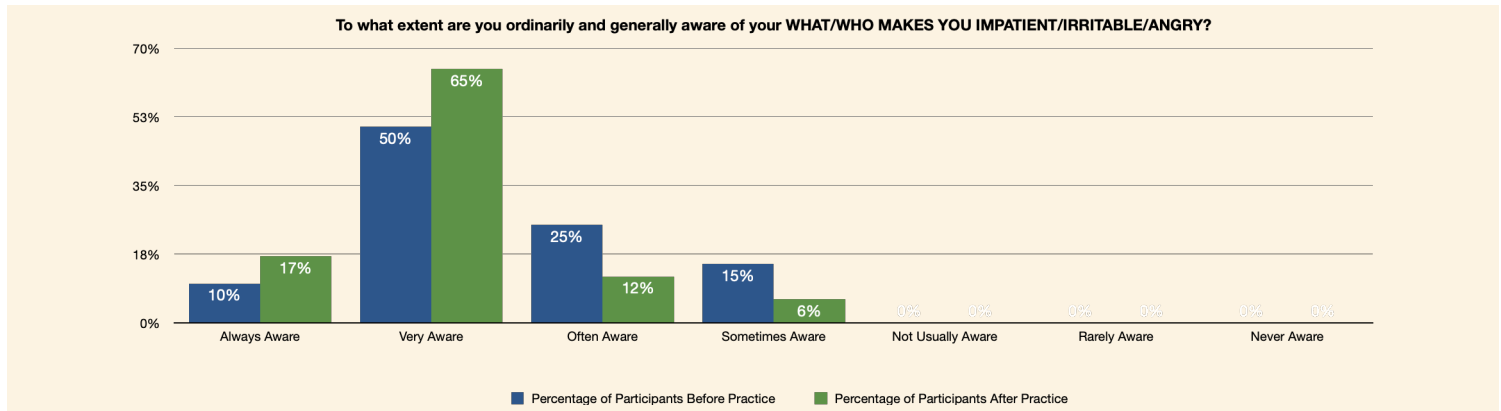


Fig 24

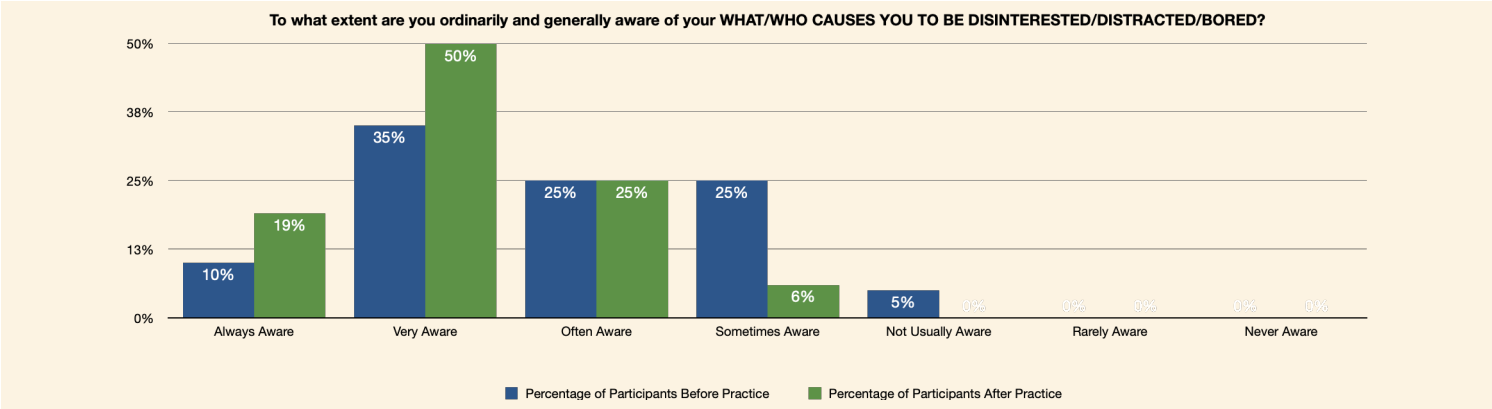


Fig 25

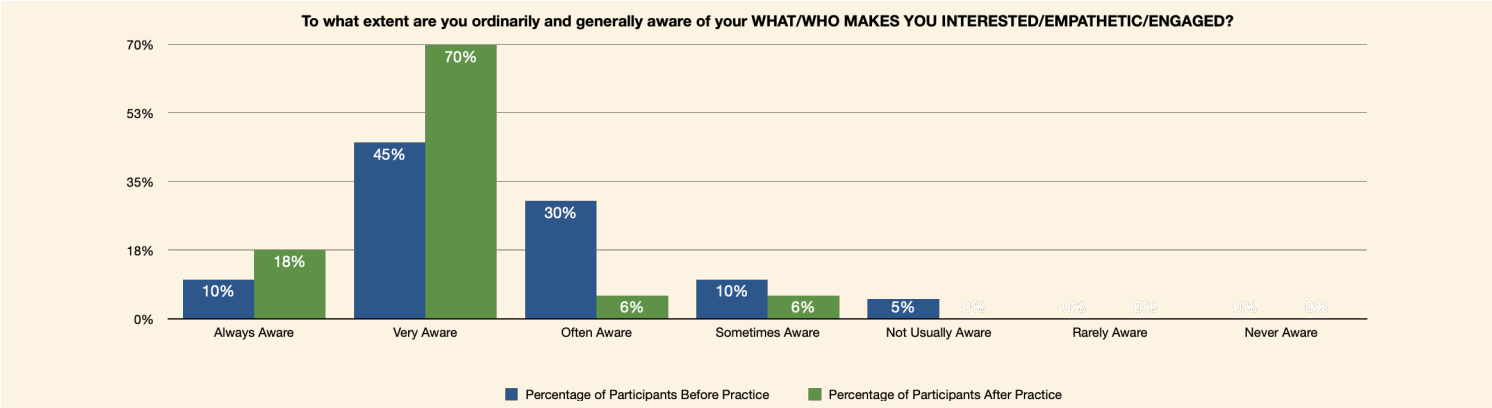


Fig 26

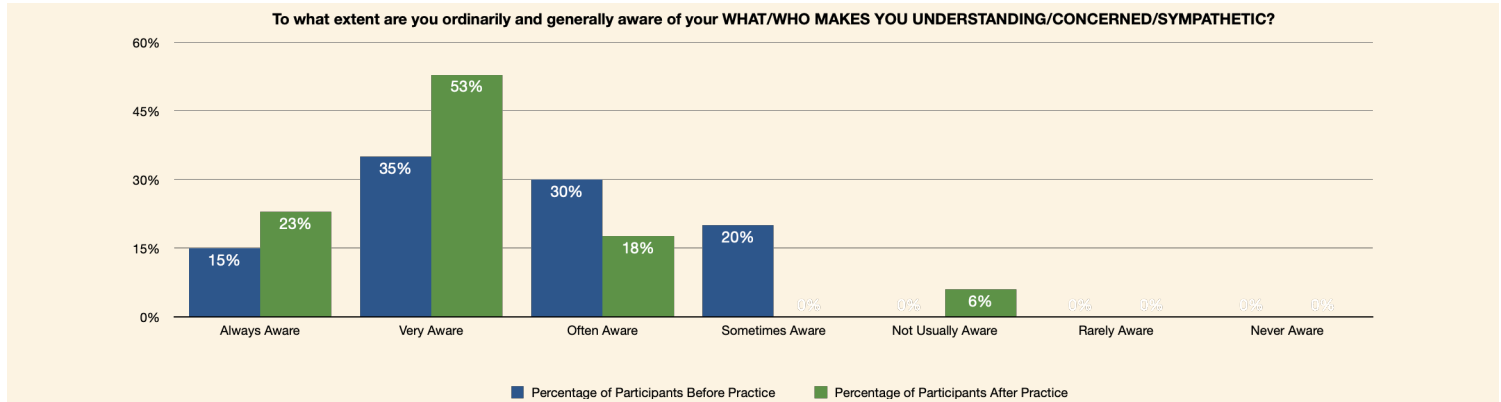


Fig 27

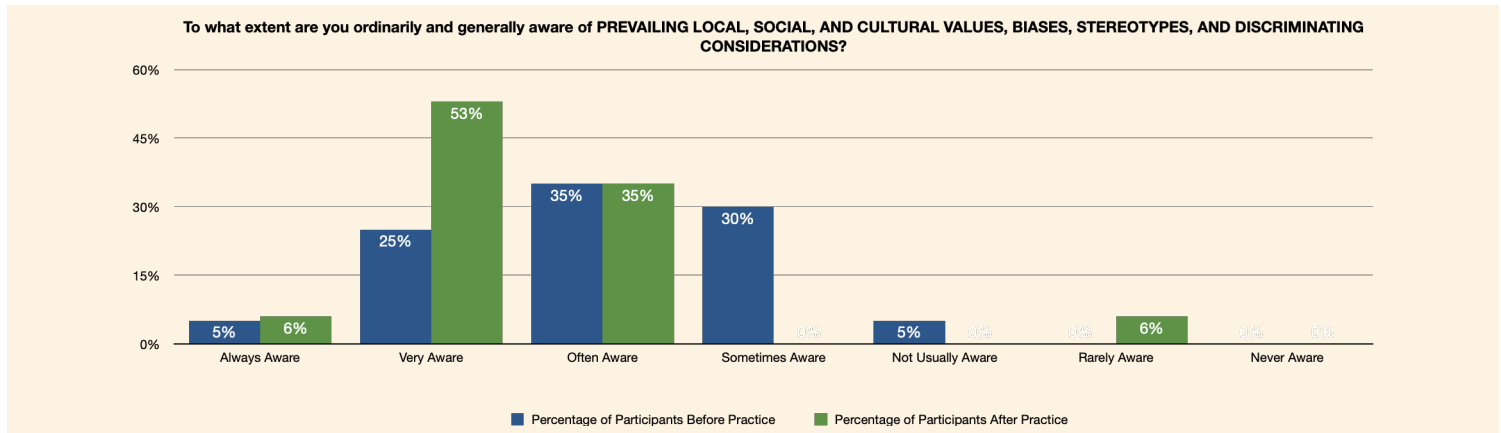


Fig 28

External Dimensions

General *awareness* levels also showed comparable changes (increases) post-practice in relation to the following external dimensions:

a. activities and changes in the external environment (Figs 29 and 30)

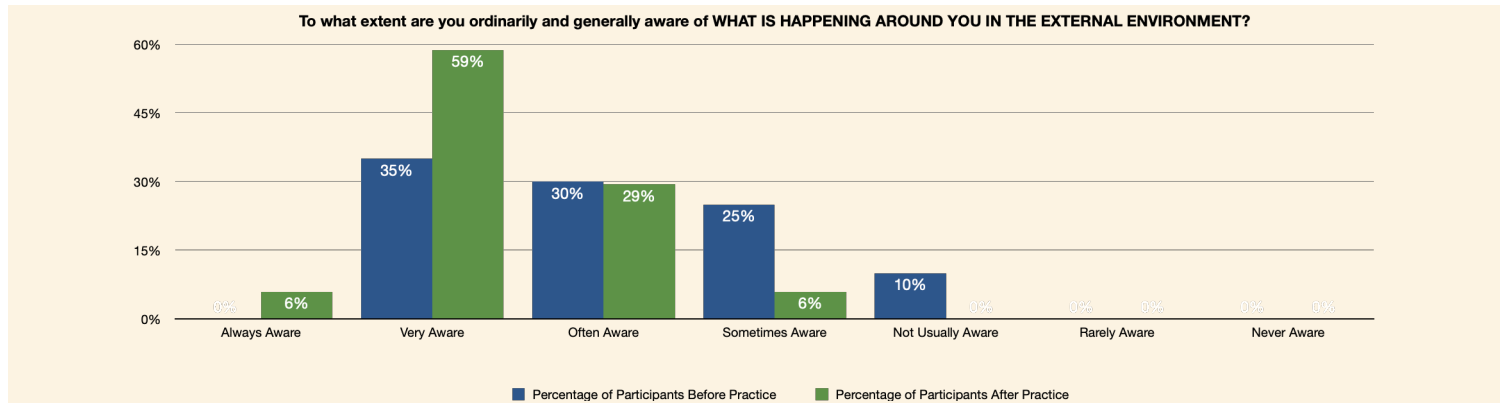


Fig 29

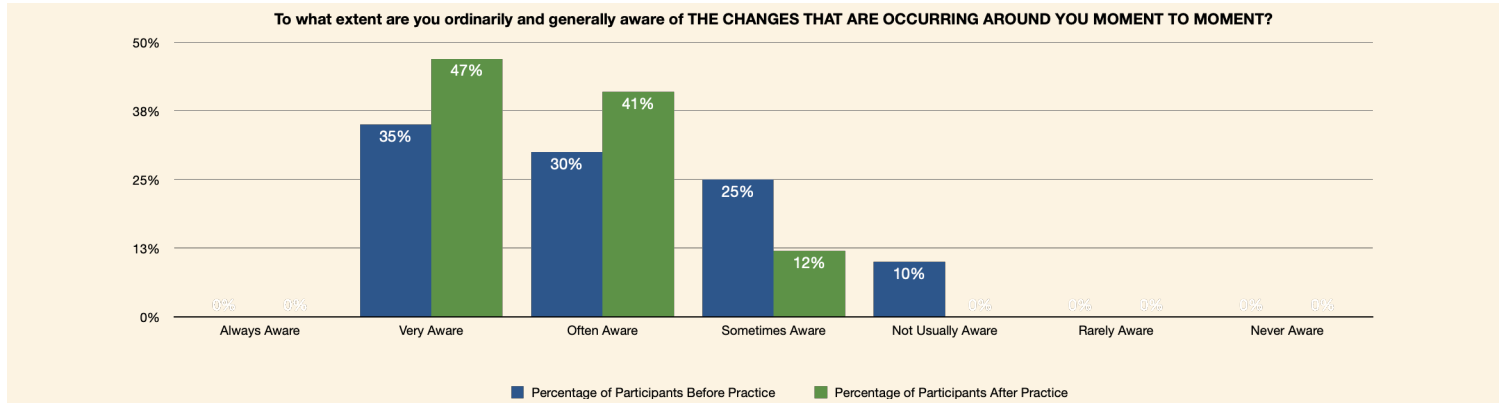


Fig 30

b. emotional states of others (Fig 31)

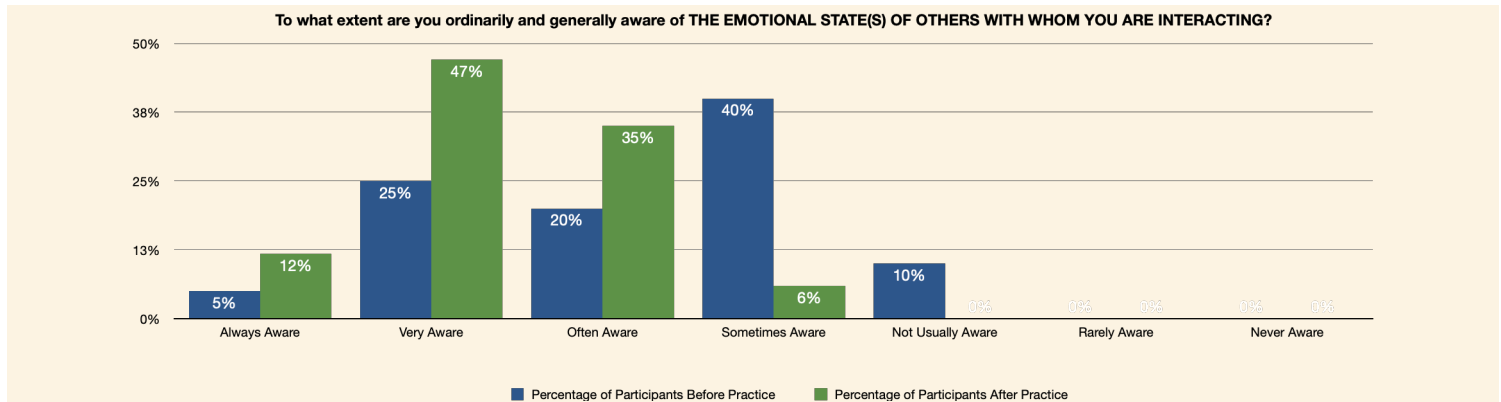


Fig 31

c. impact of personal behaviour (including words and actions) on the external environment (Fig 32)

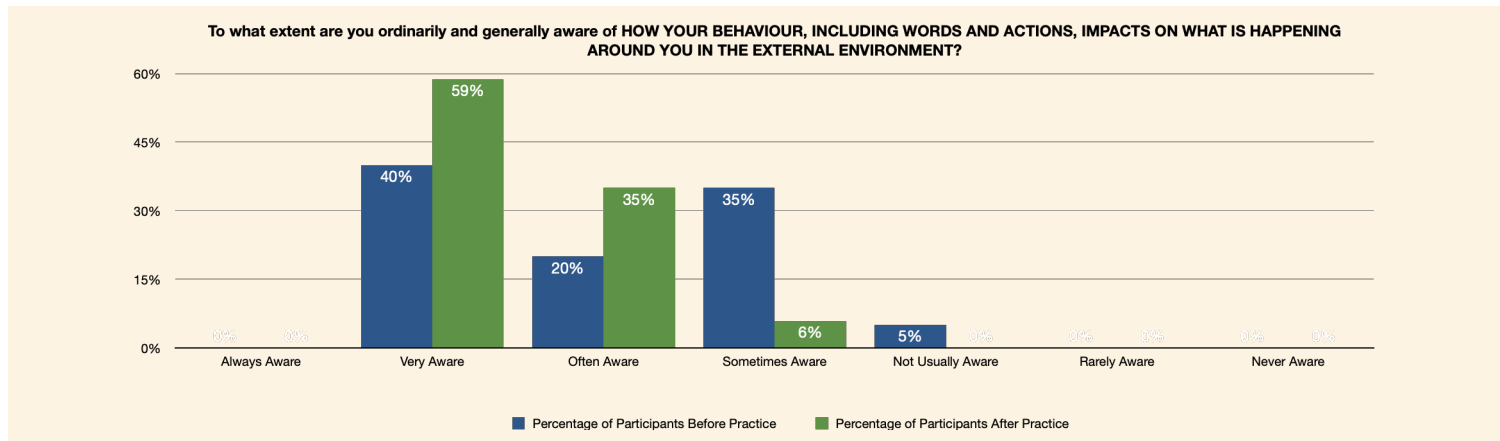


Fig 32

d. personal behaviour, facial expressions, tone of voice, gestures, non-verbal behaviours, eye-contact, emotive language, and self-management in relationship with others (Figs 33-40).

