

A SUPER VACCINE- COLLABORATIVE JUSTICE AND PEACE JURISPRUDENCE

Presented by Justice of Appeal
Vasheist Kokaram



THE ADVERSARIAL LANDSCAPE

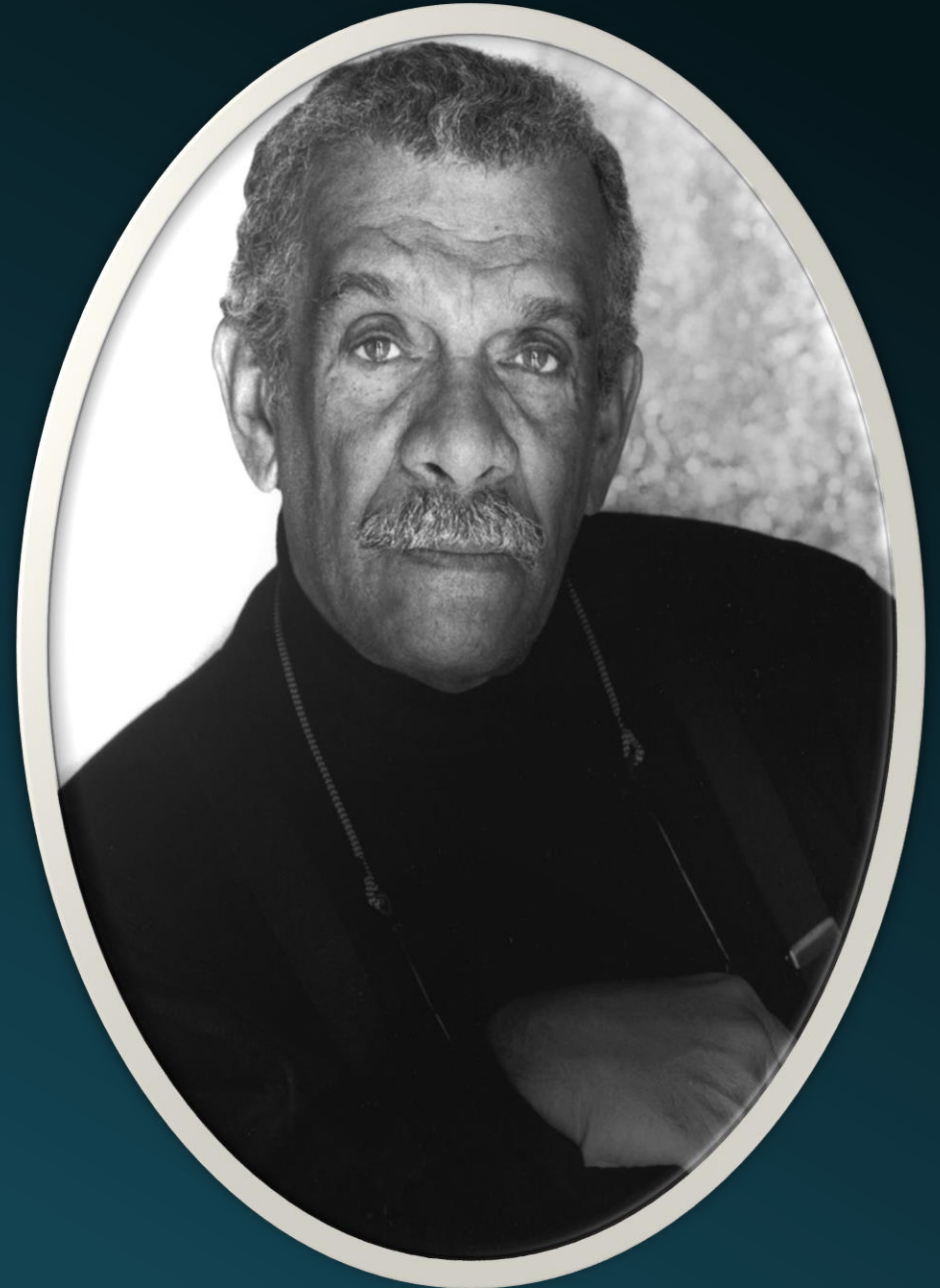


A VIRUS ATTACKING OUR HUMANISM



**“Break a vase, and
the love that
reassembles the
fragments is
stronger than that
love which took its
symmetry for
granted when it was
whole. The glue that
fits the pieces is the
sealing of its
original shape.”**

Sir Derek Walcott

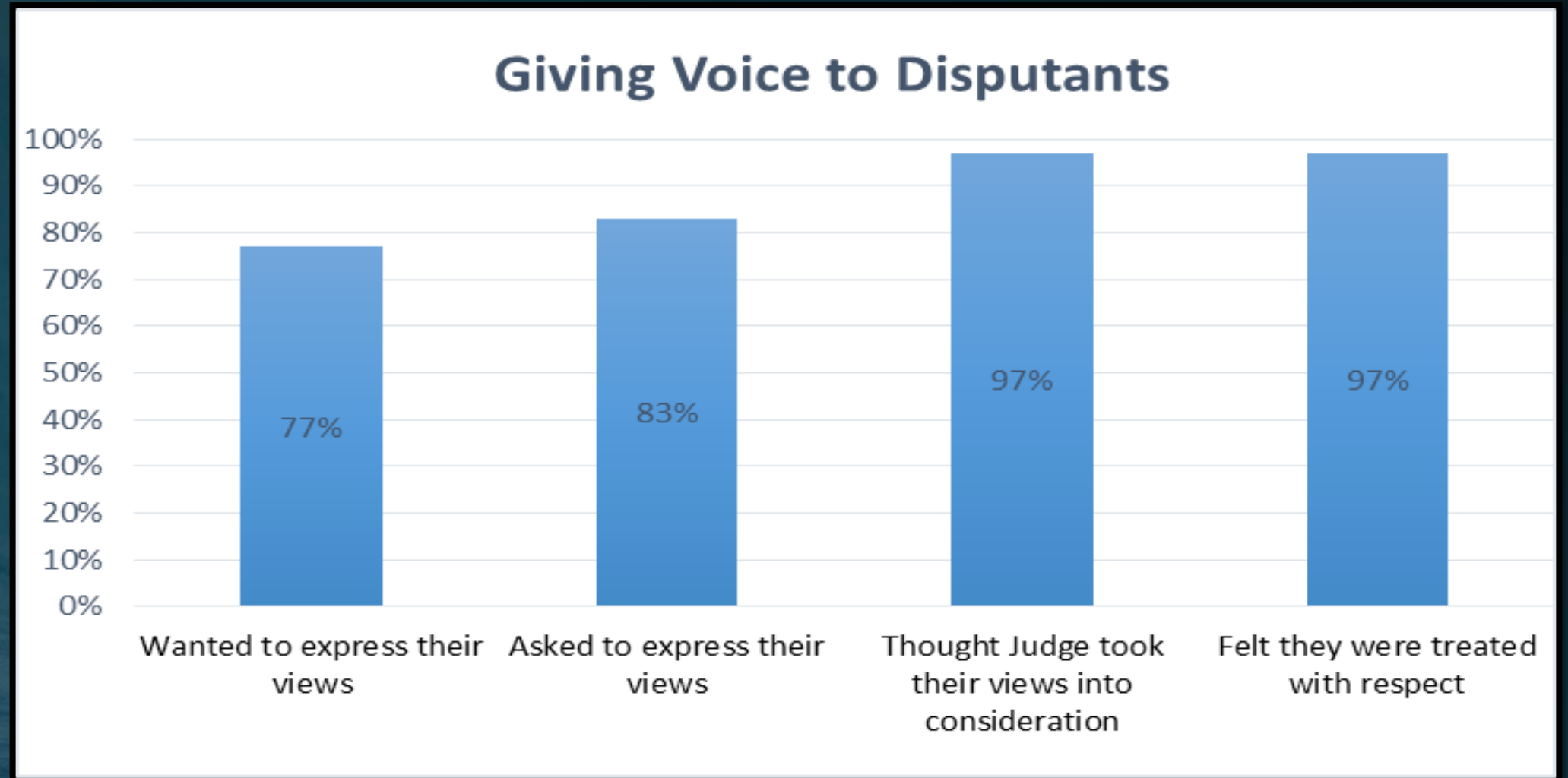


EXPLORING THE ROLE OF THE CPR JUDGE

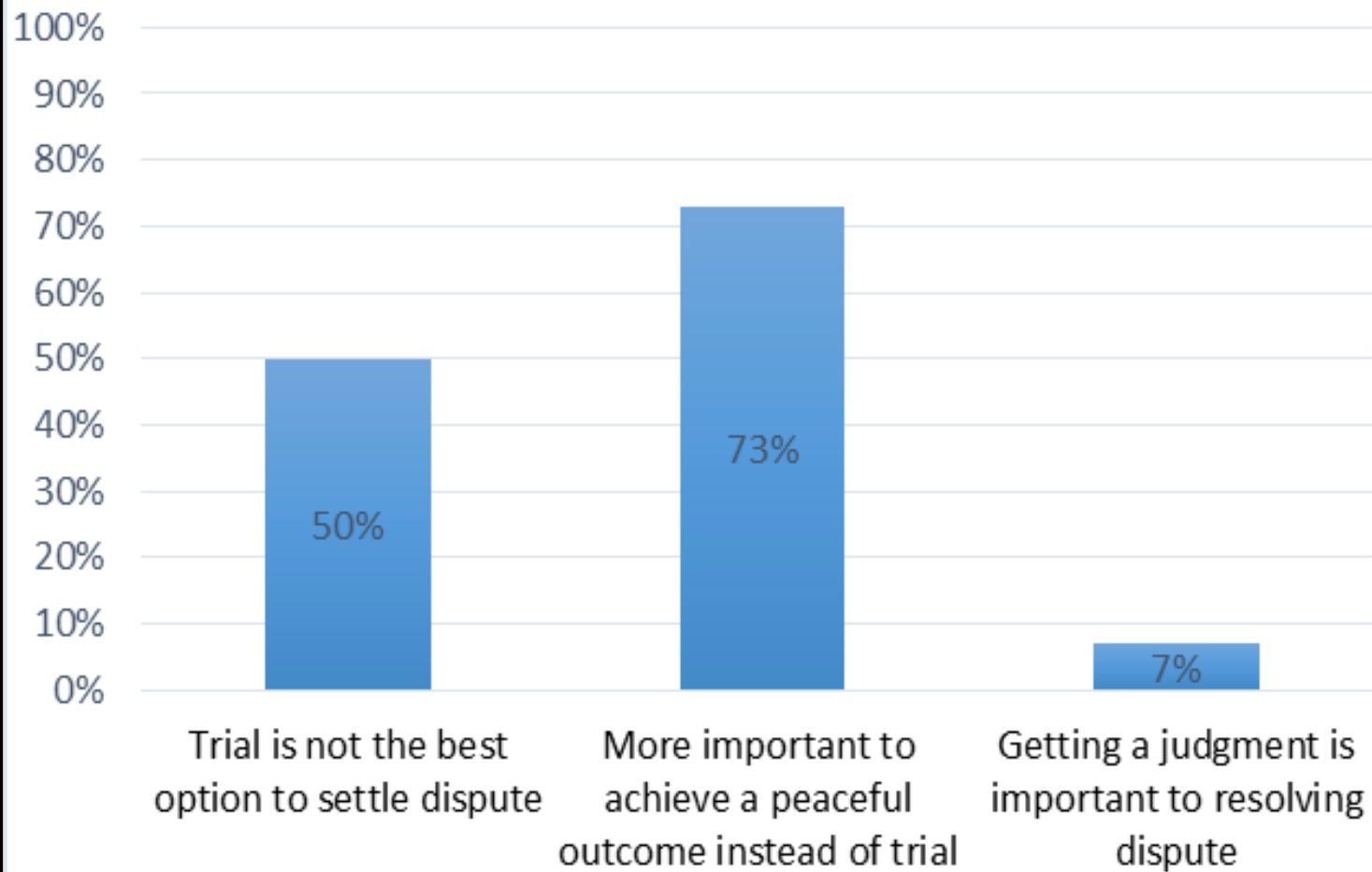
- “how Judges are perceived and experienced impacts not only on actual matters before the courts but also on the degree of public trust and confidence in the general administration of justice....”
- “Public confidence depends on judicial officers being sensitive to the social context in which we perform our duties and it requires us to perform them in a way that is relevant to the communities which we serve..”