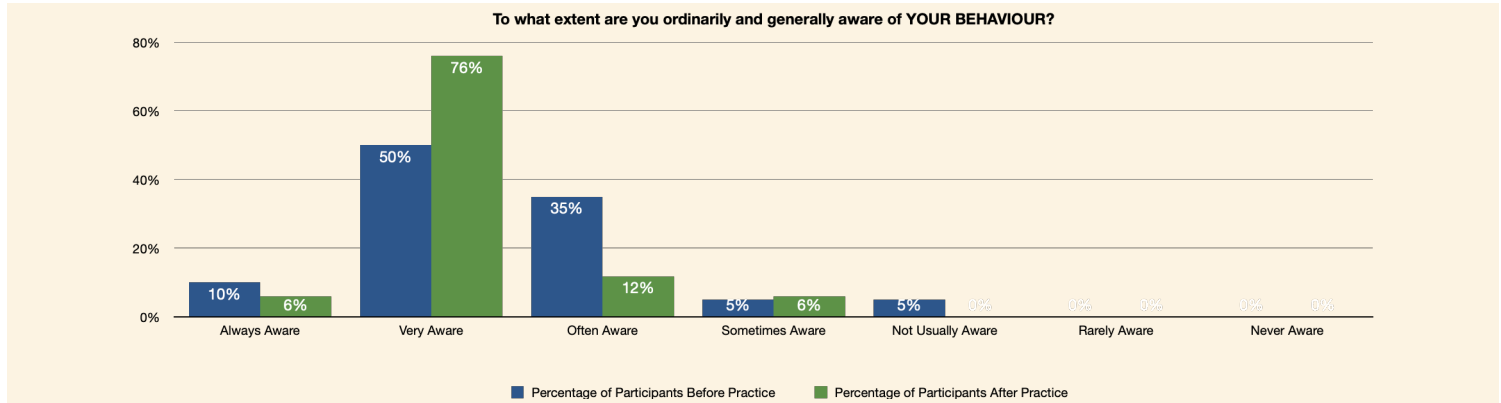


Fig 33

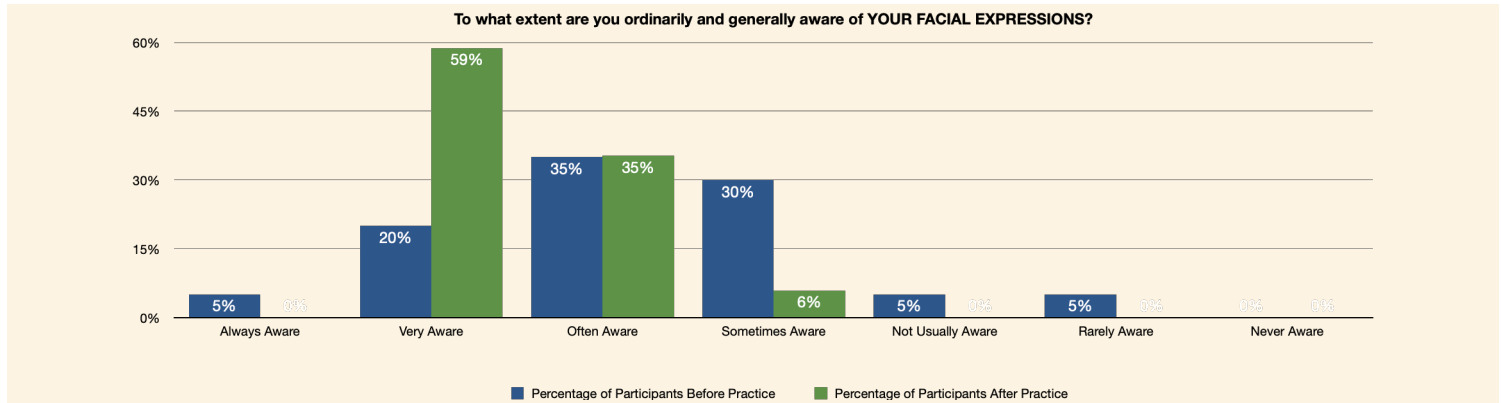


Fig 34

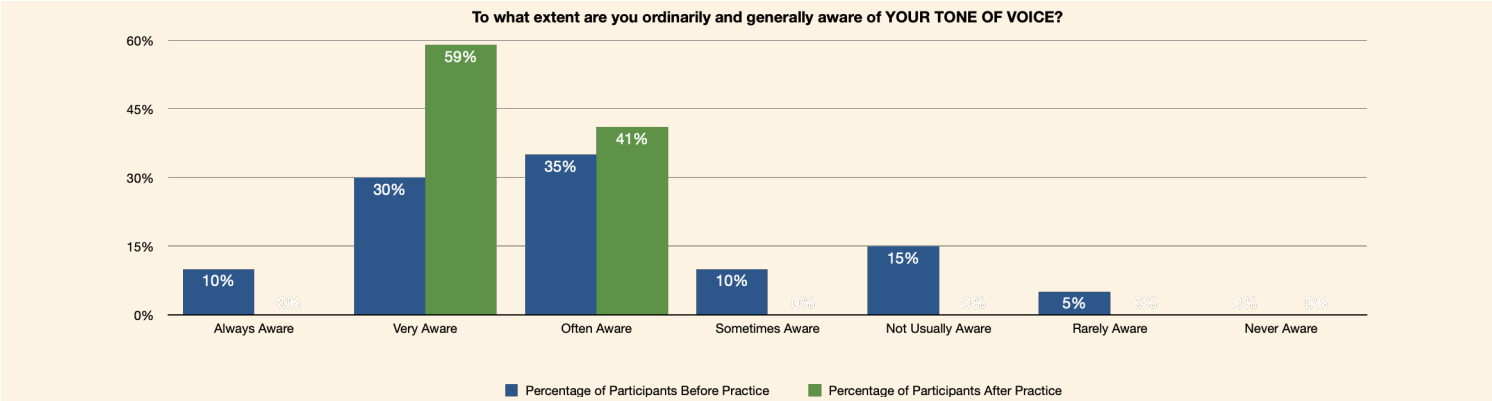


Fig 35

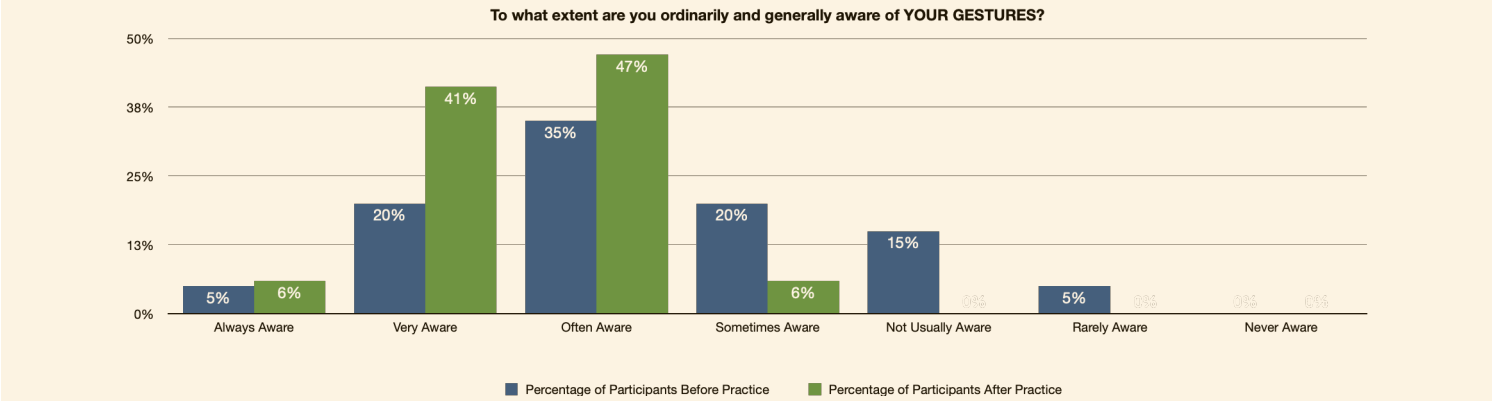


Fig 36

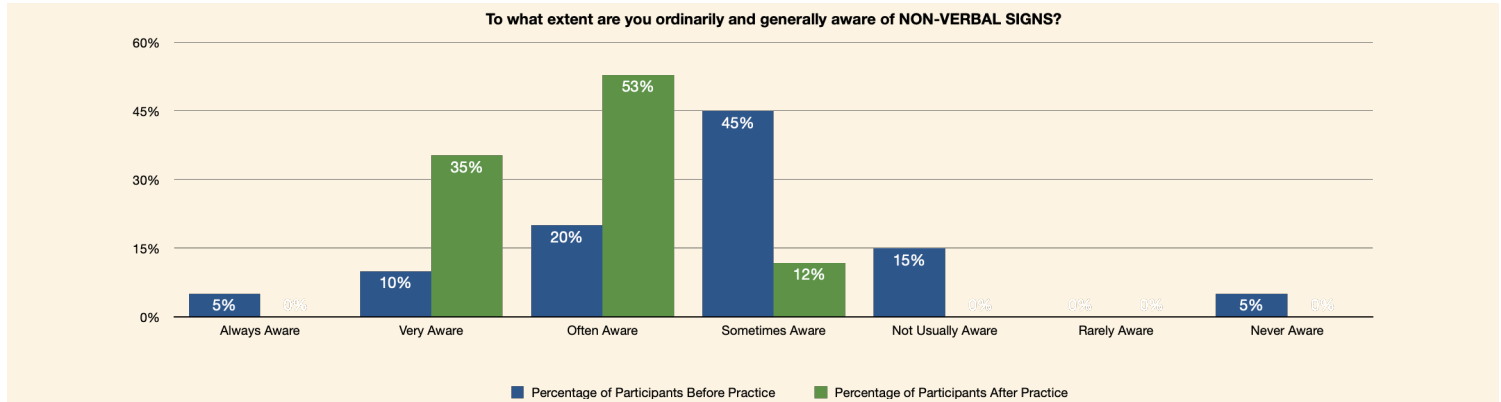


Fig 37

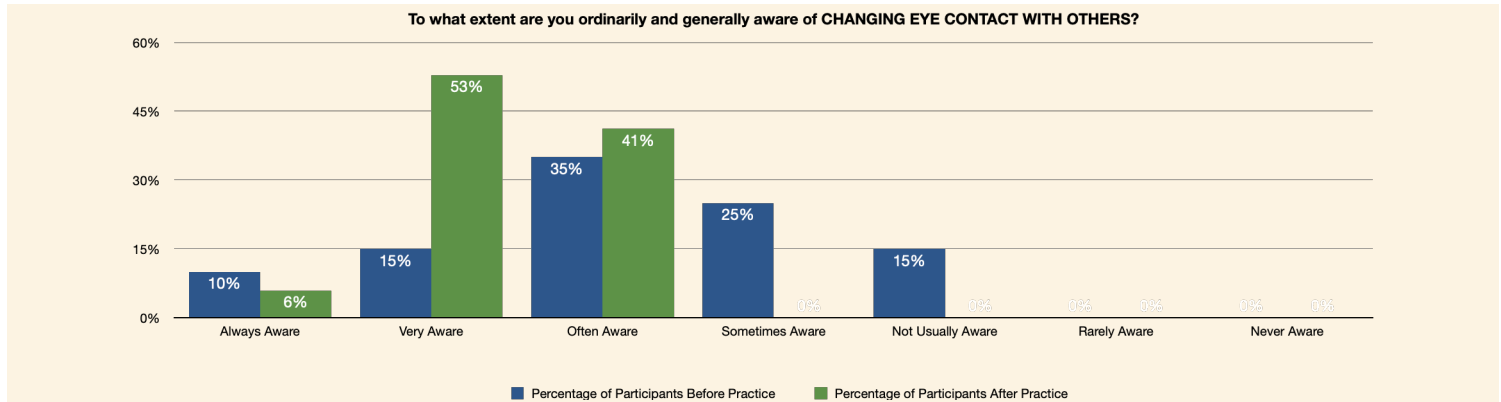


Fig 38

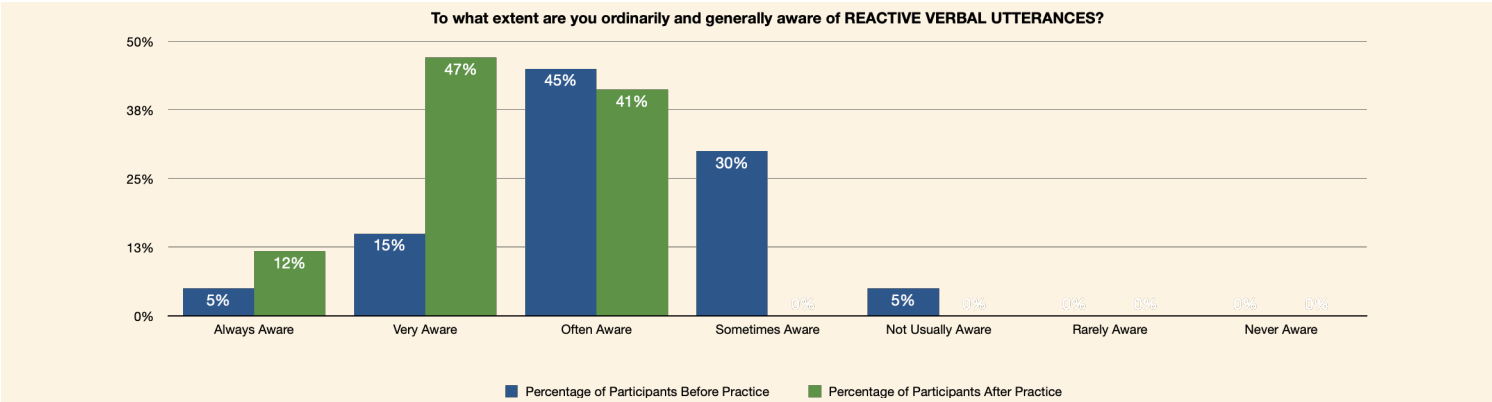


Fig 39

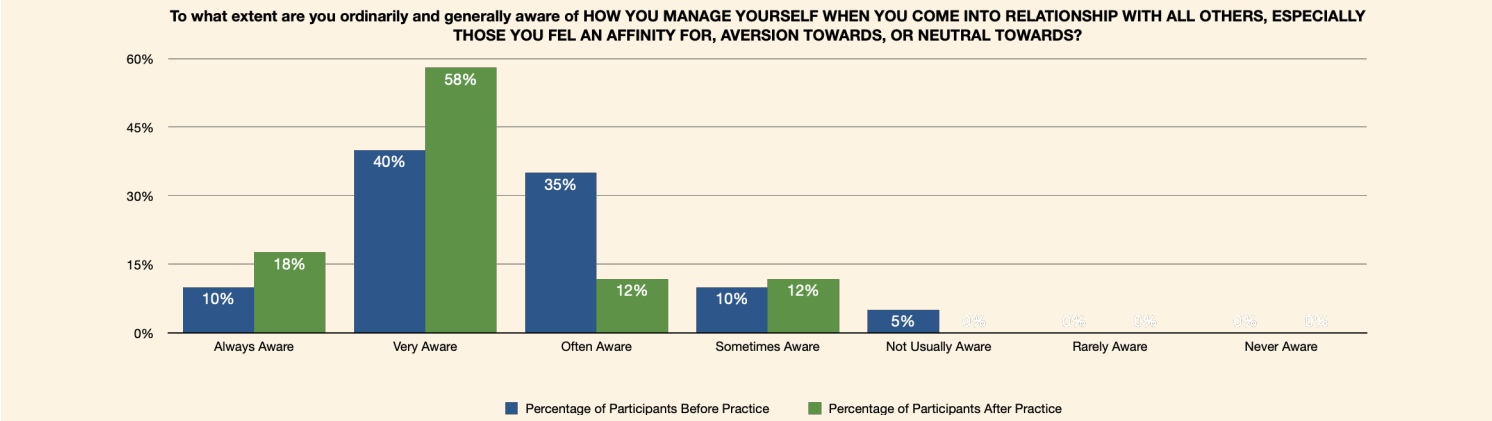


Fig 40

Notice that both domains of the external quadrant are covered, the individual and the collective. Also noteworthy are the following. First, cumulative increases for the categories *very aware* and *often aware* were most significant. In the area of *awareness* in relation to personal behaviour and its impact on the external environment, the increases were up to 59% and 35% (from 40% and 20%) respectively for being *very aware* and *often aware*. Indeed, in the entrance survey, 35% of participants claimed to be *sometimes aware* of their personal behaviour, and in the exit survey this decreased to 6% commensurate with the increases alluded to. Thus, there was an overall marked increase in self-awareness of personal behaviours after the practices. This is significant, because self-awareness of judicial officers of their behaviour can make a big difference in their ability to correct inappropriate behaviours, and thus meaningfully impact court users' experiences and perceptions of fairness. (Similar patterns were observed in relation to external environmental *awareness*, though to lesser degrees.)

Second, drilling down even deeper into personal, external self-awareness, the research reveals that because of the practices, judicial officers generally became significantly more self-aware of their behaviour, facial expressions, tone of voice, gestures, eye contact with others, verbal utterances, and how they self-managed as they came into relationship with others. For example, in relation to personal behaviour, there was an *awareness* increase from 50% to 76% in the category of being *very aware*. Similarly (in the *very aware* category), for facial expressions (20% to 59%), tone of voice (30% to 59%), gestures (20% to 41%), non-verbal behaviour (10% to 35%), eye contact (15% to 53%), reactive verbal utterances (15% to 41%), and self-management in relationship with others (40% to 58%). These are very significant shifts in increased degrees of outer self-awareness, with a potential application while in the courtroom.

What this seems to indicate quite robustly, is that for judicial officers, a relatively consistent and targeted practice of *Intentional Awareness* can lead to significant increases in overall levels of awareness in all four quadrants.

Changes in Courtroom Awareness

Ultimately, this research was undertaken to determine the effects that practices of *Intentional Awareness* could have on judicial officers while in the courtroom. General increases in awareness in areas relevant to procedural fairness, while noteworthy, needed to be further tested in the courtroom, before any conclusions of efficacy (in terms of the research question) could be postulated. The following data indicates that it is possible to suggest, based on this research, that *Intentional Awareness* can have a positive, and even significant impact on judicial officers in the discharge of their duty to meet procedural fairness standards while in the courtroom. We consider this a matter of great salience. The framing of the relevant survey questions for this specific aspect of the research was important. They were framed as follows: '***Having practiced Mindfulness, when you are in the COURTROOM, to what extent are you NOW FULLY aware and sensitive to...***' A 7-point Likert scale model was used, offering the following choices: *always aware and sensitive, very aware and sensitive, often aware and sensitive, sometimes aware and sensitive, not usually aware and sensitive, rarely aware and sensitive, and never aware and sensitive.*

External Collective Quadrant

As before, there is significant data illustrated by the category *very aware and sensitive* in relation to the external collective quadrant. For example, in response to an inquiry into awareness about the presence and needs of court users, there was an increase in *awareness* from 40% to 58%. Similarly (and in the same category), in relation to the presence and needs of court staff, there was an increase from 45% to 70%, and in relation to the presence and activities of other persons in the courtroom, there was an increase from 30% to 47%. Indeed, similar trends were reported in relation to courtroom layout and impact on the integrity of the judicial process (from 30% to 41%), security measures in the courtroom (20% to 35%), changing security risks in the courtroom (10% to 24%), and most remarkably, in relation to occurrence changes in the courtroom that could impact the integrity of the court process, there was an increase from 10% to 64%.

Detailed Analysis | Changes in Courtroom Awareness

All of these increases in *awareness*, which are demonstrated in the external collective quadrant, can have a considerable influence on whether procedural fairness standards are objectively met. In this regard, recall that procedural fairness takes values into serious consideration, and seeks to address the experiences and perceptions of court users. Figs 41-47 show this data.