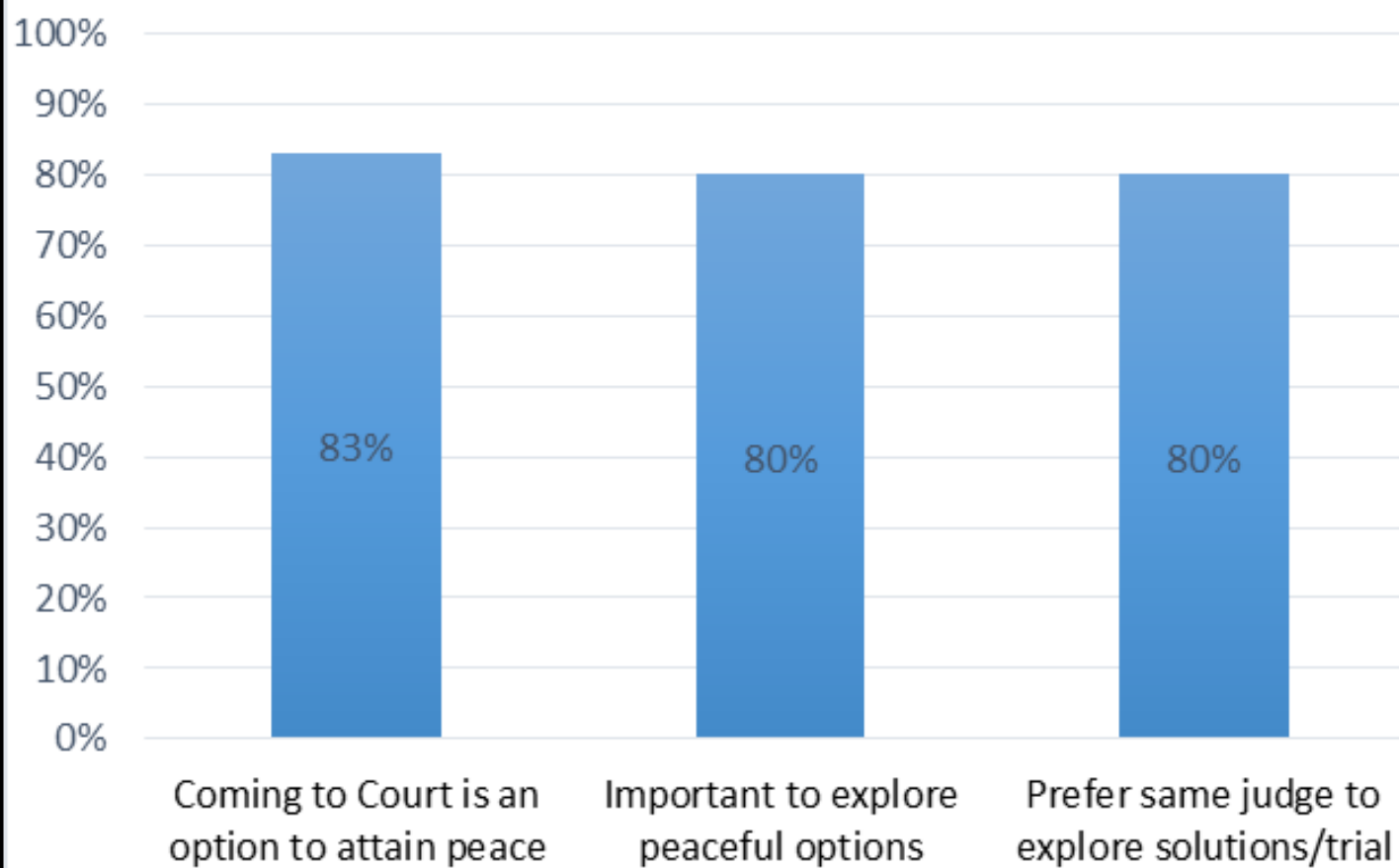
EXPERIENCE OF DISPUTANTS



No Trial



Searching for Peace





POSITIVE PEACE

Positive peace provides the necessary conditions for adaptation to changing conditions a well run society and the non-violent resolution of disagreement...a guiding principle to build and reinforce attitudes, institutions and structures that pre-empt conflict and help society channel disagreement productively rather than falling into violence.

A NEW VACCINE FOR WARRING PARTIES

**THERAPEUTIC
JURISPRUDENCE**

**COLLABORATIVE
LAW**

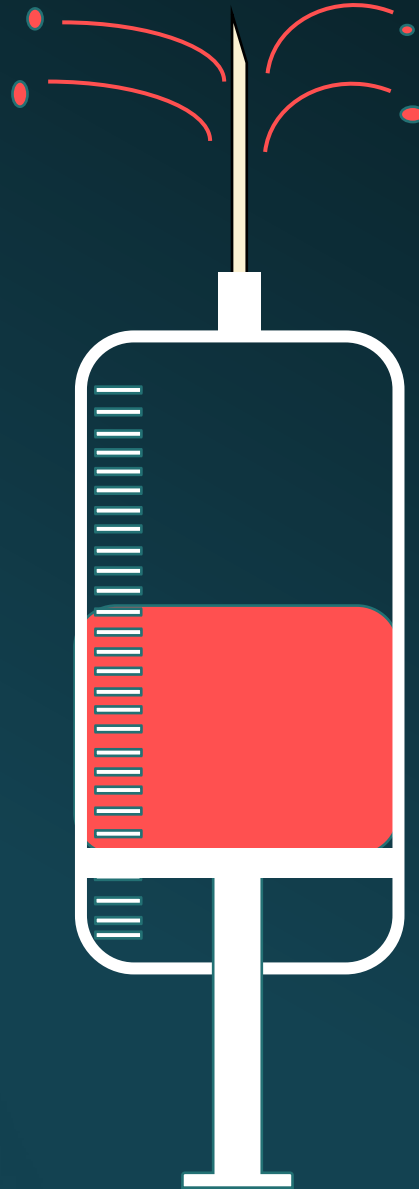
**TRANSFORMATIVE
MEDIATION**

**PROCEDURAL
JUSTICE**

**RESTORATIVE
JUSTICE**

**PREVENTATIVE
LAW**

**PROBLEM
SOLVING
COURTS**



HISTORY AND CULTURE

- East Indian and African traditions of peaceful dispute resolution systems.
- The Panchayat and the Elder System





LEARNING FROM OUR TRADITIONS

- ❑ A community or round table approach
- ❑ Practical solutions
- ❑ An acceptance of the outcome
- ❑ Monitoring the way forward