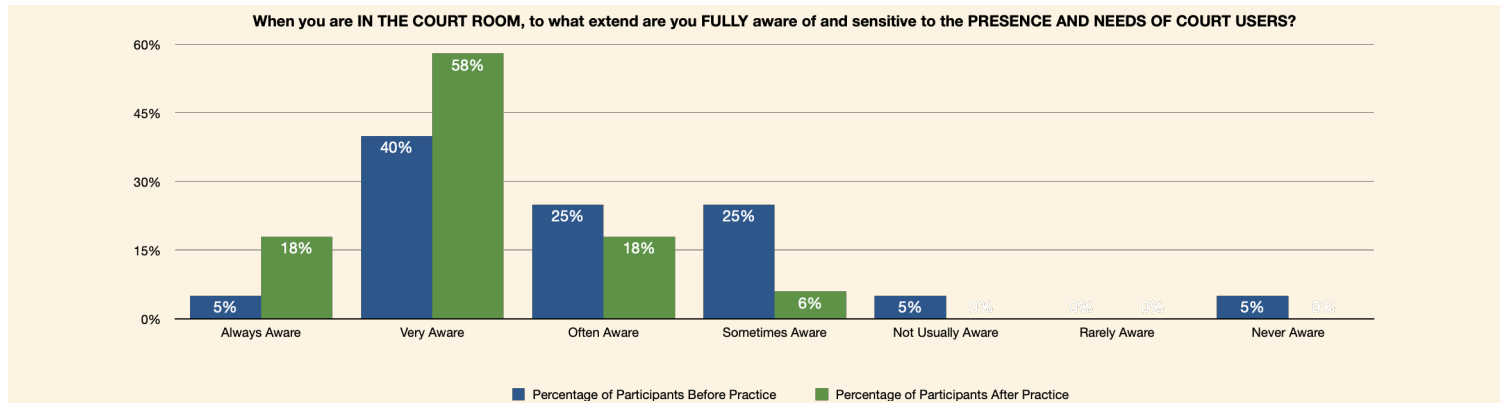


Fig 41

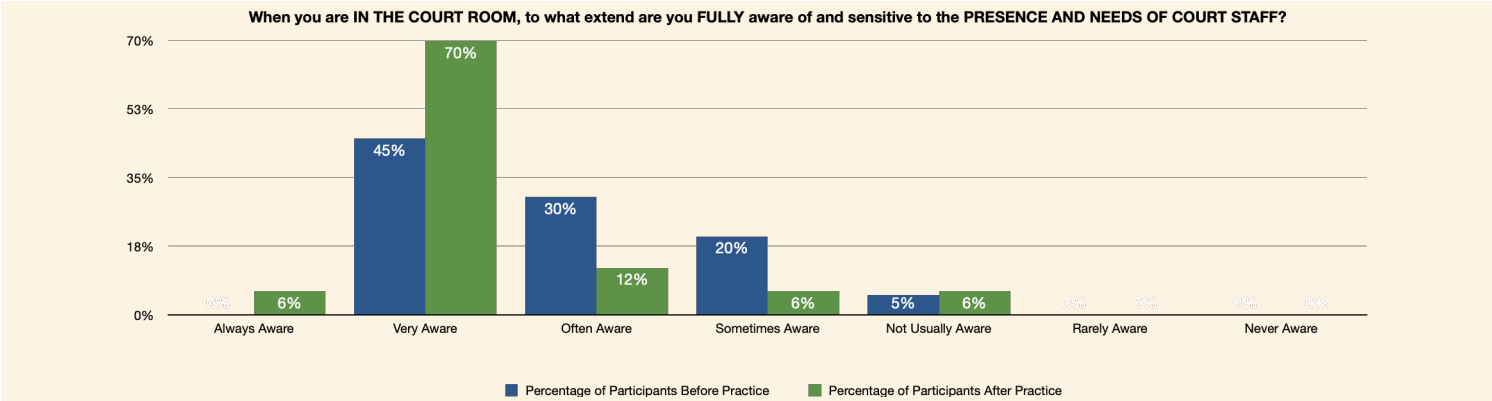


Fig 42

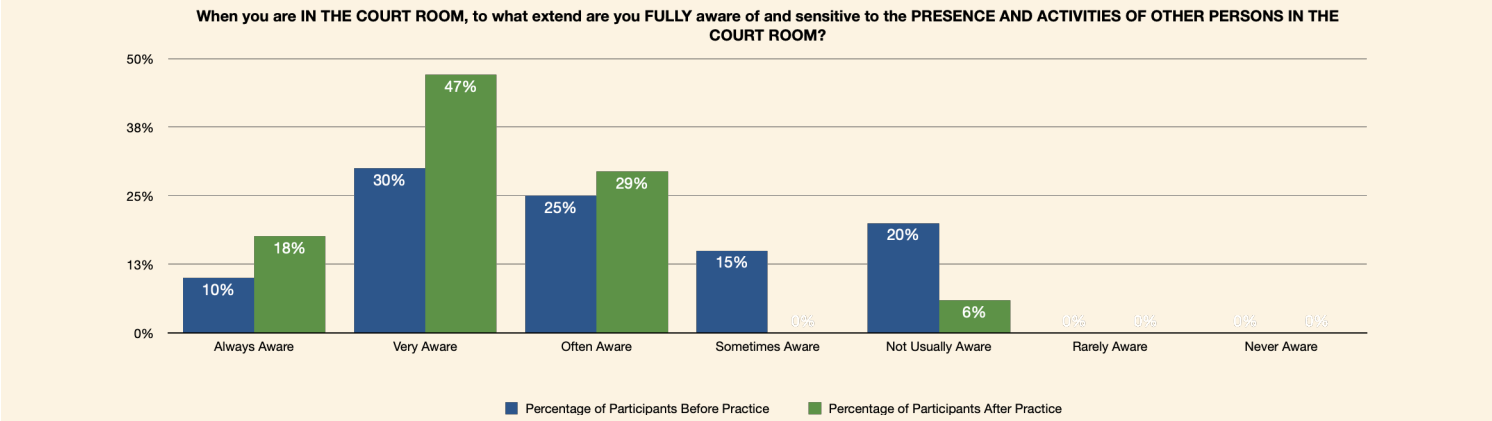


Fig 43

Detailed Analysis | Changes in Courtroom Awareness

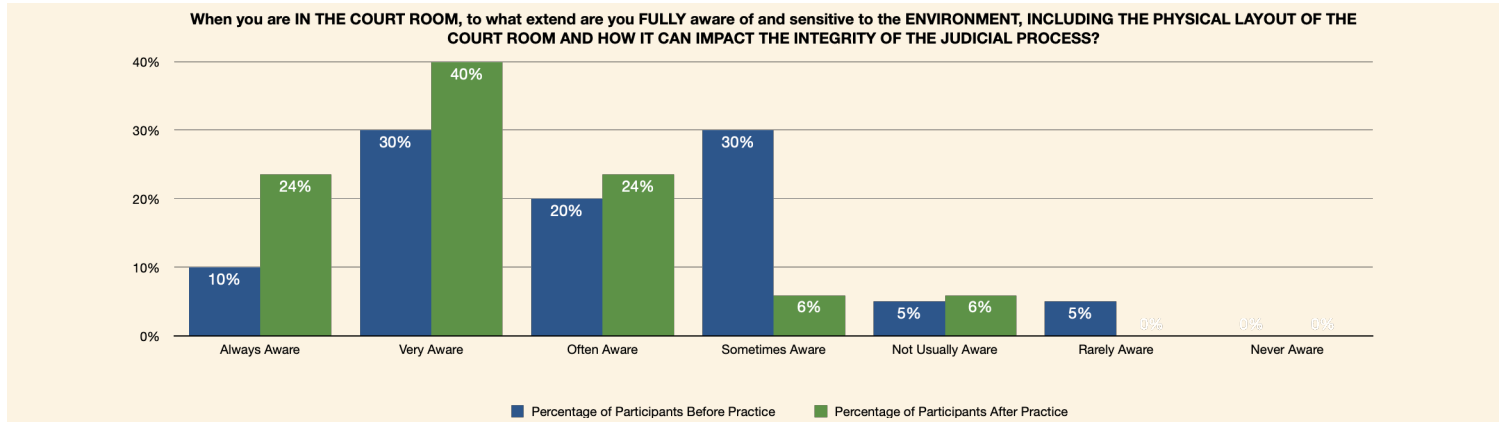


Fig 44

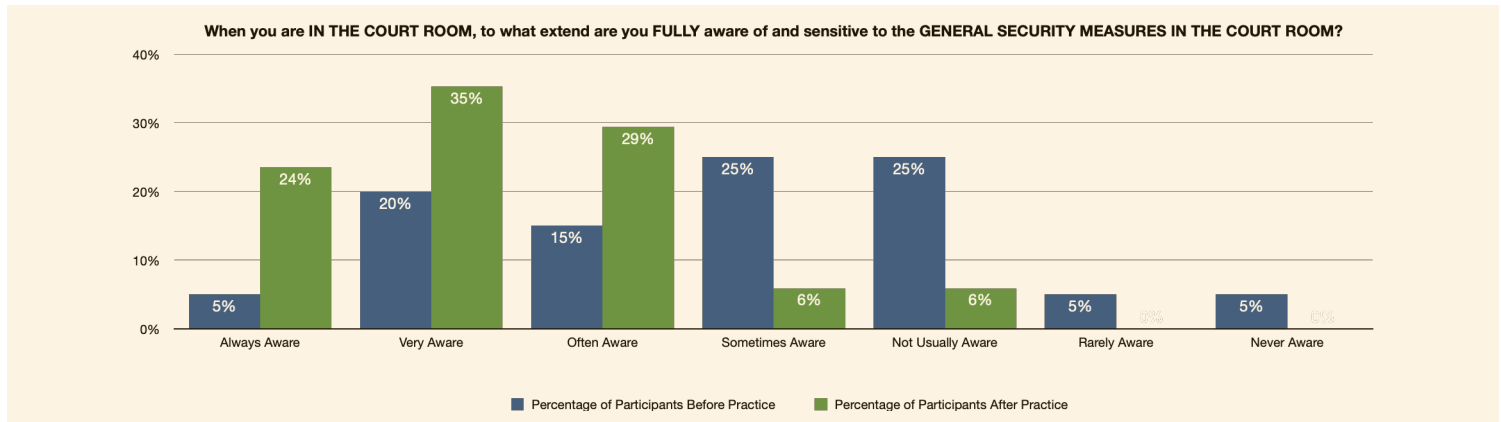


Fig 45

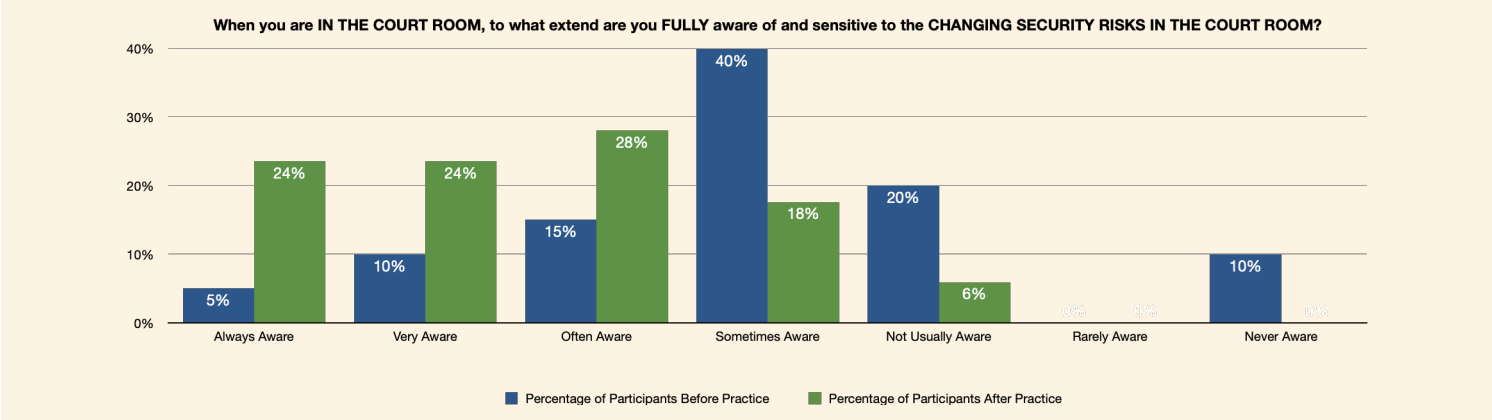


Fig 46

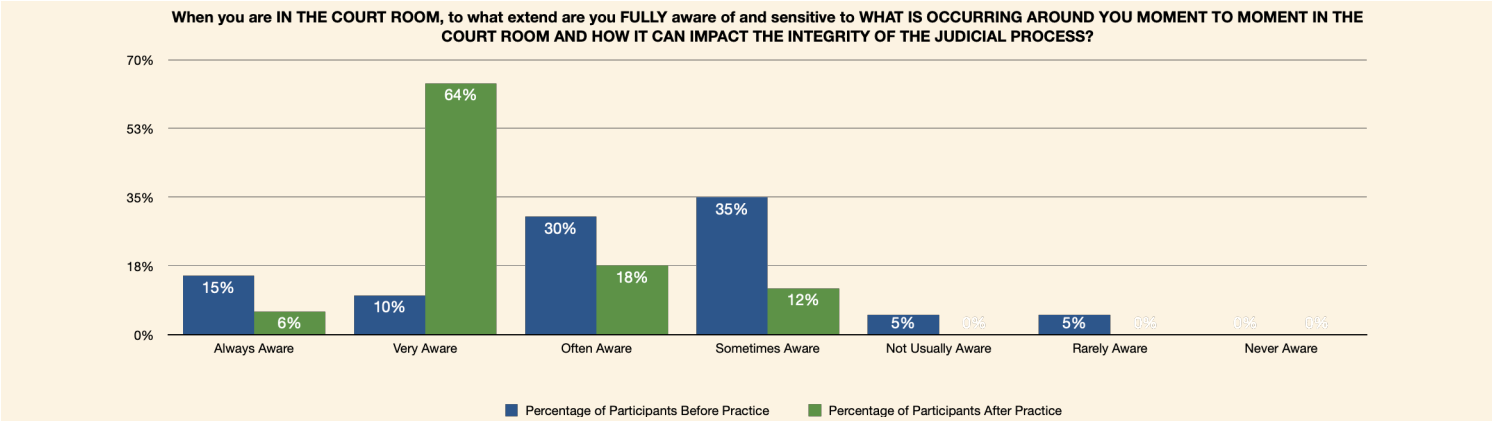


Fig 47

External Collective Quadrant

As before, there is significant data illustrated by the category *very aware and sensitive* in relation to the external collective quadrant. For example, in response to an inquiry into awareness about the presence and needs of court users, there was an increase in *awareness* from 40% to 58%. Similarly (and in the same category), in relation to the presence and needs of court staff, there was an increase from 45% to 70%, and in relation to the presence and activities of other persons in the courtroom, there was an increase from 30% to 47%. Indeed, similar trends were reported in relation to courtroom layout and impact on the integrity of the judicial process (from 30% to 41%), security measures in the courtroom (20% to 35%), changing security risks in the courtroom (10% to 24%), and most remarkably, in relation to occurrence changes in the courtroom that could impact the integrity of the court process, there was an increase from 10% to 64%.

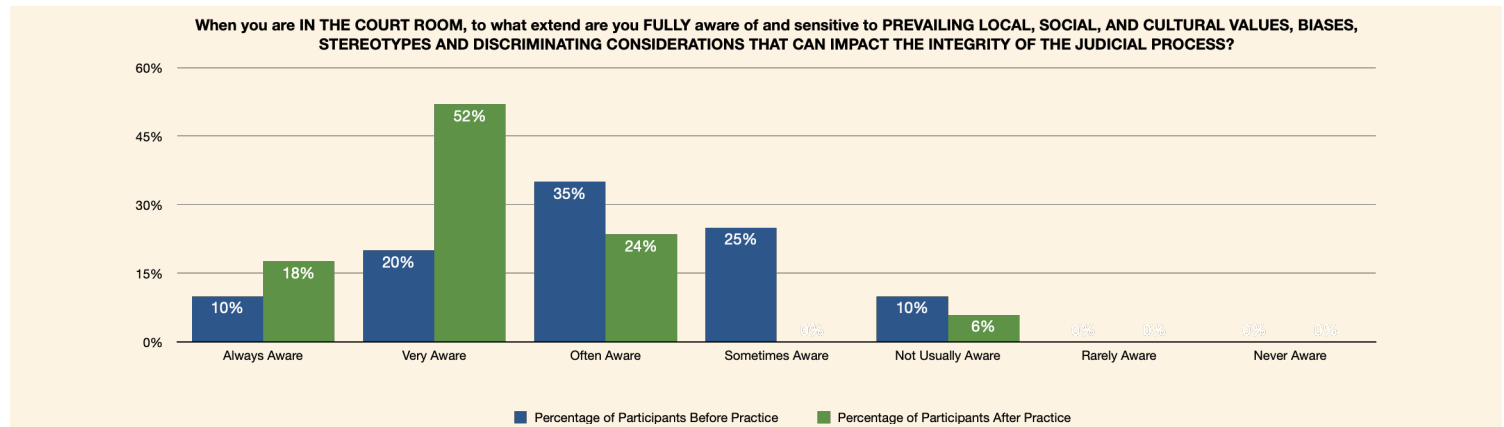


Fig 48

Internal Individual Quadrant

With respect to the internal individual quadrant, where internal and personal values, biases, stereotypes and discriminating considerations can insidiously undermine the judicial process, awareness of the impact on the integrity of the judicial process increased substantially following the practices. In the category *very aware and sensitive*, increases were reported from 50% to 70%. And in the category *always aware and sensitive*, an increase was seen from 5% to 12%. With respect to personal likes, dislikes, attractions, aversions, assumptions, and expectations, and their impact on the integrity of the judicial process, an increase in *awareness* from 5% to 35% was seen in the category of *always aware and sensitive*. Figs 49 and 50 show this.

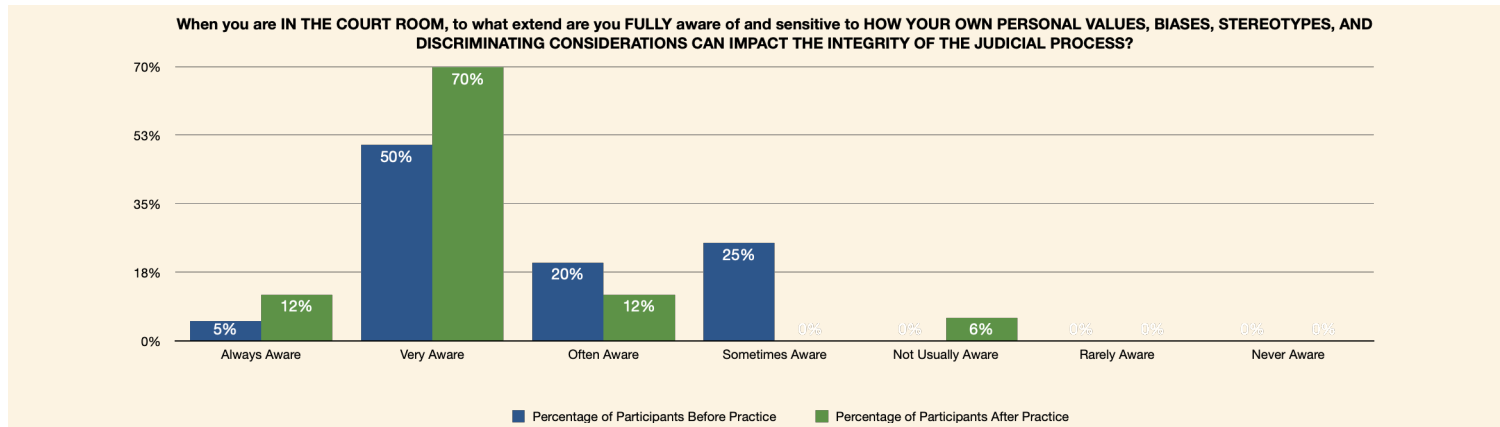


Fig 49

Detailed Analysis | Changes in Courtroom Awareness

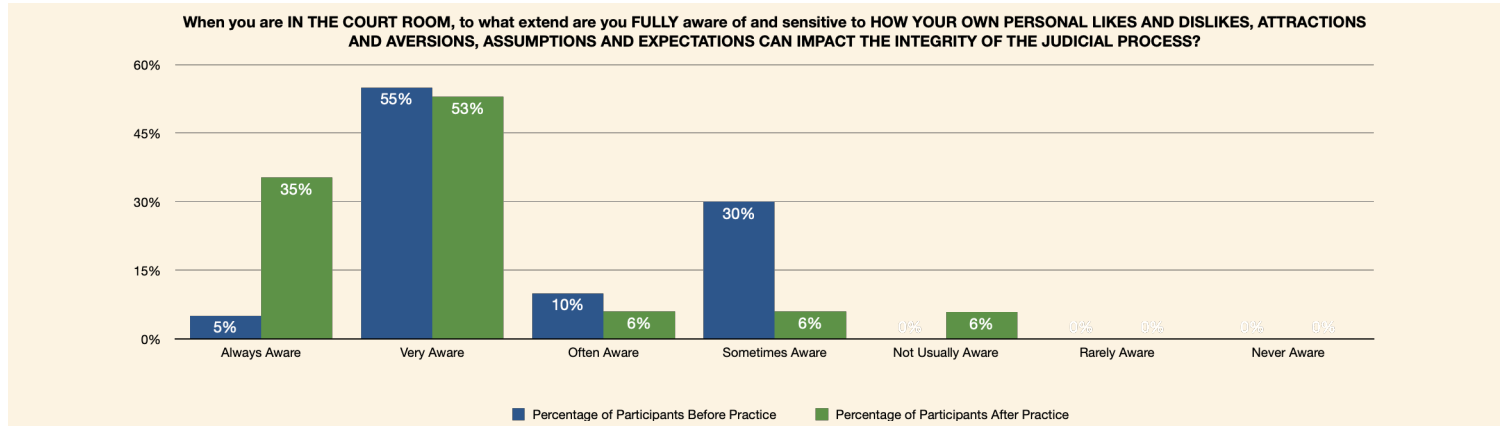


Fig 50

As before, these findings are very notable and point towards efficacy of the practices in the contexts of the actual courtroom. Their salience for meeting procedural fairness standards and achieving court excellence is self-evident.

External Individual Quadrant

In relation to the external individual quadrant, and in the categories *always aware and sensitive* (an increase from 0% to 18%), *very aware and sensitive* (an increase from 50% to 53%), and *often aware and sensitive* (an increase from 20% to 23%), increases in *awareness* in relation to changing emotions, behaviours, facial expressions, tone of voice, gestures, and non-verbal behaviours and their impact on the integrity of the judicial process, were reported. In relation to a) eye contact with others and reactive verbal utterances, as well as in relation to b) self-management and their impact on the judicial process, similar trends in *awareness* were reported in the same three categories (e.g. in the category *always aware and sensitive* increases of 0% to 18%, and 0% to 29% respectively). Figs 51-53 show this.

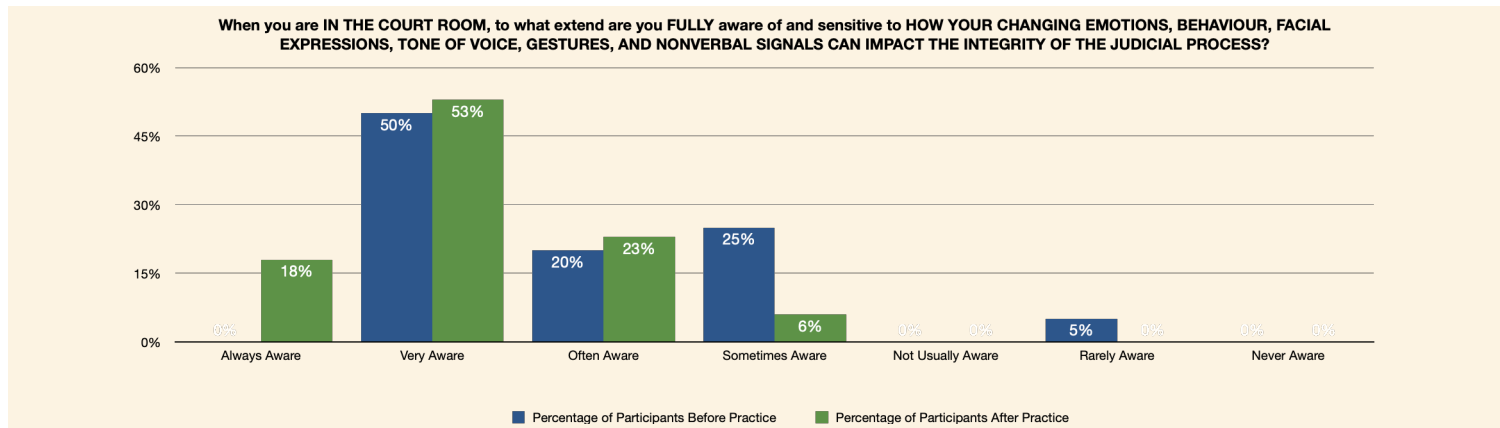


Fig 51

Detailed Analysis | Changes in Courtroom Awareness

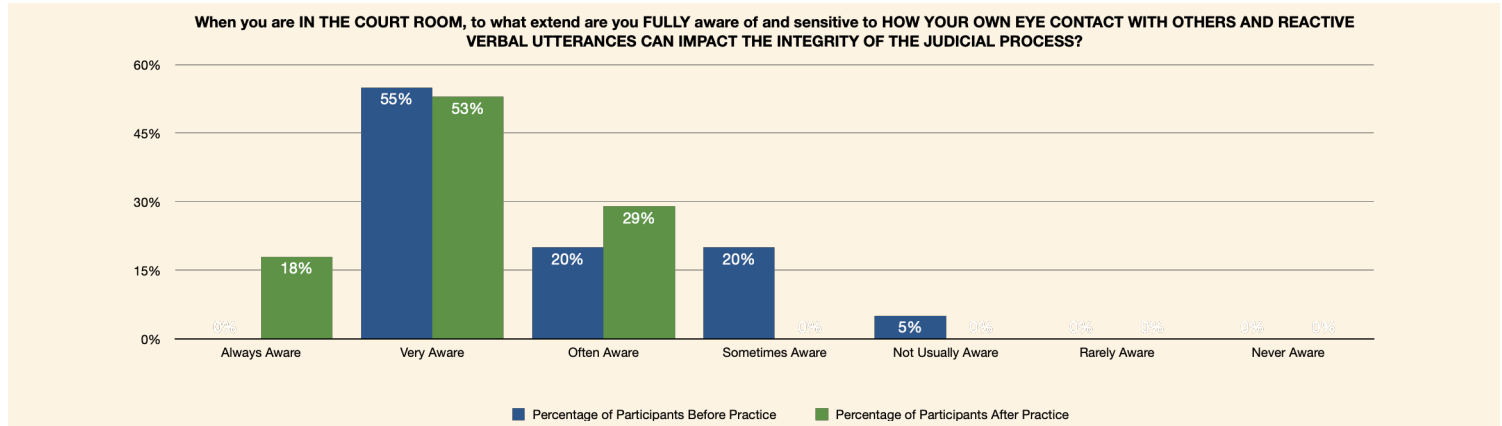


Fig 52

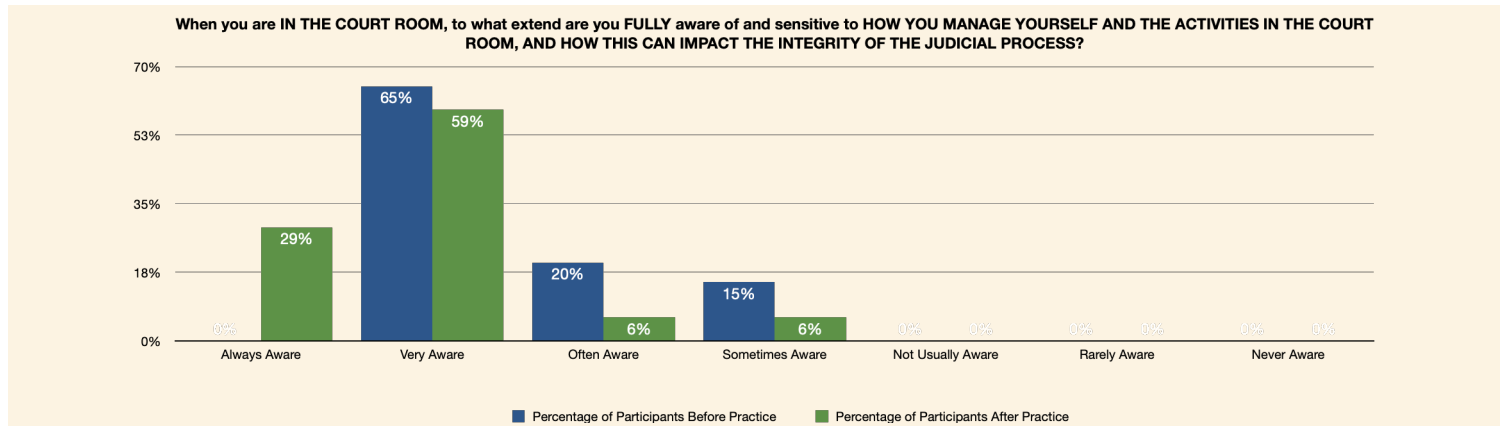


Fig 53

Indeed, these trends in changes (increases) to *awareness* as a result of the practices, also repeated relative to self-management and speech in relation to court users, attorneys, litigants, witnesses, and court staff (all measured separately), and the impact of this on the integrity of the judicial process and on the administration of justice. Figs 54 and 55 show this.

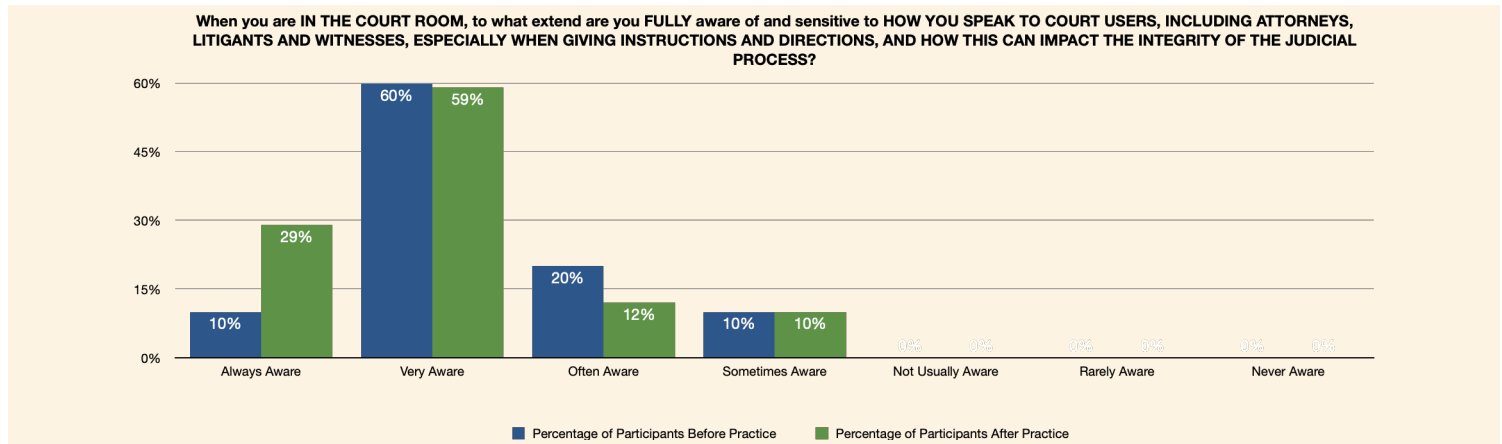


Fig 54

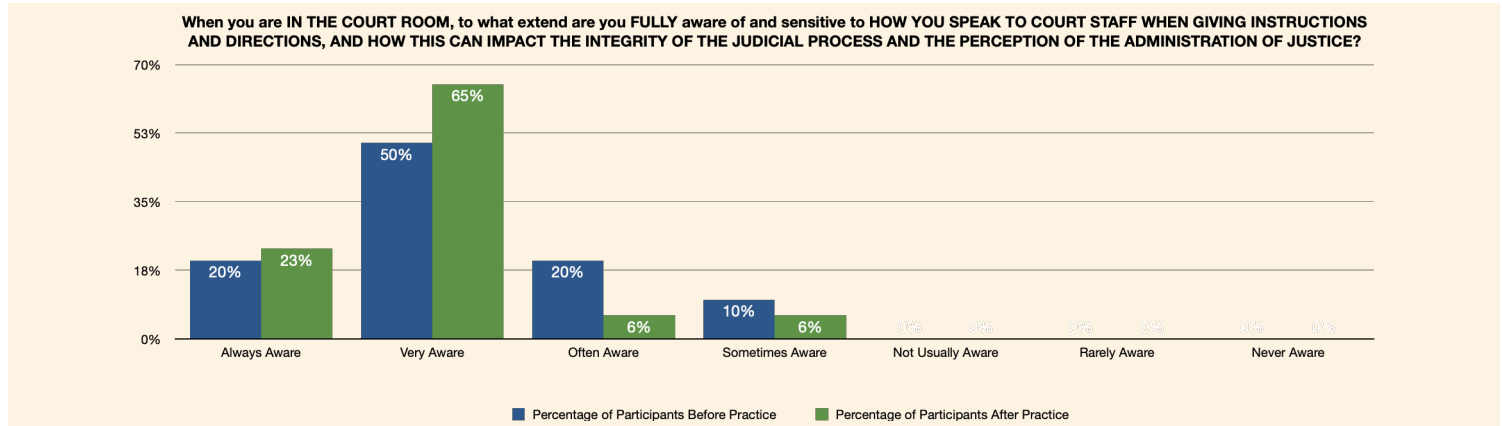


Fig 55

Again, these findings are very noteworthy and point towards efficacy of the practices in the contexts of the actual courtroom. And as before, their salience for meeting procedural fairness standards and achieving court excellence is self-evident.

Changes in Courthouse and Out-of-Court Awareness

Questions were also asked about awareness in the courthouse and outside of the formal court environment. These questions focused on judicial officers' perceptions of the impact of their behaviours on their integrity and on the administration of justice. Responses showed parallel trends throughout. For example, in the category *very aware and sensitive*, the increases in *awareness* post-practice range from 10% to over 40%. These are significant increases and point towards efficacy of the practices in contexts outside of the actual courtroom. Figs 56-59 selectively illustrate these results and trends.

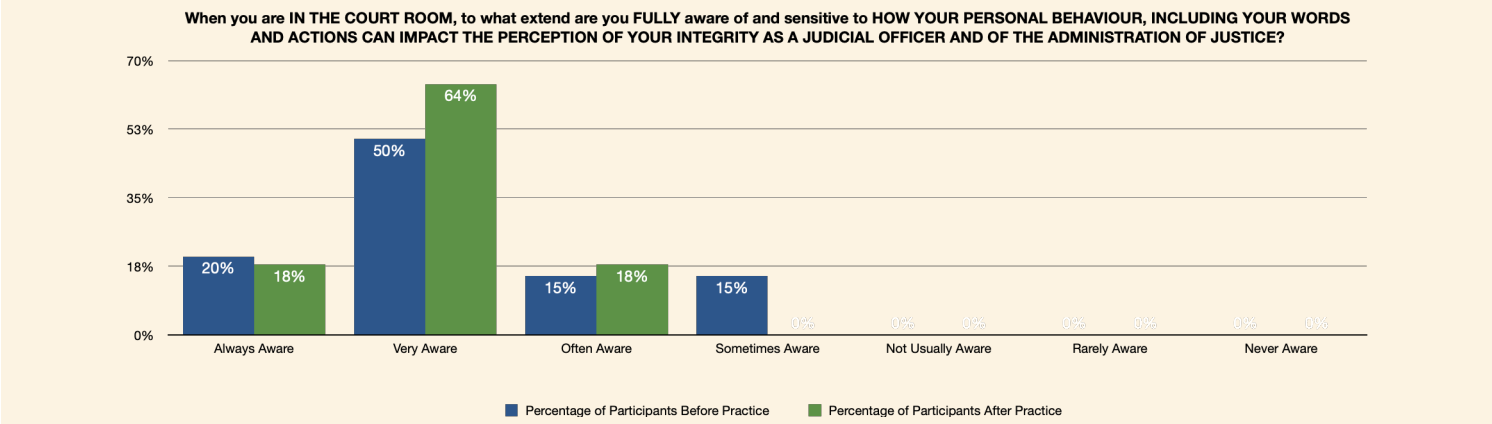


Fig 56

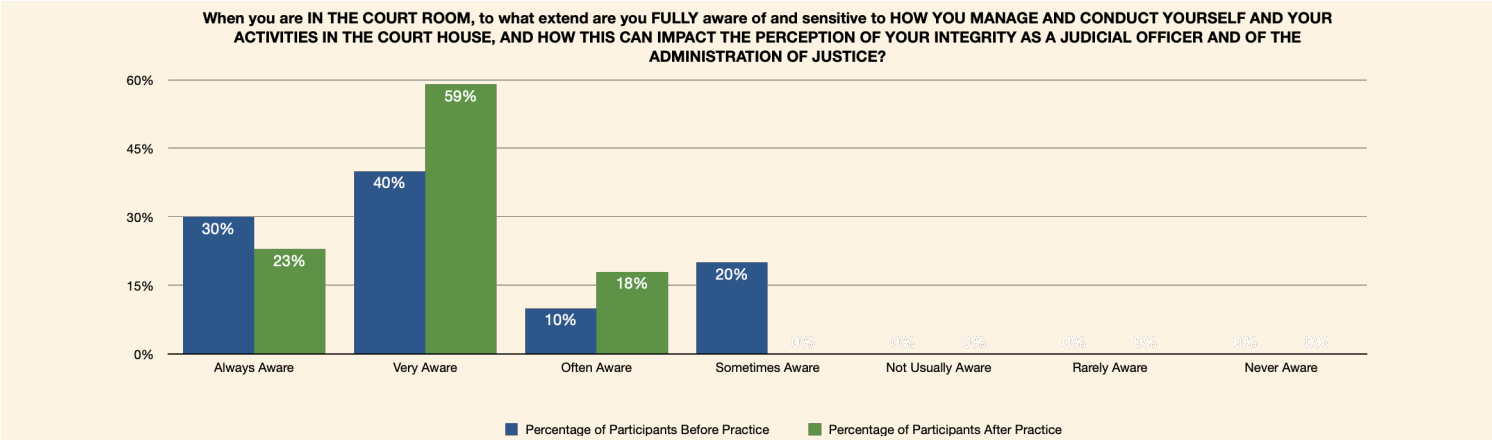


Fig 57

Detailed Analysis | Changes in Courthouse and Out-of-Court Awareness

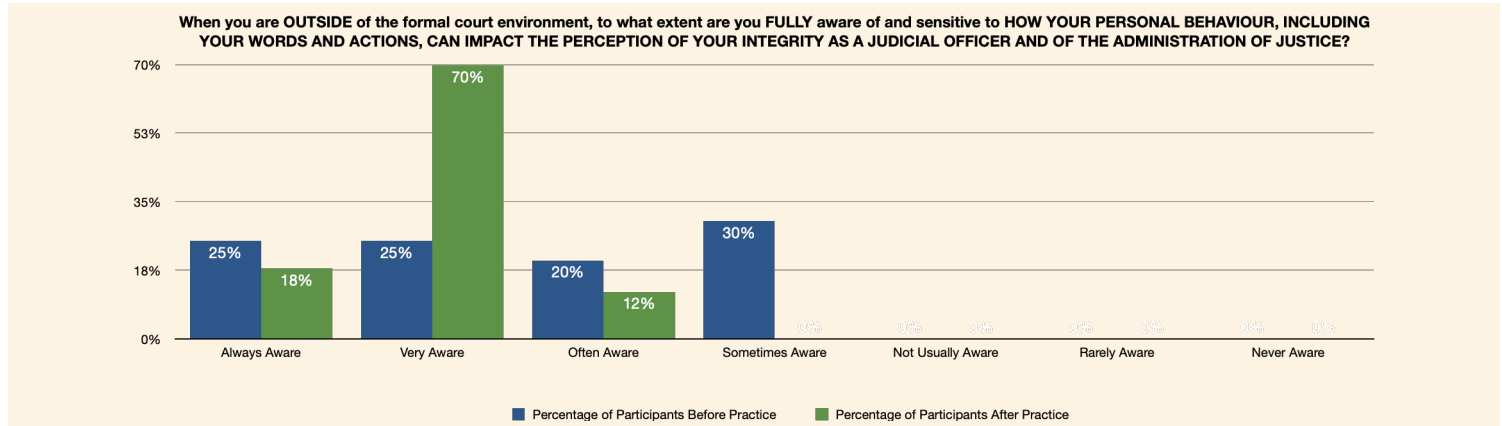


Fig 58

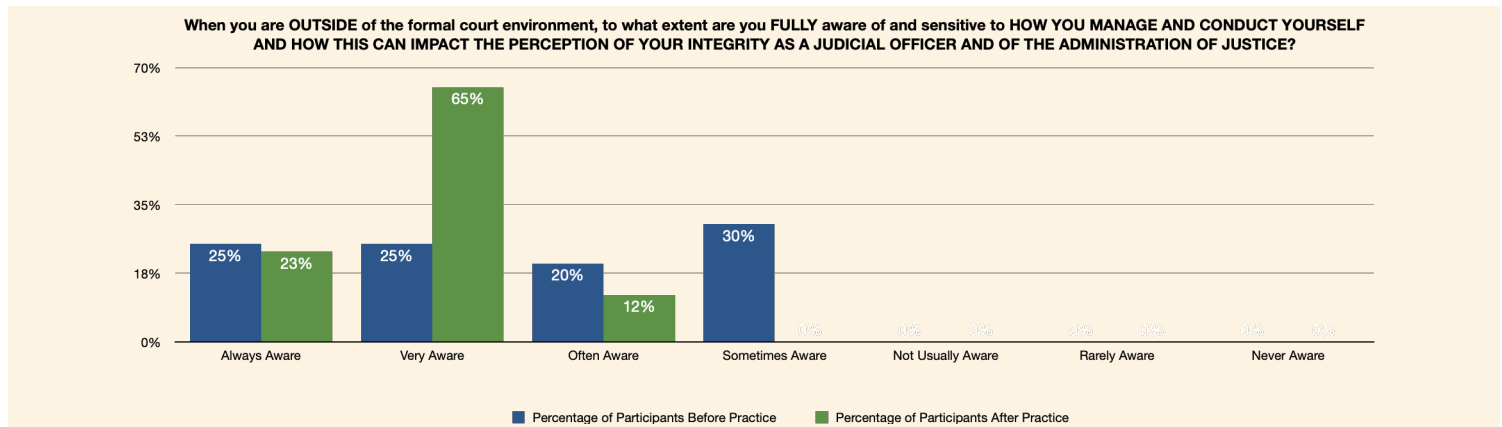


Fig 59

What therefore emerges as a reasonable, if not compelling, proposition, is that the practices increased awareness in 360-degrees, that is, in all quadrants measured, and did so both within formal courtroom settings, as well as outside of these contexts.

Changes in Awareness about Influencing Considerations

Procedural fairness and fairness in general hinge significantly on the impact of influencing considerations. That is, if a judicial officer or the judicial process is being influenced by injudicious considerations, internal or external, individual or collective, the likelihood of an unfair process and/or outcome is increased. Many of these inappropriate influences operate 'behind the scenes', as it were, in the individual sub-conscious, or in collective, cultural pre-suppositions, or in collective systems, structures, rules and practices. Resulting habitual and culturally conditioned attitudes, responses, and behaviours can also be an external source of these influences, as they can have particular and discriminating impacts on some and not on others. In a specific series of questions, this research focused its assessment of these influencing considerations on core and ancillary judicial functions. The first three series of questions, (i) to (iii) below, focused on the internal individual quadrant, and the fourth series of questions, (iv) below, focused on the internal collective quadrant. **The research data almost unequivocally confirms the value of *Intentional Awareness* as an aid to integrity in the discharge of the judicial function in the courtroom, as awareness of these myriad, influencing considerations, increased significantly post-practice.**

What is therefore of great significance in this aspect of the research, is the specific focus on whether and how these considerations can and do affect: (i) the perception, interpretation, and application of facts in a case, (ii) the perception, interpretation, and application of law in a case, (iii) the treatment of others, professional integrity, and the administration of justice, and (iv) the final outcome in cases.

i. Judicial Officers' Internal Mental, Emotional, and Psychological States

The first series of questions inquired about **the extent of awareness of how judicial officers' internal mental, emotional, and psychological states can influence a series of factors**. A 9-point Likert scale was used to capture nuance. The categories were: *fully aware*, *mostly aware*, *generally aware*, *fairly aware*, *sometimes aware*, *not often aware*, *generally unaware*, *barely aware*, and *never aware*. The responses are fascinating and revealing.

In relation to **the perception, interpretation, and application of facts** in a case, notable increases in awareness were reported as seen in Fig 60: *generally aware* from 45% to 53%, and *mostly aware* 10% to 23%. In the category *fully aware*, there was a decrease from 10% to 6%, which it is suggested can be explained as a consequence of increased awareness post-practice. That is, some participants recognised post-practice that they were in fact not as *fully aware* as they had pre-practice believed themselves to be.

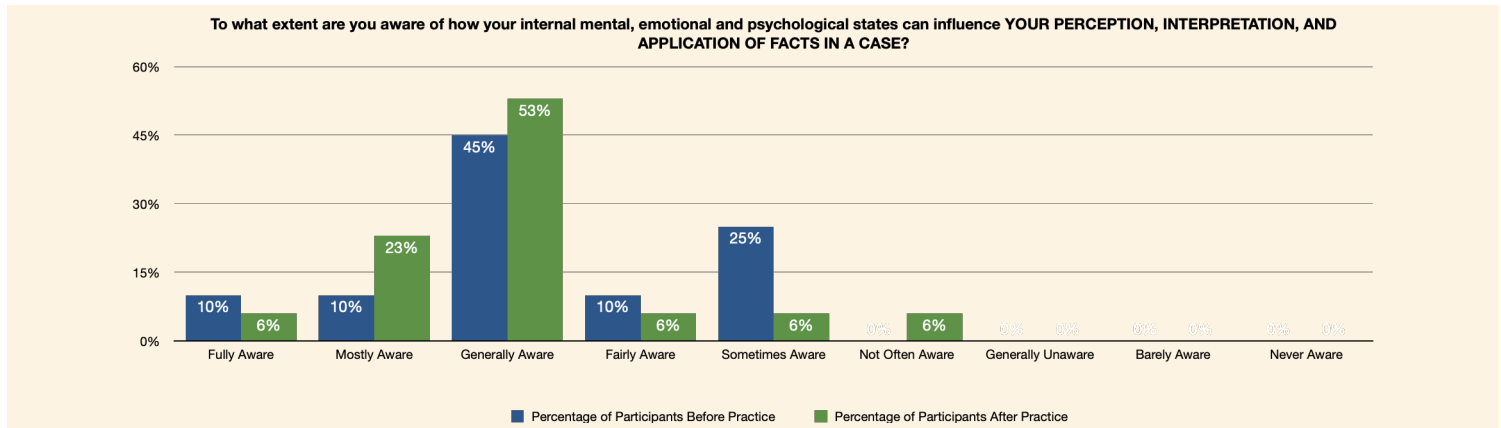


Fig 60

In relation to **the perception, interpretation, and application of the law** in a case, less notable increases in awareness were seemingly reported as seen in Fig 61: *generally aware* decreased from 50% to 47%, however *mostly aware* increased from 20% to 29%. In the category *fully aware*, there was also a decrease from 10% to 4%. These changes can also be explained as a consequence of increased awareness post-practice. That is, some participants recognised post-practice that they were in fact not *as fully aware* or as *generally aware* as they had believed pre-practice. Indeed, the sum of the decreases in the two reported categories roughly equates to the increase in the category of *mostly aware*, suggesting an increased and nuanced awareness in those categories (all other categories reported remained the same with only marginal increases in two).

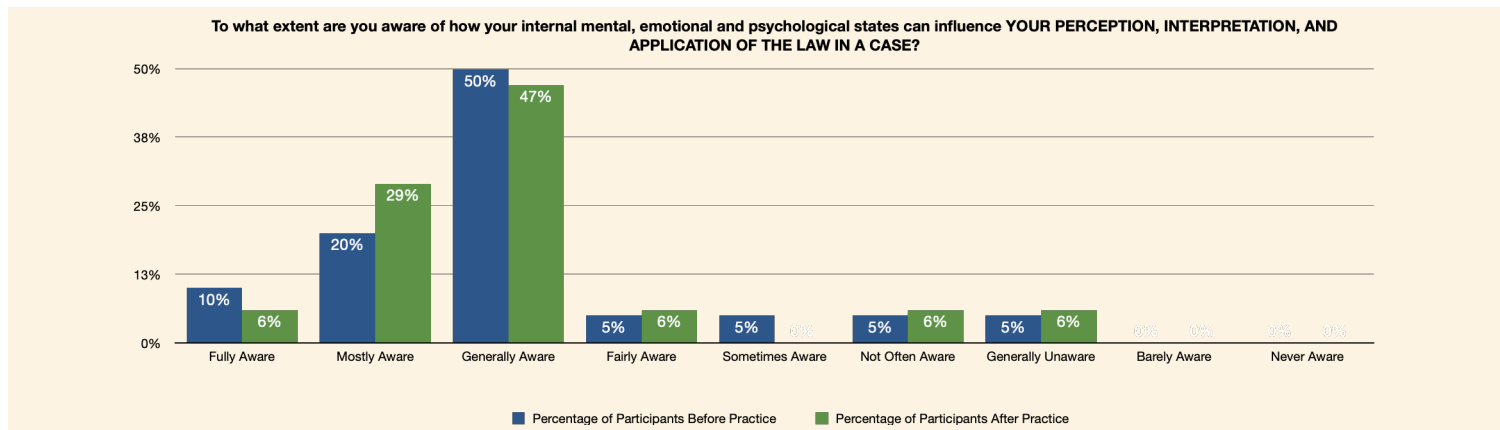


Fig 61

This information is fascinating, because it suggests that judicial officers are aware and can become increasingly aware of how their internal mental, emotional, and psychological states can influence their perceptions, interpretations, and applications of both the facts and law in a matter – their core judicial functions.

Detailed Analysis | Changes in Awareness about Influencing Considerations

These are areas where more conventional or traditional approaches may tend to believe and/or assume that judicial officers are somehow neutral, yet this may indeed not be so. Increasing their capacity for *awareness* in relation to these factors would be of considerable value to meeting procedural fairness standards, and as well for achieving generally fair and just outcomes. The effect on how judicial officers' internal mental, emotional, and psychological states influence other areas of the judicial function was also probed. In relation to **the treatment of others and the impact on perceptions of personal and professional integrity, as well as on the administration of justice**, in the category *mostly aware*, an increase from 10% to 41% was reported. As Fig 62 illustrates, this 30% increase in this category may be partly explained by commensurate decreases in the categories *sometimes aware*, *fairly aware*, *generally aware*, and *fully aware*. However, because the category *mostly aware* was the second highest category of awareness choices offered on the Likert scale, the overall results demonstrate a net increase in *awareness* post-practice.

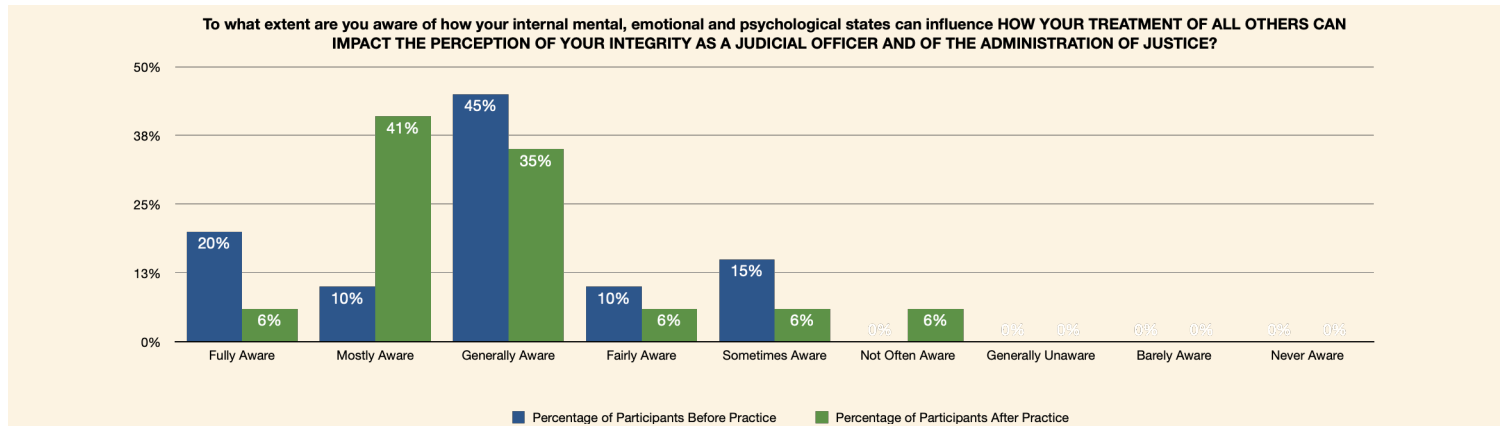


Fig 62

In relation to **the treatment of attorneys, parties, witnesses, and the conduct of proceedings**, a very similar trend was observed, and a similar analysis is postulated. See Fig 63 below.