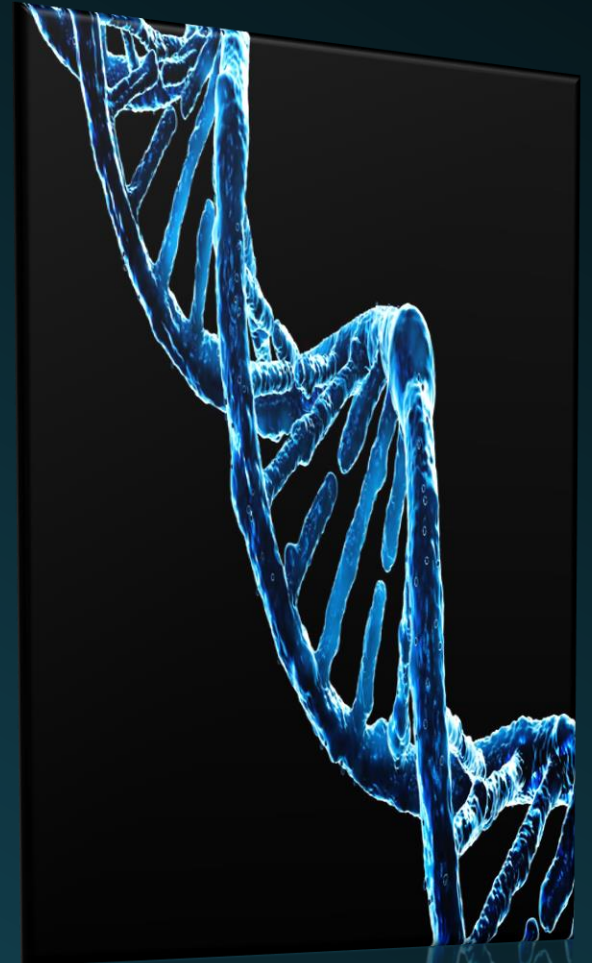
PEACE JURISPRUDENCE

“The Democratization of the System of Justice”



PEACE JURISPRUDENCE

- ❑ Judicial humanism leading positive social change
- ❑ The process by which the law places the concept of peace as an outcome
- ❑ Gives priority to reconciliation beyond legal resolution
- ❑ Pursuing restorative and therapeutic justice
- ❑ Harmonizing of parties' goals and interests
- ❑ Judicial encouragement of self-determination and collective autonomy
- ❑ Building greater trust in achieving peaceful results



COMPARATIVE OBJECTIVES

ADVERSARIAL SYSTEM	PEACE JURISPRUDENCE
Dispute Resolution	Problem solving/dispute reconciliation (relationally or internally)
Legal Outcome	Therapeutic/Humanistic outcome
Rights based	Needs based/ Practical
Interpretation of law	Application of social science
Judge as adjudicator	Judge as guide/coach/leader
Historic focused	Future oriented
I-ism	Interdependence
Layered	Minimise Appeals