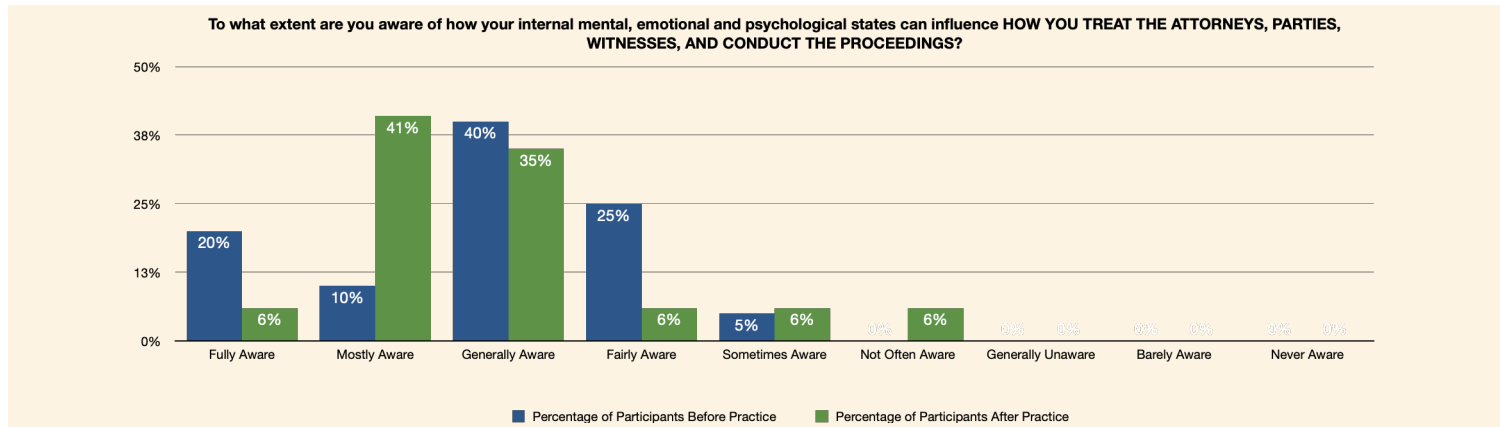


Fig 63

However, and quite dramatically so, in relation to reaching **the final outcome of a case**, which is an absolutely core judicial function, the responses showed that judicial officers experienced significant post-practice increases in their *awareness* of how their internal mental, emotional, and psychological states can influence the actual final outcomes in a case. Fig 64 below illustrates this. In the categories *generally aware*, and *mostly aware*, the third and second highest categories of awareness choices offered on the Likert scale, increases from 40% to 53% and from 10% to 40% respectively were reported. **This suggests that the prescribed practices effectively led to the reported increases in awareness capacity around what may be considered one of the most significant core judicial functions.**

Detailed Analysis | Changes in Awareness about Influencing Considerations

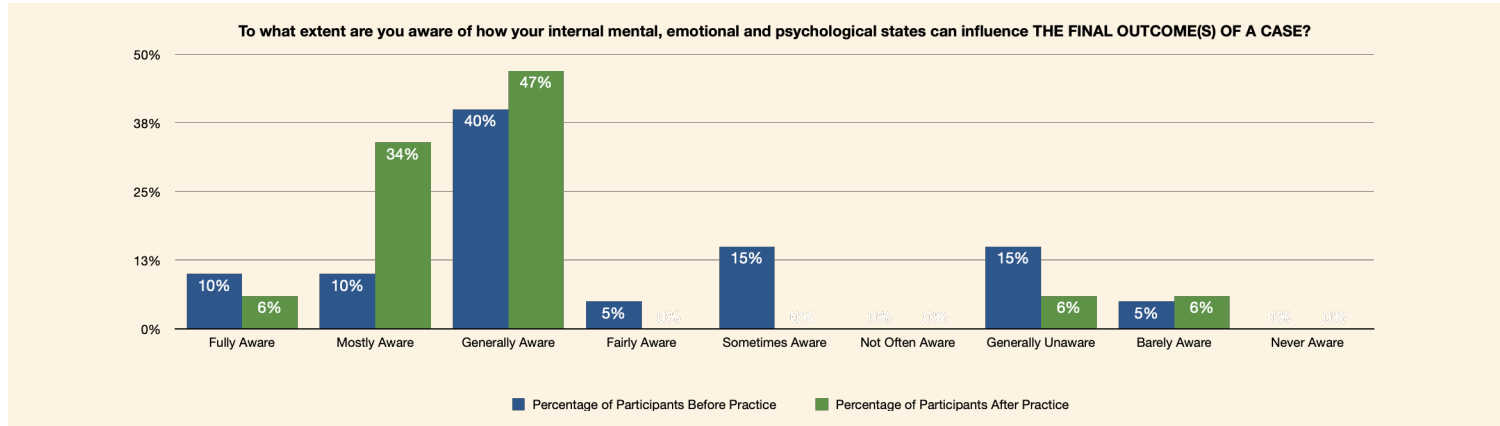


Fig 64

ii. Judicial Officers' Values, Beliefs, Stereotypes, and Discriminating Considerations

The second series of questions inquired about **the extent of awareness of how judicial officers' values, beliefs, biases, stereotypes and discriminating considerations can influence a series of factors.** As before, a 9-point Likert scale was used to capture nuance. The categories were the same: *fully aware, mostly aware, generally aware, fairly aware, sometimes aware, not often aware, generally unaware, barely aware, and never aware.* The series of factors was identical to what was measured in relation to internal mental, emotional, and psychological states.

In relation to **the perception, interpretation, and application of facts** in a case, very significant increases in *awareness* were reported in the categories *generally aware* and *mostly aware*, the third and second highest categories of awareness choices offered on the Likert scale, shifting from 40% to 59% and from 5% to 35% respectively. Fig 65 illustrates this. Also significant were the changes in the category *fully aware* (a decrease from 20% to 0%). As before and now consistently so, post-practice, participants' heightened *awareness* likely led to a recognition that their pre-practice belief that they were *fully aware* had changed, as they actually became increasingly aware of what in fact, they were aware of.

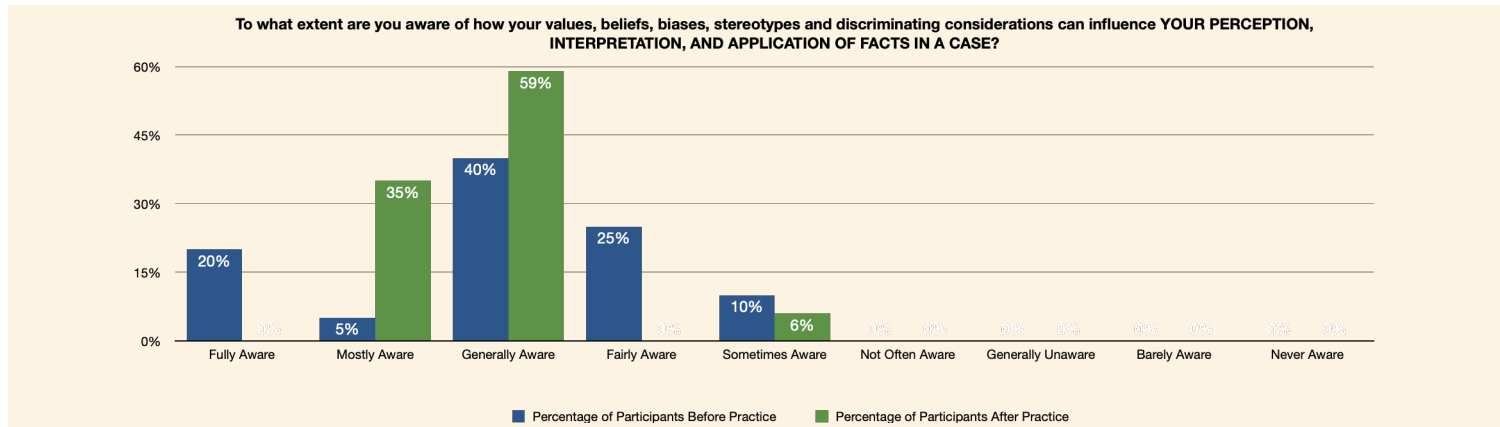


Fig 65

In relation to **the perception, interpretation, and application of the law** in a case, the increases in *awareness* paralleled those in relation to facts. Increases in *awareness* were reported in the categories *generally aware* and *mostly aware* from 40% to 53% and from 10% to 35% respectively.

Fig 66 illustrates this. As before and in the category *fully aware*, post-practice, participants' heightened *awareness* likely led to a recognition that their pre-practice belief that they were *fully aware* had changed (down from 15% to 0%).

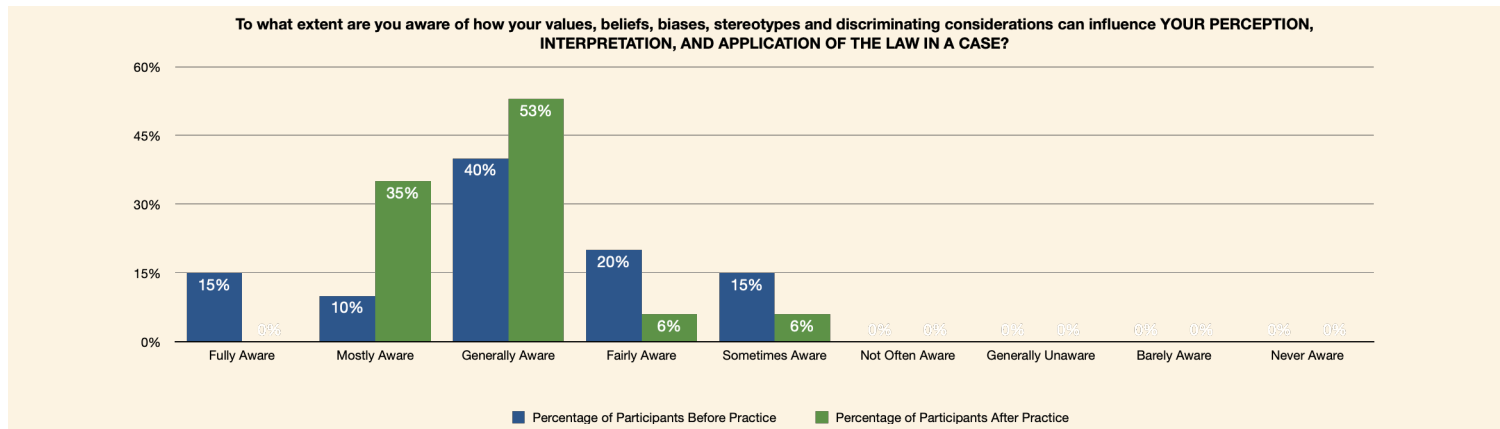


Fig 66

In relation to **the treatment of others and the impact on perceptions of personal and professional integrity, as well as on the administration of justice**, in the category *mostly aware*, an increase from 5% to 41% was reported. As Fig 67 illustrates, this 36% increase in this category may be partly explained by commensurate decreases in the categories *sometimes aware*, *fairly aware*, and *fully aware*. Notable however, is the increase in generally aware from 35% to 41%. Thus, because the categories *generally aware* and *mostly aware* were the third and second highest categories of awareness choices offered on the Likert scale, the overall result demonstrates a significant net increase in *awareness* post-practice.

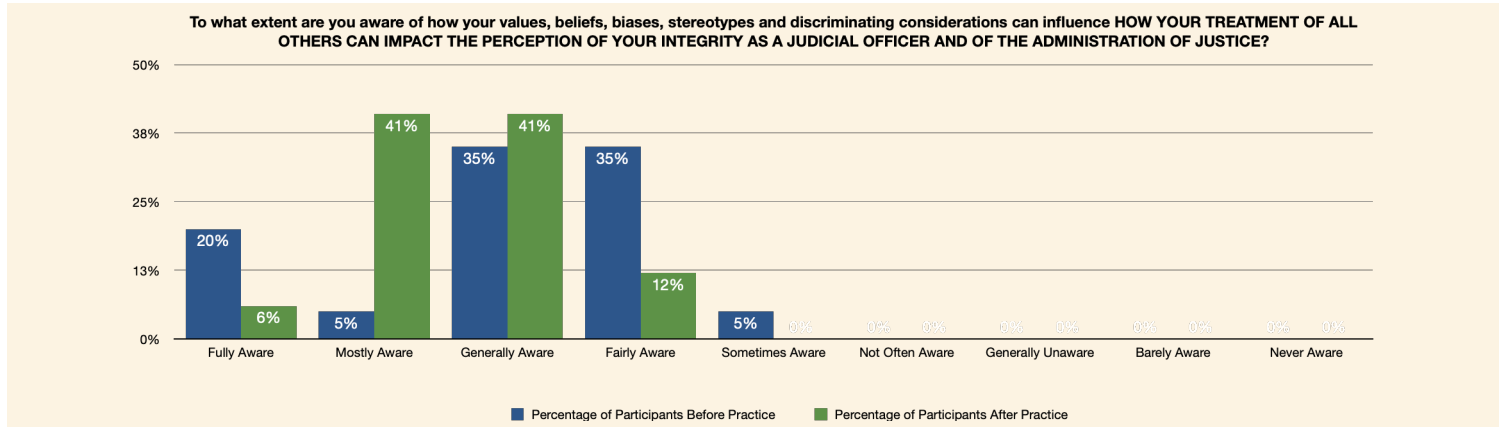


Fig 67

In relation to **the treatment of attorneys, parties, witnesses, and the conduct of proceedings**, a roughly similar trend was observed, and a similar analysis is postulated (increases in *awareness* were reported in the category *mostly aware* from 5% to 35%). See Fig 68 .

Detailed Analysis | Changes in Awareness about Influencing Considerations

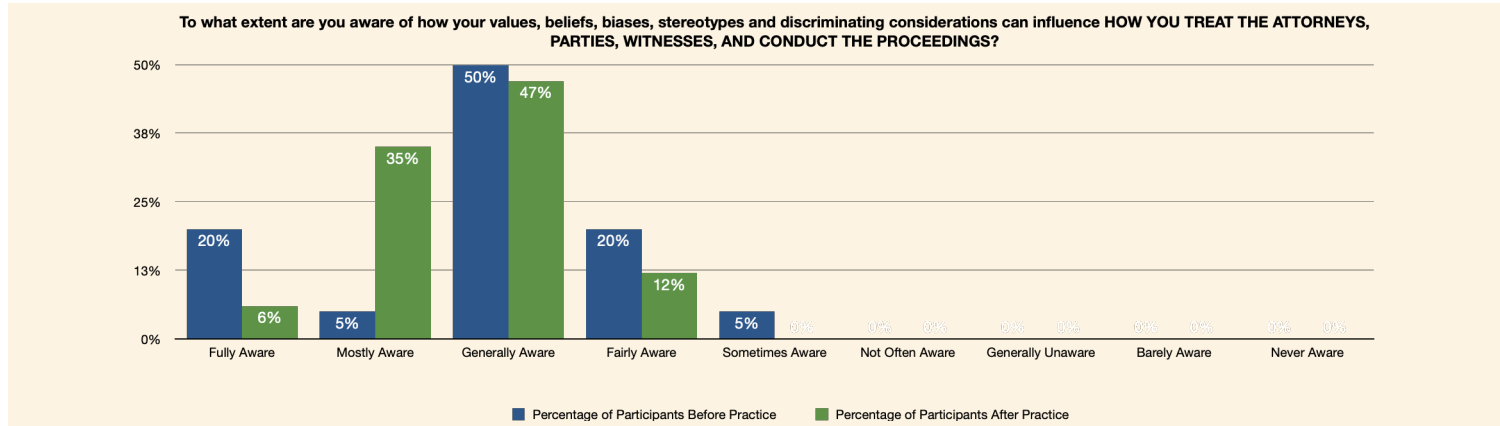


Fig 68

However, in relation to **the final outcome of a case**, the responses showed that judicial officers experienced very significant post-practice increases in their *awareness* of how their values, beliefs, biases, stereotypes and discriminating considerations can influence the final outcomes in a case. Fig 69 illustrates this. In the categories *mostly aware and fully aware*, the second and first highest categories of awareness choices offered on the Likert scale, increases from 10% to 65% and from 15% to 29% respectively were reported. This suggests that the prescribed practices effectively led to the reported increases.

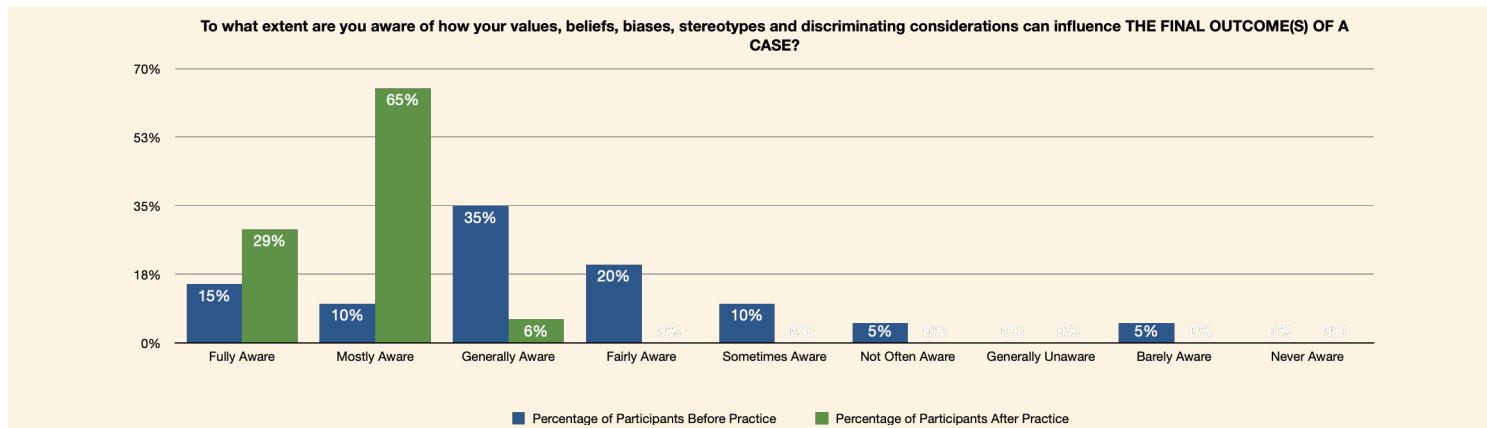


Fig 69

Clearly, judicial officers’ values, beliefs, biases, stereotypes and discriminating considerations are very impactful considerations in the context of Procedural fairness standards, as well as in relation to case outcomes. If the practices can improve (increase) judicial officers’ awareness of how these considerations are influencing the discharge of their judicial functions, and the outcomes of cases they are deciding, then it is reasonable to suggest that the practices add real value to the integrity of both judicial officers (as such) and to the general administration of justice. The research data suggests that this is so.

Given that these areas of interrogation cover core judicial functions that directly impact both process and outcome in matters, we suggest that the practices of Intentional Awarenessing used in this research can and do have a significant positive impact on increasing awareness in the areas tested.

iii. **Judicial Officers' Personal Likes, Dislikes, Attractions and Aversions, Assumptions, and Expectations**

The third series of questions inquired about **the extent to which judicial officers' personal likes, dislikes, attractions and aversions, assumptions and expectations can influence the identical series of factors**. As before, a 9-point Likert scale was used to capture nuance. The categories were the same: *fully aware, mostly aware, generally aware, fairly aware, sometimes aware, not often aware, generally unaware, barely aware, and never aware*.

The figures below illustrate the results of the research. As before, the results are most significant and follow the patterns above. Salient features are as follows and are shown in Figs 70-72.

In the category *mostly aware* (the second highest), the pre-practice survey revealed that 0% of participants selected this category for the questions related to the extent of awareness of how judicial officers' likes, dislikes, attractions and aversions, assumptions and expectations can influence their: a) perceptions, interpretations and application of facts in a case, b) their perceptions, interpretations and application of the law in a case, and c) treatment of others and the impact on perceptions of personal and professional integrity, as well as on the administration of justice. Most significantly, in the post-practice survey, the following increases in *awareness* in this category were respectively reported: a) from 0% to 29%, b) from 0% to 29%, and c) from 0% to 41%. This net increase in the degree of awareness is noteworthy, as the first two categories go to core functions (determining and applying the facts and the law in a case), and the third goes directly towards procedural fairness standards (treatment of others and impact on integrity).

To what extent are you aware of how your personal likes and dislikes, attractions and aversions, assumptions and expectations can influence YOUR PERCEPTION, INTERPRETATION, AND APPLICATION OF FACTS IN A CASE?

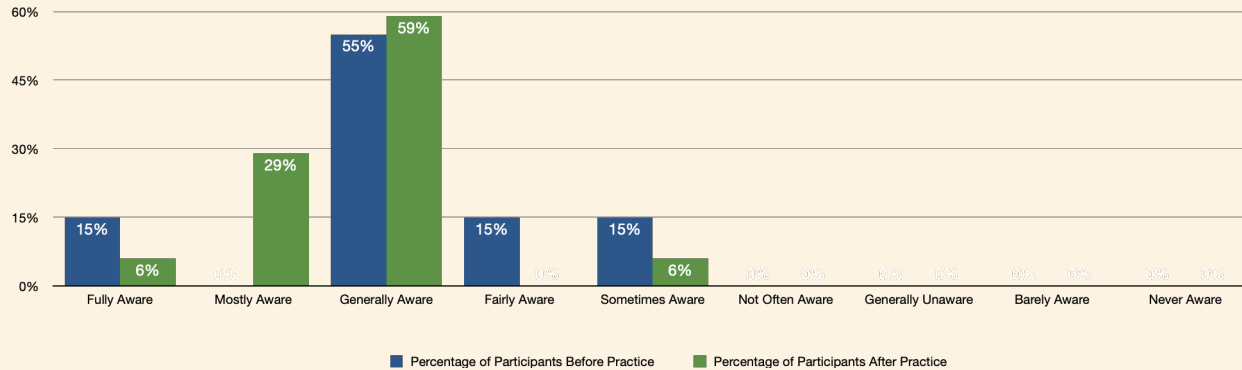


Fig 70

To what extent are you aware of how your personal likes and dislikes, attractions and aversions, assumptions and expectations can influence YOUR PERCEPTION, INTERPRETATION, AND APPLICATION OF THE LAW IN A CASE?

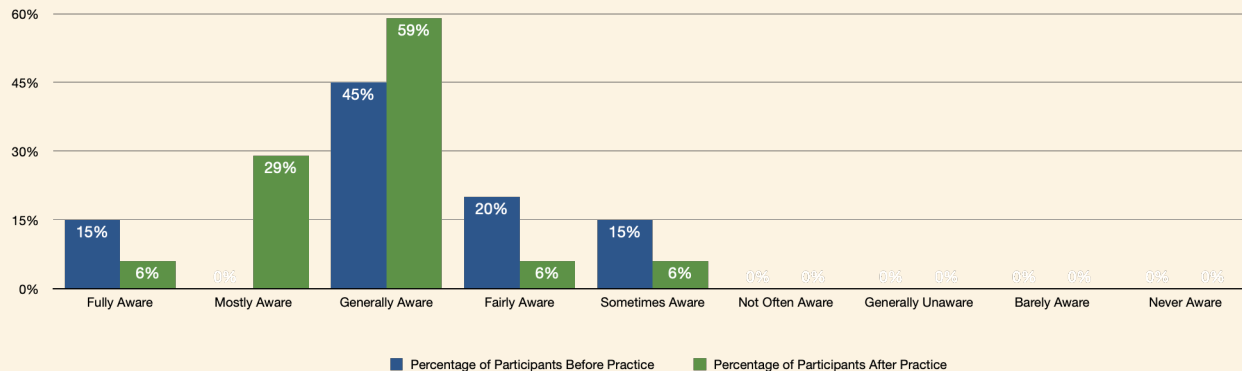


Fig 71

Detailed Analysis | Changes in Awareness about Influencing Considerations

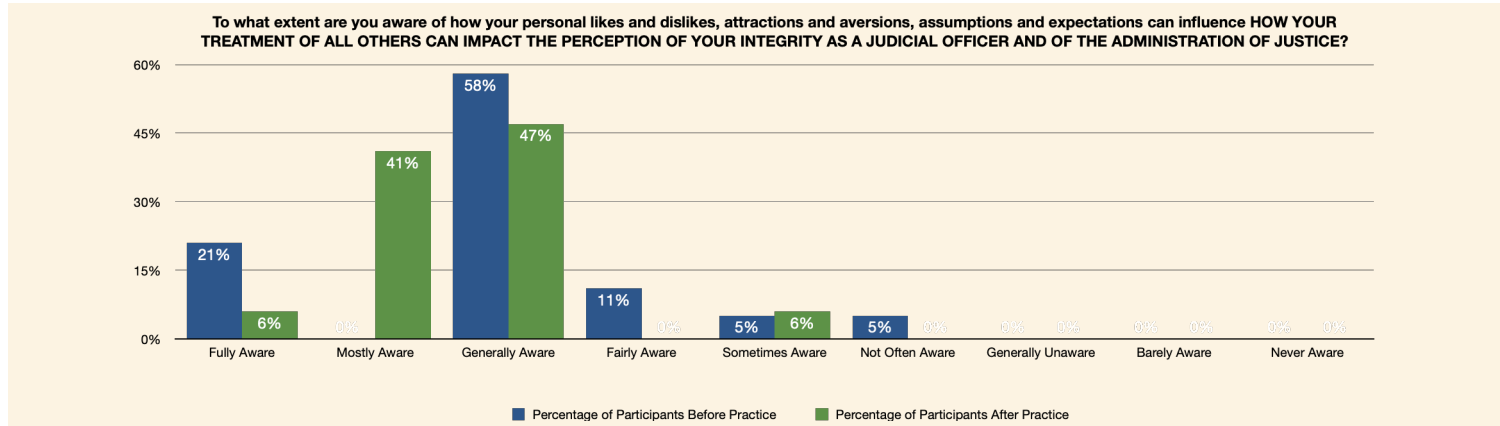


Fig 72

In relation to the **treatment of attorneys, parties, witnesses, and the conduct of proceedings**, the shift in *awareness* in the same category (*mostly aware*), was from 10% to 35% (Fig 73). And, in relation to the **final outcomes in a case**, the shift in *awareness* in this very category (*mostly aware*), was from 5% to 40%. As before, these shifts are significant, as they go directly to both core judicial functions and procedural fairness standards (Fig 74).

To what extent are you aware of how your personal likes and dislikes, attractions and aversions, assumptions and expectations can influence HOW YOU TREAT THE ATTORNEYS, PARTIES, WITNESSES, AND CONDUCT THE PROCEEDINGS?

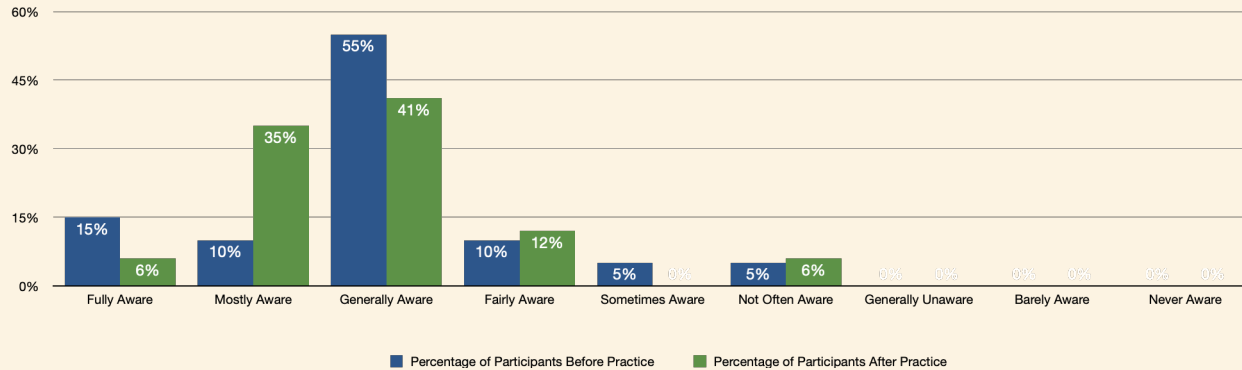


Fig 73

To what extent are you aware of how your personal likes and dislikes, attractions and aversions, assumptions and expectations can influence THE FINAL OUTCOME(S) OF A CASE?

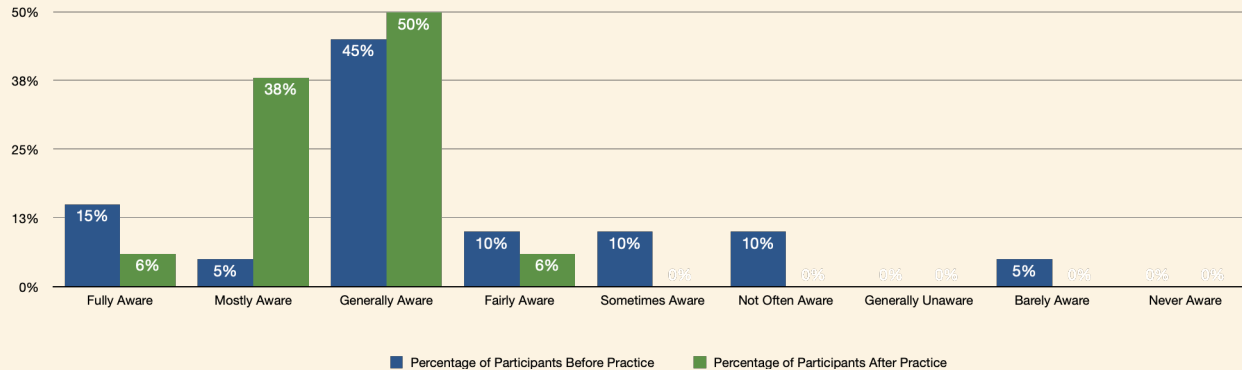


Fig 74

As has been consistently demonstrated in the post-practice responses, and as can be seen in all the data shown in the illustrations above, there was a percentage pre-practice belief of full awareness, which changed (decreased) post-practice. The consistency of this trend across all aspects of the surveys reinforces the explanation suggested previously, and in our opinion reasonably supports a net increase in general awareness post-practice.

iv. Judicial Officers' Contextually Prevailing Local, Social, and Cultural Values, Beliefs, Biases, Stereotypes, and Discriminating Considerations

This question interrogated the internal collective quadrant, a dimension often overlooked, but the influences of which on the judicial processes as well as judicial decision-making and outcomes can be quite telling. This can be especially true in post-colonial societies which exist in the Caribbean spheres. The question had a slight nuance from the other questions, in that it sought to inquire into the extent to which judicial officers 'are *shaped* and influenced'. This was because, these collective internal cultural and ideological influences have a conditioning and 'shaping' influence on members of any given community (collective) – usually referred to as cultural conditioning, or inculturation. Fig 75 illustrates the data.

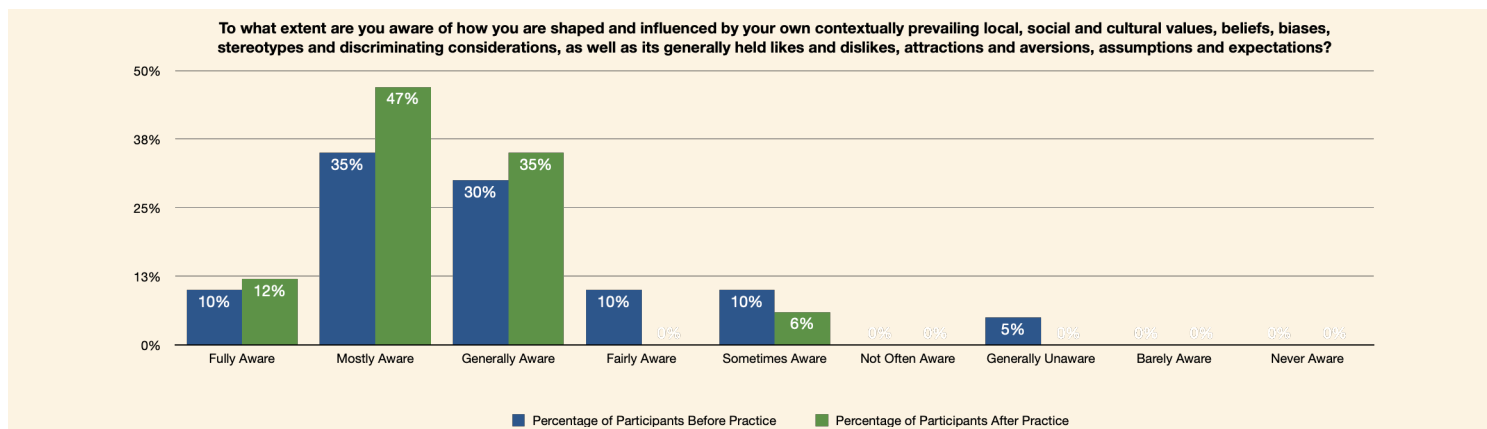


Fig 75

Notice how post-practice all three of the highest categories of *awareness* (*generally aware*, *mostly aware*, and *fully aware*), show increases in *awareness*, from 30% to 35%, 35% to 47%, and 10% to 12% respectively. We consider these changes particularly salient for Caribbean judicial officers, and for the standards of procedural fairness, where among the elements identified were accountability and inclusivity. Deficits in both of these elements have tenacious rule of law undermining traits in post-colonial societies, including the justice sectors.⁴³ It is therefore worth repeating here, that change is premised on choice, and choice is facilitated by awareness. Thus, increased capacity for *awareness*, increases the likelihood of choice-making aligned with intention or purpose, and hence growth and development towards building greater degrees of integrity. Being aware of individual and collective influences that un-judicially shape and influence judicial behaviour, court processes, decision-making, and case outcomes, affords opportunities for change.

43 Jamadar and Elahie, Proceeding Fairly; Elahie, Reflections of an Interested Observer

Changes in Attentiveness and Distractedness during Court Proceedings

The final group of questions sought to inquire into degrees of attentiveness and distractedness experienced by judicial officers during court proceedings. In a sense, these questions were designed to measure whether *Intentional Awareness* practices would increase pure levels of alertness and concentration during court proceedings. These qualities in a judicial officer have self-evident impacts on both procedural fairness standards, case management, and case outcomes. If court users perceive and experience judicial officers to be inattentive or distracted during court proceedings, it is less likely that they will consistently experience appropriate or acceptable standards of voice, respectful treatment, neutrality, trustworthiness, accountability, understanding, and inclusivity. The consequences are obvious: an undermining of public trust and confidence in the administration of justice, a loss of integrity by the particular judicial officer(s), and as well a loss of confidence in the judicial officer(s), the process, and outcomes in a particular matter. Figs 76 and 77 illustrate the data.

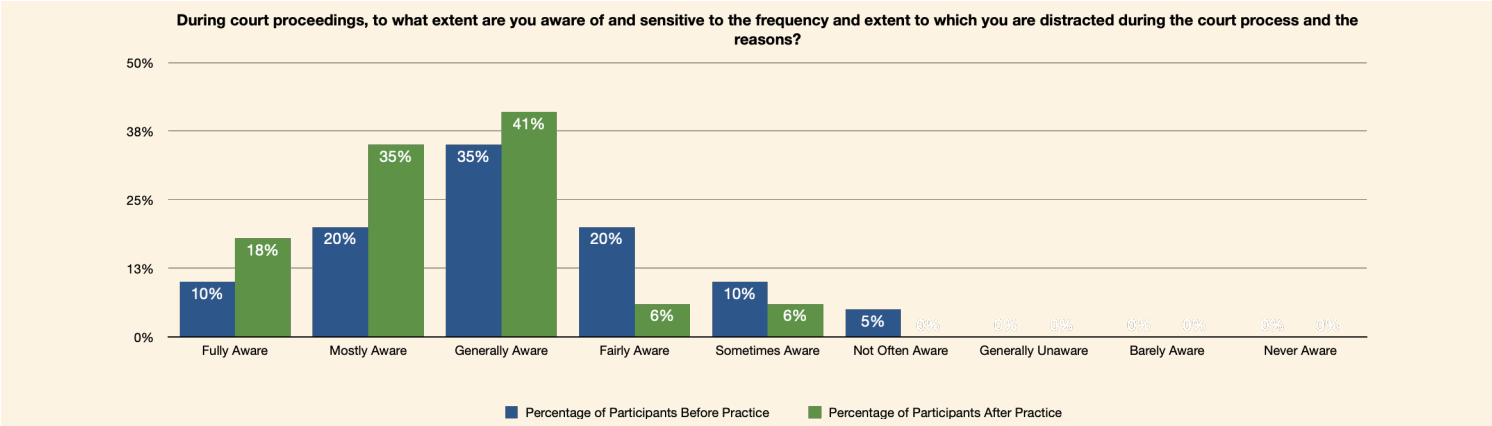


Fig 76

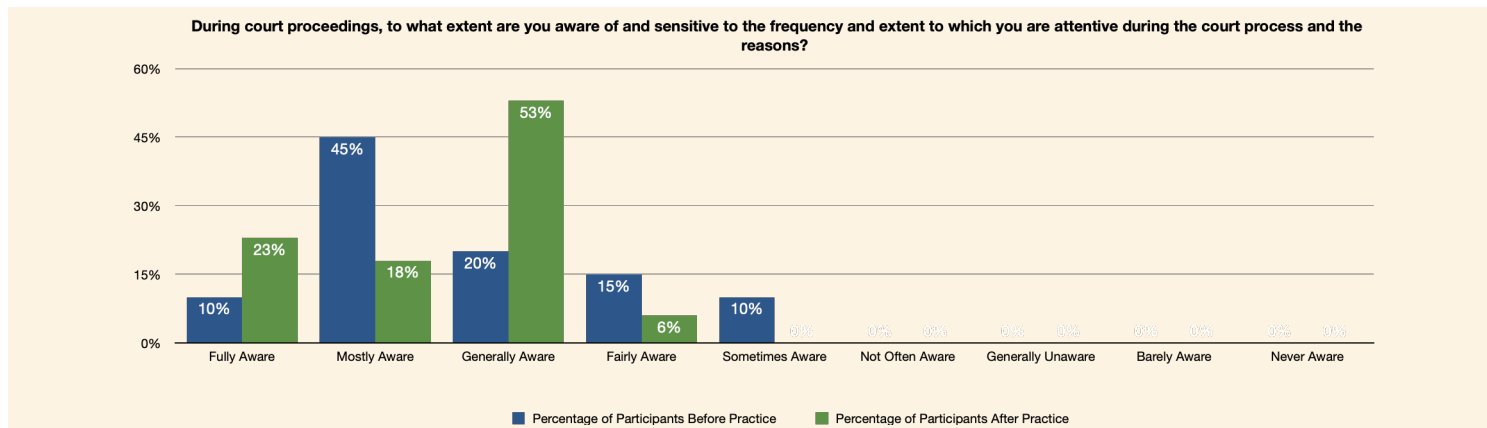


Fig 77

Notice the significant shifts in the categories *generally aware*, *mostly aware* and *fully aware*, with substantial increases in post-practice *awareness* of **frequency and extent of distractedness** during court processes, from 35% to 41%, 20% to 35%, and 10% to 18% respectively. And the significant shifts in the categories *generally aware* and *fully aware*, with substantial increases in post-practice *awareness* of **frequency and extent of attentiveness** during court processes, from 20% to 53%, and 10% to 23% respectively.

The increases in relation to frequency and extent of distractedness are more salient in the context of procedural fairness, as distractedness (and not attentiveness) is the underlying pathological condition that the practices sought to identify and access. These results suggest that the practice of *Intentional Awareness* has a positive effect on increasing awareness of both distractedness and attentiveness, and so also improving the likelihood that judicial officers' increased awareness of these considerations may result in conscious and informed choices to address them.

It goes without saying, that a consistently inattentive judicial officer is likely unfit to hold judicial office. What this research demonstrates are two corresponding insights:

- a. judicial officers are not as aware of the degree of their distractedness as they could be (pre-practice data), and
- b. practicing *Intentional Awarencing* can increase the degree of awareness in judicial officers of the extent of their distractedness (post-practice data).

Open Ended Inquiries About the Practices and Their Impact

The exit survey concluded with four general open-ended questions around practice impact, implications, and interest. These responses reflect what may be described as an overall experience of usefulness and utility as a result of practicing *Intentional Awarenessing*. The questions were as follows:

- a. How has the practice of Mindfulness **impacted you in your work environment?**
- b. How has the practice of Mindfulness **impacted you in your non-work environment?**
- c. Having practiced Mindfulness, are there **any other thoughts, feelings or insights** that you would like to share?
- d. Would you (i) **continue practicing** Mindfulness? (ii) like to **learn about more ways to engage** Mindfulness? and (iii) **recommend the practice** of Mindfulness to others?

In response to the inquiry about **impact in the work environment**, 13 responses were received, as follows:

- *It has helped me to be more focused in my thoughts.*
- *The practice has increased my alertness to the fact that the mind easily focuses on what the person as an individual believes. It is important to be aware of this and open to other possibilities.*
- *It has made me much more aware of the impact of what I think and feel on what I do, and the impact that has on the judicial process.*
- *I am generally more accepting of all the factors outside of my control.*
- *I am more aware of my physical environment and how my presence may affect others.*
- *It has also improved ability to focus.*

Open Ended Inquiries

- *I find that I am less anxious about the volume of work or the outcome of the cases and that I can trust judgment (including my instincts) more.*
- *The practice has me paying careful attention to how I use my energy during the workday. I am also more aware of my health and mental clarity.*
- *Increased in awareness of how verbal, non-verbal communication, thoughts, and actions can influence how I perform my duties and affect those around.*
- *Even though I did not complete 100%, I became very aware of what was happening in all areas of my Courtroom and how I addressed litigants, Attorneys, Staff, and any other persons in the Courtroom.*
- *I now pay close attention to the parties, the witnesses and to persons in the courtroom and their verbal and non-verbal communication.*
- *The practice has made me aware of the need to be mindful in avoiding the impact of prejudice.*
- *Improved my general focus and ability to declutter my mind.*

In response to the inquiry about **impact in the non-work environment**, 13 responses were received, as follows:

- *It has made me more appreciative of those around and their apparent needs.*
- *The practice afforded me moments of peace that I appreciated. I was able to detach/ from everyday concerns, thoughts, to do lists etc. for a few minutes each day, and sometimes just focus on the beauty in the surroundings, or on my own breathing and body movements etc.*
- *I am much more aware of myself and others and so better and more skillfully able to manage and respond to persons and situations.*
- *Best rewards in this facet of life; I am calmer, more relaxed, more solution-oriented, and full of energy.*
- *It has helped me to be more attentive to the process and not only the outcome. I recognize in my own experiences that everything in the environment and interaction influences my perception of the experience.*
- *I try to enhance the total package for all court users.*

- *I find that I am less anxious about the volume of work or the outcome of the cases and that I can trust judgment (including my instincts) more.*
- *I am calmer and more relaxed.*
- *It has helped me learn about myself. And a little more on why I am making some decisions and not making others.*
- *It has made me aware of my continued duty to conduct myself in a manner befitting a judicial officer in my engagement with the general public in a manner devoid of arrogance, entitlement and with dignity, which in any event I have always strived for.*
- *I have a greater sense of awareness of persons with whom I interact.*
- *I benefited from the practice in that it forced me to pause in the midst of busy days. It is a peaceful practice and helped me to tune into things I hadn't noticed much before.*
- *Greater awareness of people situations around me. In particular with my students.*
- *Sustained focus and concentration.*

What this feedback demonstrates is the value experienced by participants as a consequence of the practices. Noteworthy is that there were personal and positive impacts in non-work domains. They all point to the generally beneficial effects of a consciously cultivated mindfulness practice for personal and relational wellbeing. These general effects are corroborated in a broad range of research on mindfulness.

Finally, the following illustrations show the responses to the series of questions:

Would you:

- continue practicing Mindfulness?
- like to learn about more ways to engage Mindfulness? and
- recommend the practice of Mindfulness to others?

Figs 78-80 show participants' responses.