❖ VOICE

❖ RESPECTFUL TREATMENT

❖ NEUTRALITY

❖ TRUSTWORTHY AUTHORITIES

❖ ACCOUNTABILITY

❖ UNDERSTANDING

❖ ACCESS TO INFORMATION

❖ AVAILABILITY OF AMENITIES

❖ INCLUSIVITY

JUSTICE ..A ONE LOVE, IN HARMONY



THE PEACE MAKING JUDGE



A FRESH PERSPECTIVE



YOUR PEACE ROOM

Welcome to your Peace Room

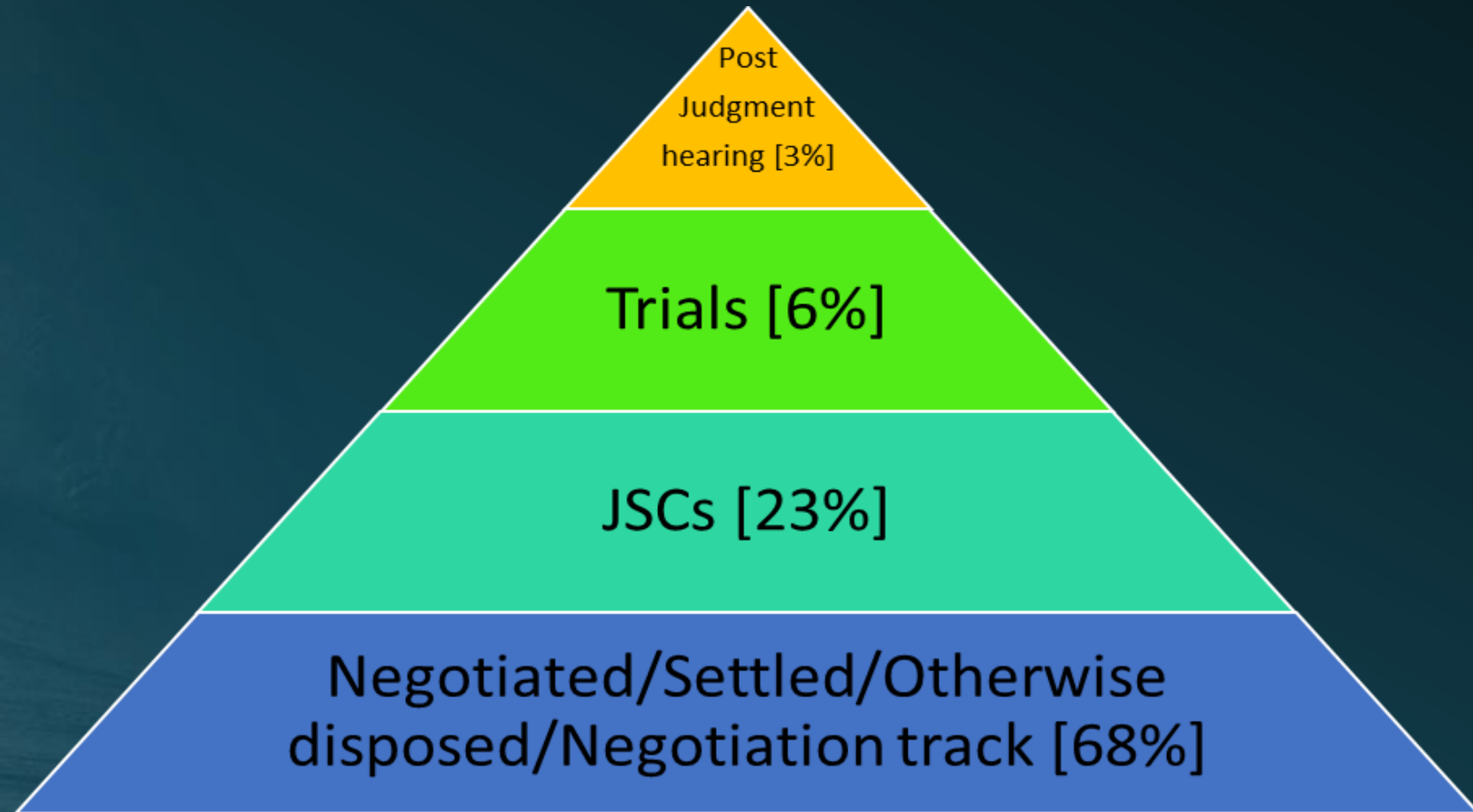