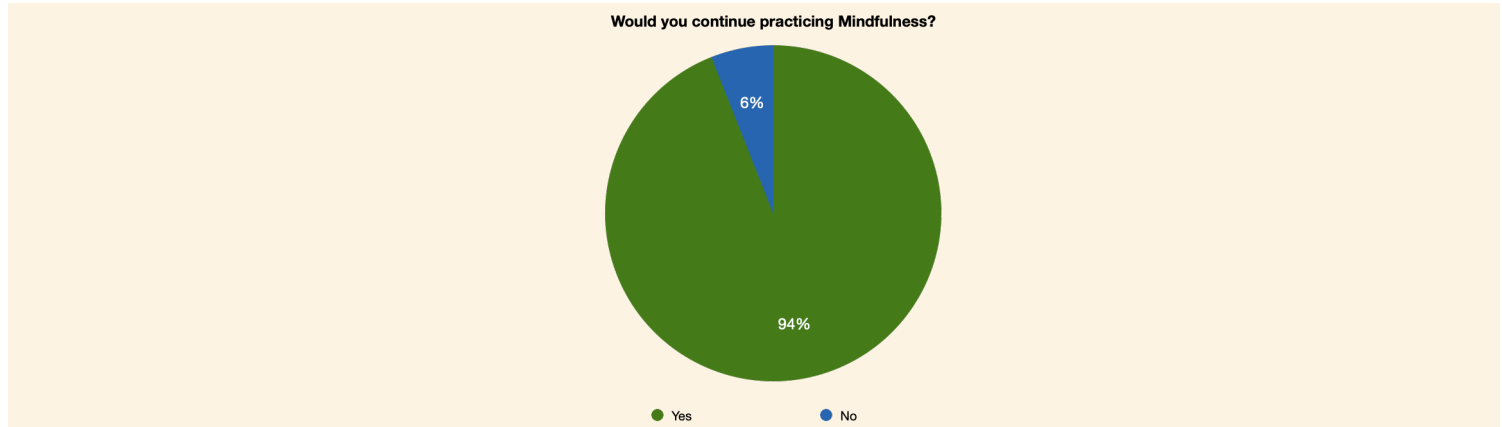


Fig 78

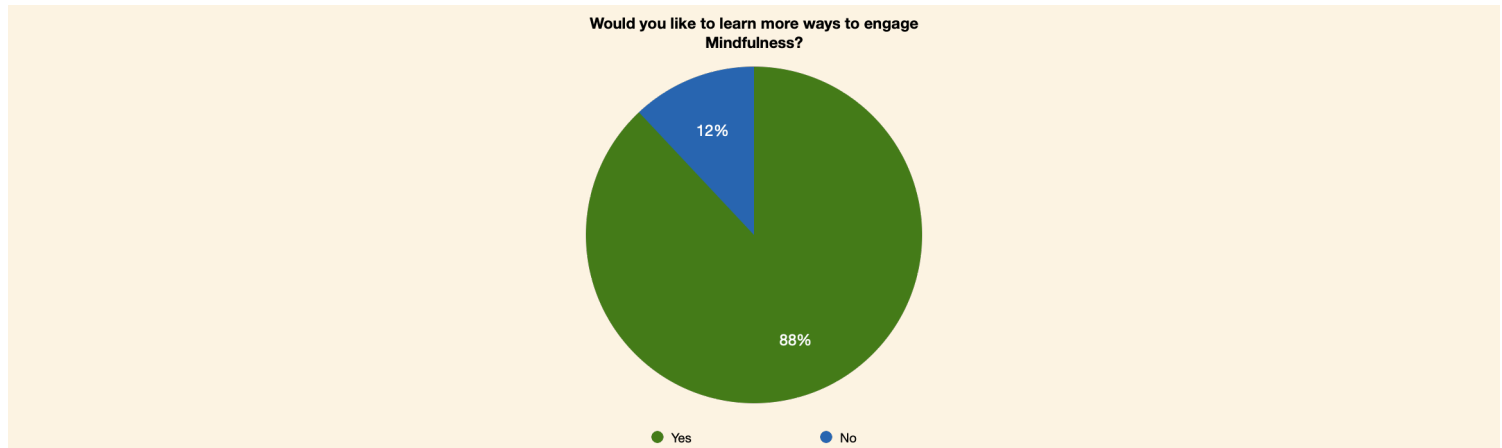


Fig 79

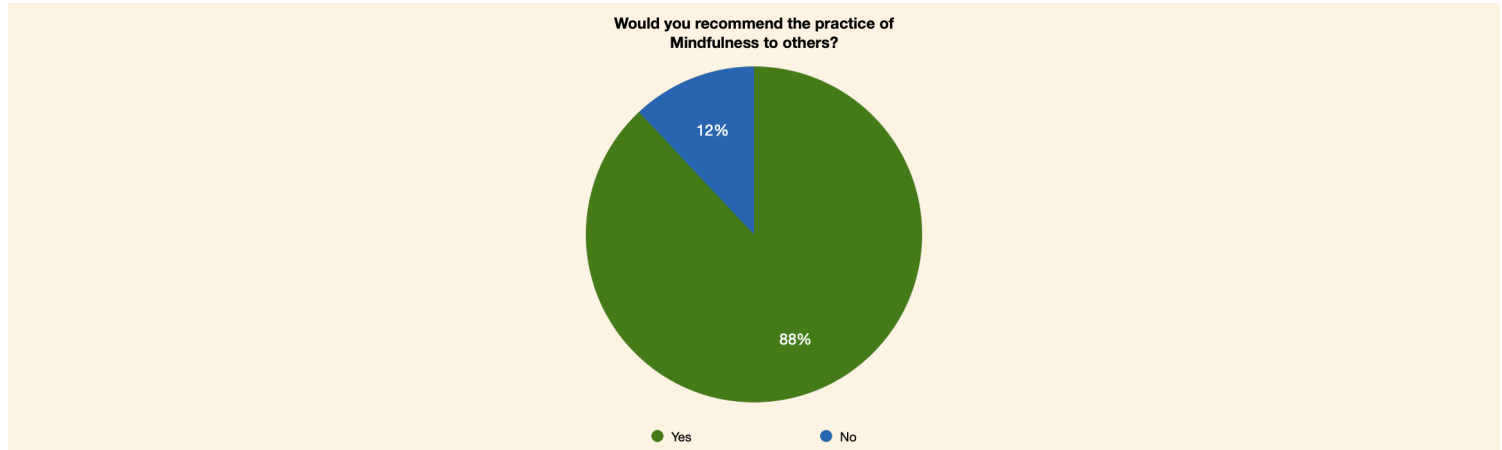


Fig 80

The data is self-explanatory and reflects very positively on participants' experiences of the practices. Taken together with the comments on impact (above), a reasonable assumption is that for a large majority (over 60% of participants in the research), the practices were professionally helpful and personally meaningful. Indeed, some of the comments in relation to impact in a non-work environment are worthy of further inquiry and are consistent with other research results into the effects of Mindfulness practices (for example, as demonstrated in the work of Jon Kabat-Zinn).

Summary and Conclusions

INTRODUCTION

In our opinion this research strongly suggests that the regular practice of *Intentional Awareness* by judicial officers, can lead to improved and enhanced courtroom function and experience, with consequential constructive effects for judicial officers, court users, and the administration of justice. This is premised on the bases that without awareness choice becomes otiose, and therefore increased awareness can facilitate more effective choices.

Provided below is a summary of this discussion, organised into the categories as reflected throughout.

WHY THE RESEARCH? The Mandate of Procedural Fairness, The Impetus of the Research

Ensuring that the public perception and experience of court systems is that of fairness, is now more than ever an unavoidable imperative of all judicial systems in democratic societies that uphold the rule of law. In Anglo-Caribbean states that have Westminster-influenced written constitutions, this adherence to fairness and a fair process has constitutional underpinnings. The court users' perspectives and experiences are now considered intrinsic to any evaluation of procedural fairness.

Significant research has been conducted that demonstrates the value of mindfulness for the practice of law and judging. This body of research, in the context of procedural fairness, confirmed that our explorations were necessary, and could make a significant difference to court users and the administration of justice.

WHY THIS PARTICULAR FOCUS AND DESIGN? Utilizing a Four-Quadrant Model

This research suggests that developing the skill of practicing *Intentional awareness* is a way in which judicial officers can more effectively and consistently fulfill the 360-degree demands of procedural fairness. The research also indicates that *Intentional Awareness* is a skill that can be taught, learned, and cultivated.

THE IMPERATIVE OF INTEGRITY. The Whole as well as the Parts Matter

This research into the usefulness of *Intentional Awareness* as a capacity creating aid to judicial officers in the proper discharge of their judicial function, is also ultimately in service of the core judicial value and principle of Integrity as a 360-degree actualising principle and value. In this way, it is also integral.

COURT PERFORMANCE STANDARDS. What we Measure Matters

The procedural fairness standards described in this paper, are also core measurement standards in relation to assessing court performance, and as such, place court users at the centre of achieving court excellence.

To the extent that *Intentional Awareness* can positively impact achieving and sustaining these procedural fairness standards, it is likely to be a useful, if not important tool in achieving both court excellence and consequently public trust and confidence (together with all the benefits that flow from these). We suggest that it can also be critical to facilitating the achievement and sustainability of Integrity as a core value of court systems.

THE DESIGN. Mindfulness, as *Intentional Awarenessing*, through a Four-Quadrant Model

If judicial officers could consistently, especially in high stress courtroom situations, discern, embrace, transcend, and free themselves from a) the unfair and often compulsive influences of their habitual (and addictive) thought patterns, feelings, agendas, conduct and biases, b) from the inappropriate and injudicious mind states, emotions, prejudices, prejudgments, and patterns of behaviour that often accompany them, as well as from c) the structural and cultural systems and forms of conduct that undermine and deny fairness and equality of treatment, it is more likely that the standards of procedural fairness will be met more reliably. Procedural fairness is expected to be present and manifest in the inner and outer aspects of both individual and institutional ways of thinking and behaving, that is, in four quadrants: the individual interior (the individual's thoughts, feelings, intentions, and psychology), the collective interior (the institutional policies, ideologies, relationships, culture, and shared meaning), the individual exterior (the individual's mannerisms and behaviours), and the collective exterior (the institutional behavioural forms, its overt systems, structures, and infrastructure).

Change is premised on choice, and choice is facilitated by awareness.

THE PRACTICES. Mindfulness, as *Intentional Awarenessing*, in the Four Quadrants

The practices can be thought of as *Intentional Awarenessing* conditioning events/experiences/exercises, that were used to develop a corresponding capacity in judicial officers to facilitate testing and determining whether by doing so the practices could have a measurable impact on qualitative and quantitative aspects of 360-degree *awarenessing* by judicial officers in the courtroom.

METHODOLOGY

Participants engaged in this exploratory research were required to:

1. Complete an entrance survey.
2. Practice the intentional awareness practices supplied to them for a period of 27 days, twice a day.
3. Complete an exit survey after the 27-day period.

The design was intended to capture a pre-practice (baseline) profile of the group and so allow for a comparative analysis with a post-practice profile and data generated by the exit survey.

THE DATA COLLECTION TOOL

The survey questionnaire which participants completed before and after the practice period sought to ascertain judicial officers' assessment of their awareness in four different areas or dimensions. The survey was designed to capture these assessments based on the four-quadrant model.

QUESTIONNAIRE SALIENCE

The design was intended to inquire into deeper and deeper levels of judicial officers' 360-degree awareness, as well as to permit a comparative analysis, by using the survey assessments before and after the practices, of whether, and if so to what degree, judicial officers' *awareness* may have changed. The design also specifically targeted the nine elements of procedural fairness and sought to assess whether a conscious practice of *Intentional awareness* could have positive impacts on judicial officers' responsibilities in this regard.

PRACTICE DATA. Experience of the Practice

More than 75% of participants sustained the practice to an extent of at least 50% (41% to an extent of 75%). And, in response to a series of questions that allowed for an assessment of usefulness, over 85% considered the practices positively impactful, would continue them, and recommend them to others, thus attesting to their utility.

General Effects

What is significant about these findings is their potential impact on judicial officers' procedural fairness responsibilities. The four-quadrant model divides experiences into internal and external, and procedural fairness requires judicial officers to be aware of both what they are experiencing internally, 'inside' themselves, as well as what is happening 'outside', externally, in the courtroom environment. The practices were designed to focus and cultivate awareness in both dimensions. Thus, findings that in both dimensions over 70% of participants observed an increase in awareness, is considered salient.

DETAILED ANALYSIS. Changes in General Awareness

Internal Dimensions

A reasonable conclusion that can be drawn from this data, is that in the internal individual dimension, the capacity for *awarenessing* of thoughts was increased as a consequence of the practices. Similar results were shown in relation to *awarenessing* of emotions, bodily sensations, and inner reactions to changing circumstances. Also, beyond thoughts, emotions, sensations, and inner reactions, the changes in *awarenessing* around internal mind-sets (biases, social context, preferences, emotive triggers, causes of disinterest and sympathy, and prevailing local, social and cultural biases, stereotypes and discriminating considerations) were very significant. These are very substantial shifts in increased degrees of self-awareness, in areas that can have a real impact on procedural fairness considerations.

External Dimensions

General *awarenessing* levels also showed comparable changes (increases) post-practice in relation to the following external dimensions: a) activities and changes in the external environment b) emotional states of others, c) impact of personal behaviour (words and actions) on the external environment, d) personal behaviour, facial expressions, tone of voice, gestures, non-verbal behaviours, eye-contact, emotive language, and self-management in relationship with others, e) personal biases, assumptions, patterns of behaviour, preferences (likes), aversions (dislikes), irritants, empathetic and sympathetic triggers, and f) prevailing local, social, cultural biases, stereotypes and discriminating considerations. Thus, there was an overall marked increase in self-awareness of personal behaviours after the practices. This is significant, because self-awareness of judicial officers of their behaviour can make a big difference in their ability to correct inappropriate behaviours, and thus meaningfully impact court users' experiences and perceptions of fairness.

Overarching Insights

These are very significant shifts in increased degrees of both inner and outer self-awareness, with a potential application while in the courtroom. Similar patterns were observed in relation to external environmental *awarenessing*, though to lesser degrees. What this seems to indicate quite robustly, is that for judicial officers, a relatively consistent and targeted practice of *Intentional Awarenessing* can lead to significant increases in overall levels of awareness in all of the four-quadrants.

DETAILED ANALYSIS. Changes in Courtroom Awareness

The data indicates that it is possible to suggest, based on this research, that *Intentional Awarenessing* can have a positive, and even significant impact on judicial officers in the discharge of their duty to meet procedural fairness standards while in the courtroom. We consider this a matter of great salience.

External Collective Quadrant

All increases in *awarenessing*, which are demonstrated in the external collective quadrant, can have a considerable influence on whether procedural fairness standards are objectively met.

Internal Collective Quadrant

In terms of the internal collective quadrant, the data is no less significant. Levels of *awarenessing* about prevailing local, social and cultural values, biases, stereotypes and discriminating considerations and their impact on the integrity of the judicial process, were notably increased following the practices.

Internal Individual Quadrant

With respect to the internal individual quadrant, where internal and personal values, biases, stereotypes and discriminating considerations can insidiously undermine the judicial process, awareness of the impact on the integrity of the judicial process increased substantially following the practices.

External Individual Quadrant

In relation to the external individual quadrant, increases in *awarenessing* in relation to changing emotions, behaviours, facial expressions, tone of voice, gestures, and non-verbals and their impact on the integrity of the judicial process, were reported. In relation to a) eye contact with others and reactive verbal utterances, as well as in relation to b) self-management, and their impact on the judicial process, similar trends in *awarenessing* were reported.

Indeed, these trends in changes (increases) to *awarenessing* as a result of the practices, were also repeated relative to self-management and speech in relation to court users, attorneys, litigants, witnesses, and court staff, and in relation to the impact of this on the integrity of the judicial process and on the administration of justice.

Overarching Insights

Again, these findings are very noteworthy and point towards efficacy of the practices in the contexts of the actual courtroom.

DETAILED ANALYSIS. Changes in Courthouse and Out-of-Court Awareness

The data indicates significant increases and points towards efficacy of the practices in contexts outside of the actual courtroom. What therefore emerges as a reasonable proposition, is that the practices increased awareness in 360-degrees, that is, in all quadrants measured.

DETAILED ANALYSIS. Changes in Awareness about Influencing Considerations

The research data almost unequivocally confirms the value of *Intentional Awarenessing* as an aid to integrity in the discharge of the judicial function in the courtroom, as awareness of these myriad, influencing considerations increased significantly post-practice.

Judicial Officers' Internal Mental, Emotional, and Psychological States

This information is fascinating, because it suggests that judicial officers are aware and can become increasingly aware of how judicial officers' internal mental, emotional, and psychological states can influence their perceptions, interpretations, and applications of both the facts and law in a matter, their core judicial functions. Increasing their capacity for *awarenessing* in relation to these factors would be of considerable value to meeting procedural fairness standards, and as well for achieving generally fair and just outcomes. The responses showed that judicial officers experienced significant post-practice increases in their *awarenessing* of how their internal mental, emotional, and psychological states can influence: a) the perception, interpretation and application of facts, b) the perception, interpretation and application of law, and c) the final outcomes in a case.

The effect on how judicial officers' internal mental, emotional, and psychological states influence other areas of the judicial function was also probed. In relation to a) the treatment of others and the impact on perceptions of personal and professional integrity, as well as on the administration of justice, and b) the treatment of attorneys, parties, witnesses, and the conduct of proceedings, the overall results demonstrate a net increase in *awareness* post-practice. This suggests that the prescribed practices effectively led to the reported increases in *awareness* capacities.

Judicial Officers' Values, Beliefs, Biases, Stereotypes and Discriminating Considerations

The responses showed that judicial officers experienced very significant post-practice increases in their *awareness* of how their values, beliefs, biases, stereotypes and discriminating considerations can influence: a) the perception, interpretation and application of facts, b) the perception, interpretation and application of law, and c) the final outcomes in a case. In relation to a) the treatment of others and the impact on perceptions of personal and professional integrity, as well as on the administration of justice, and b) the treatment of attorneys, parties, witnesses, and the conduct of proceedings, the overall results demonstrate a significant net increase in *awareness* post-practice.

To the extent that the practices can improve (increase) judicial officers' awareness of how these considerations are influencing the discharge of their judicial functions, and the outcomes of cases they are deciding, then it is reasonable to suggest that the practices add real value to the integrity of both judicial officers (as such) and to the general administration of justice. The research data suggests and supports that this is so. Given that these areas of interrogation cover core judicial functions that directly impact both process and outcome in matters, as well as procedural fairness standards, we suggest that the practices of *Intentional Awareness* used in this research can and do have a significant positive impact on increasing awareness in the areas tested.

Judicial Officers' Personal Likes, Dislikes, Attractions and Aversions, Assumptions, and Expectations.

As before, the results are most significant and follow the patterns above. Salient features are as follows. In relation to the extent of awareness of how judicial officers' likes, dislikes, attractions and aversions, assumptions and expectations can influence their: a) perceptions, interpretations and application of facts in a case, b) their perceptions, interpretations and application of the law in a case, and c) treatment of others and the impact on perceptions of personal and professional integrity, as well as on the administration of justice, significant post-practice increases in awareness were reported. These increases are noteworthy as the first two categories go to core functions (determining and applying the facts and the law in a case), and the third goes directly towards procedural fairness standards (treatment of others and impact on integrity). In relation to a) the treatment of attorneys, parties, witnesses, and the conduct of proceedings, and b) the final outcomes in a case, the shift in *awareness* capacity was substantial. As before, these shifts are significant, as they go directly to both core judicial functions and procedural fairness standards.

Judicial Officers' Contextually Prevailing Local, Social and Cultural Values, Beliefs, Biases, Stereotypes and Discriminating Considerations

Post-practice, all three of the highest categories of *awareness* (*generally aware, mostly aware, and fully aware*), show significant increases in *awareness*.

We consider these changes particularly salient for Caribbean judicial officers, and for the standards of procedural fairness, where among the elements identified were accountability and inclusivity. Deficits in both of these elements have tenacious rule of law undermining traits in post-colonial societies, including in the justice sectors.

Changes in Attentiveness and Distractedness during Court Proceedings

These results suggest that the practice of *Intentional Awarenessing* has a positive effect on increasing awareness of both distractedness and attentiveness, and so also improving the likelihood that judicial officers' increased awareness of these considerations may result in conscious and informed choices to address them.

It goes without saying, that a consistently inattentive judicial officer is likely unfit to hold judicial office. What this research demonstrates are two corresponding insights: a) judicial officers are not as aware of the degree of their distractedness as they could be, and b) practicing *Intentional Awarenessing* can increase the degree of awareness in judicial officers of the extent of their distractedness.

Overarching Insights

As has been consistently demonstrated in the post-practice responses, and as can be seen in all the data shown in the illustrations above, there was a percentage pre-practice belief of full awareness, which changed (decreased) post-practice. The consistency of this trend across all aspects of the surveys reinforces and, in our opinion, reasonably supports an increase in general *awarenessing* post-practice.

It is therefore worth repeating here, change is premised on choice, and choice is facilitated by awareness. Thus, increased capacity for *awarenessing* increases the likelihood of choice-making aligned with intention or purpose, and hence growth and development towards building greater degrees of integrity. Being aware of individual and collective influences that un-judicially shape and influence judicial behaviour, court processes, decision-making, and case outcomes, affords opportunities for constructive change facilitative of improving standards of procedural fairness in all four quadrants.

Bibliography

- Acemoglu D and Robinson JA, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (Crown Business 2012)
- Albrecht K, *Social Intelligence: The New Science of Success* (John Wiley & Sons 2009)
- Assagioli R, *The Act of Will* (Wildwood House 1973)
- Assagioli R, *Psychosynthesis* (Penguin 1977)
- Ayers-Caesar v BS (A minor) Civ App No 252 of 2015*
- The Bangalore Principles of Judicial Conduct* (Judicial Group on Strengthening Judicial Integrity 2002)
<https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf>
- Baumeister RF and Tierney J, *Willpower: Rediscovering the Greatest Human Strength* (Penguin Books 2012)
- Bradberry T and Greaves J, *Emotional Intelligence 2.0* (TalentSmart 2009)
- Braithwaite KJ and others, *Procedural Fairness A Manual* (Judiciary of the Republic of Trinidad and Tobago 2018)
- Burke K and Leben S, “Procedural Fairness: A Key Ingredient in Public Satisfaction” (2007) 44 Court Review: The Journal of the American Judges Association
- Casey P, Burke K and Leben S, “Minding the Court: Enhancing the Decision-Making Process” (2013) 5 International Journal for Court Administration 45

- Clear J, *Atomic Habits: An Easy & Proven Way to Build Good Habits & Break Bad Ones* (Penguin Random House 2018)
- Code of Judicial Conduct* (Caribbean Court of Justice 2020)
- Cox D, La Caze M and Levine M, “Integrity” (*Stanford Encyclopedia of Philosophy* February 20, 2017) <<https://plato.stanford.edu/archives/spr2017/entries/integrity/>> accessed September 2, 2021
- Dean J, *Making Habits, Breaking Habits: How to Make Changes That Stick* (Oneworld 2013)
- Elahie E, *Reflections of an Interested Observer: Ethnographic Musings on the Court User's Experience in T&T* (Judiciary of the Republic of Trinidad and Tobago 2017)
- Firth AM and others, “Mindfulness and Self-Efficacy in Pain Perception, Stress and Academic Performance. The Influence of Mindfulness on Cognitive Processes” (2019) Volume 12 Psychology Research and Behavior Management 565
- Fogel JD, “Mindfulness and Judging”
- Goleman D, *Social Intelligence: The New Science of Human Relationships* (Bantam Books 2006)
- Goleman D, *Working With Emotional Intelligence* (Bantam Books 1998)
- Good DJ and others, “Contemplating Mindfulness at Work” (2015) 42 Journal of Management 114
- Gunaratana H, *Mindfulness in Plain English* (Wisdom Publications 2019)
- International Consortium for Court Excellence, “Global Measures of Court Performance” (October 15, 2020) <https://www.courtexcellence.com/_data/assets/pdf_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf> accessed July 6, 2021

- Jamadar P and Braithwaite KJ, *Exploring the Role of the CPR Judge* (Judiciary of the Republic of Trinidad and Tobago 2017)
- Jamadar P and Elahie E, *Proceeding Fairly: Report on the Extent to Which Elements of Procedural Fairness Exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago* (Judiciary of the Republic of Trinidad and Tobago 2018)
- Jensen K, *Three Brains: How the Heart, Brain, and Gut Influence Mental Health and Identity* (Mind Publishing 2016)
- Kabat-Zinn J, *Coming to Our Senses, Healing Ourselves and the World through Mindfulness* (Hyperion Books 2010)
- Kabat-Zinn J, *Emotional Intelligence: Why It Can Matter More Than IQ* (Bantam Books 1995)
- Kabat-Zinn J, *Full Catastrophe Living: Using the Wisdom of Your Body and Mind to Face Stress, Pain, and Illness* (Bantam Books Trade Paperbacks 2013)
- Kabat-Zinn J, *Mindfulness for Beginners: Reclaiming the Present Moment and Your Life, Sounds True* (Sounds True 2016)
- Kabat-Zinn J, *Wherever You Go, There You Are Mindfulness Meditation in Everyday Life* (Hachette Books 2014)
- Kahneman D, Sibony O and Sunstein CR, *Noise: A Flaw in Human Judgment* (Harper Collins 2021)
- Kahneman D, *Thinking, Fast and Slow* (Penguin 2012)
- Karelaia N and Reb J, “Improving Decision Making through Mindfulness” [2015] *Mindfulness in Organizations* 163

- Kerrigan D, “Therapeutic Jurisprudence in Trinidad and Tobago” in Daniel Nehring, Ole Jacob Madsen, Edgar Cabanas, China Mills, & Dylan Kerrigan (eds), *The Routledge International Handbook of Global Therapeutic Cultures* (Routledge 2020)
- Lally P and others, “How Are Habits Formed: Modelling Habit Formation in the Real World” (2009) 40 *European Journal of Social Psychology* 998
- Mayer JD, Salovey P and Caruso DR, “Emotional Intelligence: Theory, Findings, and Implications” (2004) 15 *Psychological Inquiry*
- Neal TM and Brank EM, “Could Mindfulness Improve Judicial Decision Making?” [2014] *PsycEXTRA Dataset*
- Oka M and Soosalu GA, *Mbraining: Using Your Multiple Brains to Do Cool Stuff* (CreateSpace Independent Publishing Platform 2012)
- Rogers SL, McAllen C and Jha AP, “Mindfulness Training for Judges: Mind Wandering and the Development of Cognitive Resilience” [2018] *Court Review: The Journal of the American Judges Association* 669
- Seamone ER, “Judicial Mindfulness” (2002) 70 *University of Cincinnati Law Review* 1023
- Siegel RD, *The Science of Mindfulness: A Research-Based Path to Well-Being* (The Great Courses 2014)
- Soosalu G, Henwood S and Deo A, “Head, Heart, and Gut in Decision MAKING: Development of a Multiple Brain Preference Questionnaire” (2019) 9 *SAGE Open*
- Statements of Principle and Guidelines for Judicial Conduct* (Judiciary of the Republic of Trinidad and Tobago 2017)

Bibliography

Wilber K and others, *Integral Life Practice* (Integral Books 2008)

Wilber K, *Integral Spirituality: A Startling New Role for Religion in the Modern and Postmodern World* (Integral Books 2007)

Authors' Reflections

Peter Jamadar

In my quest as a judicial officer to become more independent and impartial, and to act in greater integrity, this conscious intent has revealed the reality of the contrary. To be human is to be born, to grow, and to develop in intersecting cultures and environments of interdependencies and biases, where preferences, self-interests, and separation fragment integrity. Perfect independence, impartiality, and integrity are seemingly forever unattainable. Always out of reach.

Yet, as a judicial officer, I aspire towards their attainment and application, especially in the core work of decision-making, as indeed in all of living. This is our duty arising out of the oath we take, and the compulsion of our ethics as judicial officers.

This quest has led me to mindfulness as intentional awarenensing, and its usefulness in cultivating enhanced degrees of situational and intersectional awareness, both within myself and the socio-legal cultures I inhabit, as well as of what is continuously unfolding in the environments around me including my own external behaviours and interpersonal interactions. In fact, of my judging! Still far from being perfect, through the practice of Intentional awarenensing I have discovered greater spaciousness and enlarged opportunities for more impartial and independent decision-making, that is at the same time increasingly aware, sensitive, and responsive to emerging situational realities and changes. Indeed, this even in relation to the law as law, and how it intersects with society. Maybe most profoundly, I have found an improved capacity to pause, listen, hear, see, reflect, and choose; to change. Greater freedom from my practiced hubris. Refreshingly, more humility. And I hope, through this process, that I am becoming a better judge and person.

Phenomenologically, this condition is experienced as an intentionally open, receptive, sensitively heightened, present moment, 360-degree internal and external state of awareness. It is experienced as more fully aware neutrality, enlivened by greater degrees of respect, regard, and intelligence. Grounded and stabilised in an abiding undifferentiated awareness, and responsive to broader fields of accessible information. Permeated by an ever-deepening awareness of what is.

Richard Jamadar

As an adjudicator, I voluntarily took an oath to exercise neutrality and impartiality in all aspects of the judicial process. Taking the oath was the easy part. Being true to the oath, daily, is an on-going art. I knew that as an adjudicator I needed additional tools to complement my meditation practice if I was going too consistently, and with integrity, manifest neutrality, and impartiality. This training (the practise of intentional awareness) can provide such tools. It requires no more than 30 minutes a day. The effects are immediate. I needed only my desire to manifest the oath, my intention to cultivate intentional awareness/mindfulness, my breath, and a comfortable seat. No additional props were needed.

Unique to this training was the “measurement” of my level of awareness before and after practicing. This was an “eye-opener” in that I was not as aware as I believed myself to be. Secondly, the practice of engaging awareness within a four-quadrant reality (360 -degree awareness) as it pertains to the judicial process enabled me to expand my awareness into these other areas. I found this aspect of the training stimulating and rewarding as it highlighted areas of the judicial process that I needed to include. Thirdly, the training allowed me to be more sensitive to the visceral feelings within my body as biases, views, and likes and dislikes manifested. By tapping into these feelings, I was able to “acknowledge”, “stop”, and “choose” rather than responding in a habitual manner. Fourthly, I noticed that I was listening more completely. Not only to myself, but to all parties. The practice of intentional awareness as it relates to manifesting neutrality and impartiality is an effective and immediate tool. This is one of my practices.

Elron Elahie

When I was first approached to explore the impact of intentional awarenassing on judicial officers I was sceptical. I feared that such an undertaking would have difficulty going past the conceptual, and in some ways, the esoteric. But working in judicial education over the past six years, I abandoned my bias in hopes of discovering practices that can significantly impact behavioural change and, ultimately, the administration of justice.

The data from this small-scale interrogation is both exciting and hopeful – that intentional awarenassing can play a significant role in not only how individual judicial officers can improve elements of their judicial practice, but also how judiciaries are able to map and engage whole-system change.

Appendix

A brief historical and chronological overview of the Mindfulness Movement from its Buddhist roots to its current global secularisation and multiple applications in the West - Richard Jamadar

Mindfulness - A four-billion-dollar industry (Purser 2019, 13). Books on Mindfulness include Mindful Parenting, Mindful Eating, Mindful Teaching, Mindful Therapy, Mindful Leadership, to Mindful Dog Owners (2019, 13). In addition, there are workshops, online courses, and phone apps that specialize in teaching and tracking mindfulness (2019, 13). Mindfulness has made its way into public schools, Wall Street and Silicon Valley, law firms, and government agencies, including the United States military (2019, 13). Just standing in-line at the check-out counter at supermarkets there are magazines with Mindfulness related content. It is hard not to miss the Mindfulness Movement. But it was not always like this — so when and how did the Mindfulness Movement become household words in the West?

The Mindfulness Movement appears to have taken root in the late twentieth century (Shaw, 2020). Shaw states that various therapies and techniques taught the cultivation of mindfulness to treat various psychological disorders and were successful. Indeed, one of the founders of the Mindfulness Movement, Jon Kabat-Zinn, the creator of Mindfulness-Based Stress Reduction (MBSR), had his first course in 1979, which he titled “Stress Reduction and Relaxation Program” (Purser 2019, 7, 9, 65). What these therapies and techniques had in common was that they, for the most part, were derived from Buddhism (2019, 8, 65; Shaw 2020). What is known today as Buddhism was derived from the teachings and realizations of Siddhārtha Gautama.

During the fifth or sixth century B.C.E., close to what is now the India-Nepal border, Siddhārtha Gautama was born and raised. He was a prince from the Śākya clan (Tenzin Gyatso and Thubten Chodron, *Buddhism One Teacher, Many Traditions*, 2014 at 1). It was foretold that he would either be a Buddha, a fully awakened being capable of finding and teaching a path to liberation, or a universal monarch (Shaw 2020, 2). It is said that his parents, being members of the ruling class, wanted their young son to be a Universal Monarch (2020, 2). In attempting to discourage him from following the path of a Buddha he was protected from knowledge of old age, sickness, and death. This was so that he would not be troubled by the ‘painful concern for others’ or by the ‘nature of existence itself’ (2020, 2). He grew up, therefore, not knowing about old age, sickness, or death (2002, 2). However, as a young man he ventured outside the palace walls and encountered, on successive days, an old person, a sick person, and then a corpse (2002, 2). It is said that this was the first time he had encountered aging, sickness, and death. One can imagine the shock he must have experienced and the realisation that he could not escape this similar fate. That the palace walls and every sensual experience within the palace walls were not going to protect him from this eventuality. Whether mostly legend or not, the essential point is that when he was confronted with old age, disease, and death, he was motivated to begin his quest which led to his awakening. (Analayo 2017, 8). On the fourth day he saw a mendicant and he began to contemplate if this was a way to be free of the experiences of suffering (Gyatso and Chodron 2014, 1). And at the age of twenty-nine he left the luxury and protection of the palace and took on the life of a mendicant (2014, 1). During this time, he trained with various teachers and not finding the liberation he believed possible, he pursued severe ascetic practices. (2014,1; Shaw 2020, 2). After many years he realised that asceticism did not confer greater awareness or produce any kind of liberating insight (Shaw 2020, 2-3). He then remembered a happy meditation experience he had when he was young and subsequently realised a mind that was free from clinging and free from rejection. He arose an awakened being (Shaw 2020, 3). He taught the four noble truths: that suffering is to be known and understood; that cravings are the cause of suffering; that freedom can be realised; and that there is a path to this freedom (Shaw 2020, 4).

This path is called The Eightfold path, and Mindfulness is number seven on this path. In the following centuries his teachings ‘spread south to Sri Lanka; west into present-day Afghanistan; northeast to China, Korea, and Japan; southeast to Southeast Asia and Indonesia; and north to Central Asia, Tibet, and Mongolia (Gyatso and Chodron 2014, 2). More recently, Buddhism has spread to Europe, North and South America, Australian, and Africa (2014 at 2). We will now explore, briefly, the beginning of the Mindfulness Movement in the West.

‘In the late twentieth century, the modern secular Mindfulness Movement emerged, describing mindfulness as beneficial for finding mental health and stability’ (Shaw 2020, 179). Kabat-Zinn, as one of the leaders of the Mindfulness Movement, ‘was initially careful to avoid using words such as mindfulness, or even meditation’ (Purser 2019, 66). Kabat-Zinn described his method as ‘moment-to-moment awareness’ (2019, 66). It appears Kabat-Zinn discovered Zen Buddhism while a student at MIT and later practiced Theravada methods at the Insight Meditation Society in Barre, Massachusetts (2019, 67). As Purser (2019) states, The technique that Kabat-Zinn learned at the Insight Meditation Society had been imported from revival movements in Burma, Thailand, and Sri Lanka. Under occupation by the British Empire, Theravada Buddhist monks had resisted conversion attempts by Christian missionaries by promoting vipassana, a form of “insight” meditation. Before the late nineteenth century, few laypeople meditated. However, led by reformers such as Ledi Sayadaw and Mahasi Sayadaw in Burma, a large movement developed, which was globalised by Western students and influential teachers like S.N. Goenka. These figures downplayed the importance of Buddhist doctrine as well as more difficult concentration practices. Instead, they emphasised mindfulness, which was construed in novel ways as “the heart of Buddhism,” yet compatible with science and rational Western sensibilities (Purser 2019, 67). Mindfulness is the English translation of the Pali word *sati*. How did *sati* come to be translated as mindfulness and what are the activities/qualities of mindfulness?

The word “Mindfulness” is the English translation of the Pali word *sati*. *Sati* is an activity (Shaw 2020, 9). Shaw (2020) states that, ‘[t]he first person to use the term mindfulness for *sati* was Henry Alabaster, one of the first British diplomats allowed into the protective state of Siam (Thailand)’ (2020, 10). And ‘[t]he translator who gets most credit for the first use of the term mindfulness, ... is T. W. Rhys Davids, one of the first and greatest of the translators of Buddhist texts into English’ (2020, 11). He defined the term *sati* as mindfulness (2020, 11). Shaw (2020) continues, ‘mindfulness offered ... a very appropriate translation for *sati*’ (15). Both words include, ‘historically, a sense of memory along with the notion of being aware of what is going around oneself...[B]oth include a sense of guarding, too.’ In some contexts, both languages suggest it can be consciously directed - that is, in the bearing of something in mind or bringing it actively to one’s attention. An ethical dimension and attentiveness to others are also often linked to the English word mindfulness, in ways we also find in most Buddhist contexts. The sense of ‘being mindful of the needs of others[.]...There is a sense that it involves a nonattached, attentive friendliness or equanimity with regard to the object or to other beings.’ It should be highlighted that, whether rightly or wrongly, it is the ‘lack of these elements in some modern secular therapeutic definitions and methods of mindfulness that has been criticised recently.’ (Shaw 2020, 15). Presently, Mindfulness is the commonly accepted English translation of the Pali word *sati*. Presented below are a few examples of how Mindfulness is defined or understood. As will be seen the range is broad.

Joseph Goldstein (2013, 13), states that, ‘[t]he most common understanding of mindfulness is that of present-moment awareness, presence of mind, wakefulness.’ Culadasa (John Yates) (2017, 29) explains that Mindfulness is more than being attentive or remembering to pay attention. It is paying attention to the ‘right things, and in a more skilful way.’ Bhikkhu Analayo (2019) provides an in-depth discussion on Mindfulness as described and reflected in early Buddhist discourses. He suggests that, ‘[p]erhaps the most crucial aspect of mindfulness practice is to stay in the present moment [;]’ ‘[T]o be fully aware of what is happening right now’ (Analayo 2019, 4 - 5). And how is this accomplished? Bhikkhu Analayo suggests that we cultivate certain qualities of mind so that we can remain in the present moment.

For example, he suggests the already familiar quality of mind used for memory, ‘to be alert and attentive when something takes place that we later have to remember’ (Analayo 2019, 5). In addition, he suggests a softness in our approach, a receptivity instead of a forcefulness of mind, ‘receptively assimilating with the potential of giving birth to new perspectives’ (Analayo 2019, 7). And cultivating ‘breadth of mind,’ an ‘open-minded and broadly receptive attitude’ (2019, 9). As to the benefits of mindfulness, he suggests that with practice, the benefits include, ‘... our ability to understand and interact better with others. We also become better at distinguishing between what others express and how this comes to be coloured by our own commentary on it, how our biases tend to interfere even when just hearing or reading. This in turn makes us notice how our own mind wants to react’ (2019, 17). Mindfulness as taught in classic Buddhism is one element of the Eightfold Path. Taught within the construct of the Eightfold Path and the Four Noble Truths, together with the other elements, the teaching is that one is naturally led to Awakening.

Jon Kabat-Zinn defines Mindfulness as follows:

‘Mindfulness can be thought of as moment-to-moment, non-judgmental awareness, cultivated by paying attention in a specific way, that is, in the present moment and as non-reactively, as non-judgmentally, and as openheartedly as possible. The non-judgmental part doesn’t mean that you won’t have any judgments! On the contrary, it means that you will discover that you have tons of judgements, but that you will be more inclined to recognize them for what they are, namely preferences of all kinds, judgments, liking, disliking, desire, aversion. Being non-judgmental is thus an invitation to intentionally suspend the judging as best as you can, while noticing how much it goes on’ (2018, 93)

...

‘It is wakefulness, pure and simple. It is awareness’ (94).

For Kabat-Zinn, mindfulness is something that we are all familiar with, it is innate, and can be cultivated. Thus, he suggests that '[o]f all the meditative wisdom practices that have developed ... mindfulness is perhaps the most basic, the most powerful, the most universal ...' (2018, 94). 'For mindfulness is none other than the capacity we all already have to know what is actually happening as it is happening' (2018, 94). And not only is mindfulness 'an innate quality of mind,' it can be cultivated and "refined" through regular practice (2018 at 94). This is the practice of Mindfulness Meditation - 'the systematic and intentional cultivation of mindful presence ...' (2018, 94).

However, it is helpful to go a little deeper and examine what mindfulness is and is not. In understanding what mindfulness meditation is not, a clearer understanding develops as to what mindfulness meditation is. Kabat-Zinn suggests that Mindfulness Meditation is not a technique but a way of being (2018, 43). Certainly, there are methods and techniques taught for Mindfulness Meditation practices, but the suggested orientation is that these techniques are 'pointing at ways of being, ways of being in relationship to the present moment and to one's own mind and one's own experience...' (2018, 43). In this way we do not get stuck on the techniques (for example, am I doing it right, why am I not having special experiences) and stay orientated to our relationship with the present moment, and whatever we are experiencing at that moment.

In addition, it is not about 'throwing a switch in your brain, that results in your mind going completely blank. No more thought, no more worry' (Kabat-Zinn 2018, 44). As Kabat-Zinn states, '[f]rom the point of view of mindfulness practice, pain or anguish, or...boredom or impatience or frustration or anxiety or tension in the body are all equally valid objects of our attention...' (2018, 44). '[M]indfulness meditation is the embrace of any and all mind states in awareness, without preferring one to another' (2018, 44). It is the awareness of the present moment, 'accepting whatever is happening simply because it is already happening, and not taking any of it personally, or noticing how personally you are taking it and letting even that realisation be held in awareness' (2018, 46).

Initially, when we begin a Mindfulness Meditation practice, we may be surprised, shocked, overwhelmed, with our storyline about everyone and every experience. This is natural and as Kabat-Zinn suggests, even ‘hilarious to watch the workings of our own mind ...’ (2018, 58). ‘Humor, playfulness, and undermining any hint of a pious attitude in yourself are critical elements of mindfulness practice’ (2018, 58). Mindfulness taught and practiced as a stand-alone secular practice has the potential to provide a “space” to see and know one’s responses and reactions in any given situation. Within this “space” there is the potential to choose how to respond or react - automatic responses are, for the moment, deactivated, and one can choose how to mindfully respond or react, free from bias and unskillful responses and reactions.

As we cultivate continuous access to awareness through Mindfulness Meditation the question arises - how does this abiding in awareness bring benefit to ourselves and others? It seems that accessing awareness, even for a moment, allows for a “shift” in our relationship with our on-going experience (Kabat-Zinn 2018, 74). And it is this shift in our relationship with the on-going experience that ‘gives [us] more degrees of freedom in [our] attitude and in [our] actions in a given situation...’ (2018, 74). ‘Every moment in which we are caught, by desire, by an emotion, by an unexamined impulse, idea, or opinion, in a very real way we are instantly imprisoned by the contraction within the habitual way we react, whether it is a habit of withdrawal and distancing ourselves...or of erupting and getting emotionally ‘hijacked’ by our feelings...’ (2018, 56). However, if we are aware as we are experiencing these moments there is a “shift,” and it is this “shift” in relationship to the experience that allows, potentially, for us not to fall into our habitual reactions. Or to recover “more quickly” if we have fallen (2018, 56).

Practically, Kabat-Zinn suggests that as we bring awareness to our present experience, we take one more critical step - we bring awareness to the awareness itself (2018, 74). And we test for ourselves, is the awareness itself ‘in pain, or angry, or frightened, or sad?’ (2018, 74). Is his experience, it is not in pain, not angry, not frightened, not sad.

This self-discovery allows for the “shift” in relationship to the experience and for the potential of not being imprisoned. (Kabat-Zinn 2018 at 74). We come to know personally that awareness is ‘bigger than and of a different nature altogether’ from our pain, anger, fright, or sadness (Kabat-Zinn 2018, 74). It is this realization that can manifest in the freedom to not fall into our habitual reactions or recover “more quickly” if we have fallen. And in seeing within ourselves, we can begin to see within others.

In short, one has the freedom to make a choice.

As judicial officers the benefits of mindfulness offer the potential to perform our duties and responsibilities with increased and enhanced awareness and so possibly and even likely in a more neutral, impartial, and just manner.

Bibliography

- Analayo, Bhikkhu. 2018. *Satipatthana Meditation, A Practice Guide*. Cambridge: Windhorse Publications.
- Goldstein, Joseph. 2013. *Mindfulness, A Practical Guide to Awakening*. Boulder: Sounds True.
- Gyatso, Tenzin, and Thubten Chodron. 2014. *Buddhism, One Teacher, Many Traditions*. Somerville: Wisdom Publications.
- Gyatso, Tenzin, and Thubten Chodron. 2017. *Meditator's Life of the Buddha*. Cambridge: Windhorse Publications.
- Kabat-Zinn, Jon. 2018. *Meditation Is Not What You Think: Mindfulness and Why It Is so Important*. New York: Hachette Books.
- Purser, Ronald E. 2019. *McMindfulness: How Mindfulness Became the New Capitalist Spirituality*. London: Repeater.
- Shaw, Sarah. 2020. *Mindfulness, Where It Comes From and What It Means*. Boulder: Shambhala Publications.
- Yates, John Charles. 2017. *The Mind Illuminated*. New York, NY: Touchstone.

MINDFUL JUDGING

Exploring the Impact of Intentional
Awareness on Judicial Officers

Peter Jamadar, Elron Elahie, and Richard Jamadar