SIDE EFFECTS OF A PEACE JURISPRUDENCE APPROACH

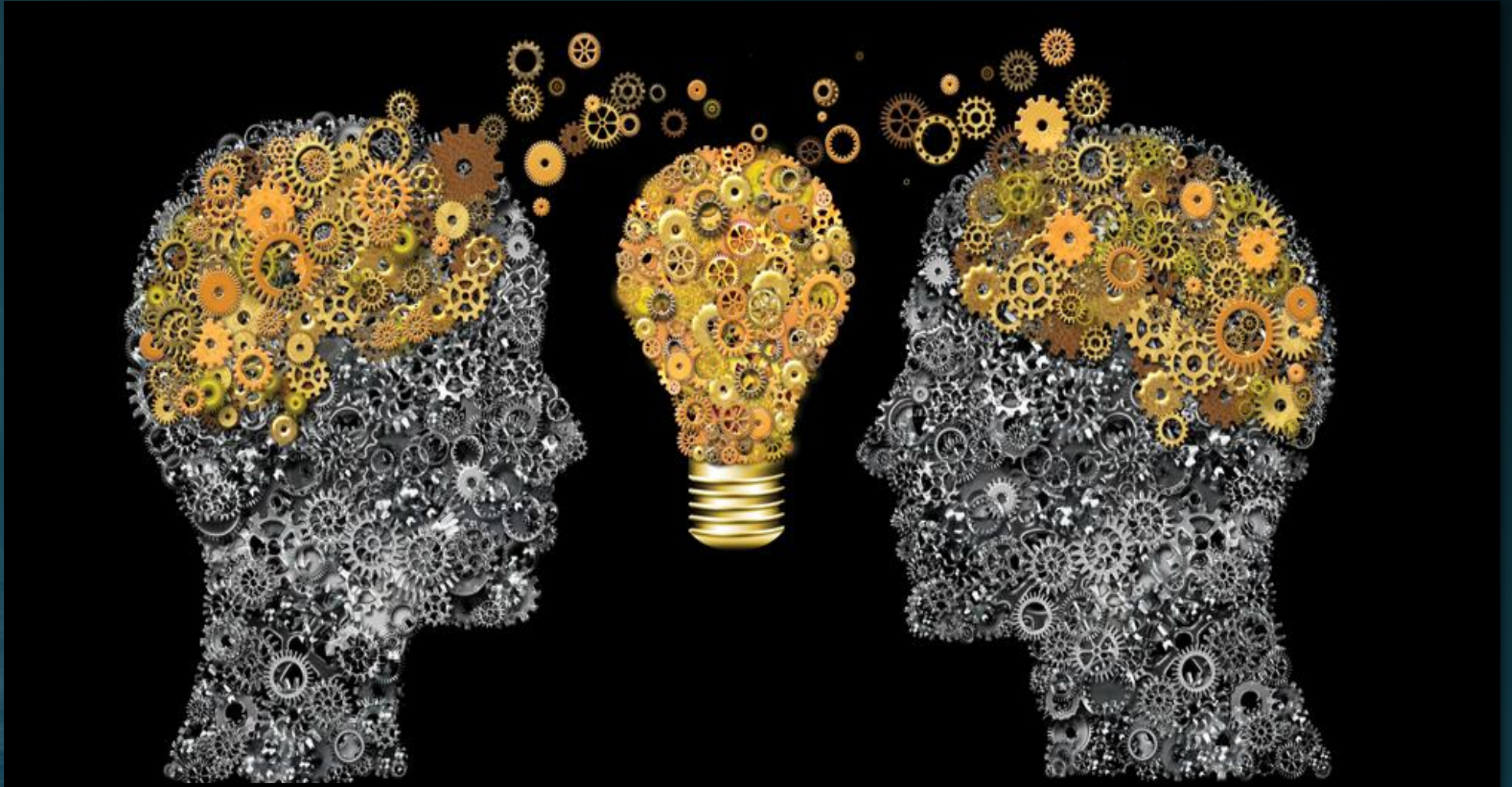
- **Time management**
- **Attorney buy in**
- **Bias**
- **Judicial Overreach**



SNAPSHOT



CASE STUDIES-SAMPLE CASES



A FORMULA

LEGITIMATE OBJECTIVES OF THE CMC JUDGE

- Information exchange: Disclosure
- Agreed facts/Agreed issues
- Agreement on Quantum if applicable
- Expert evidence (if necessary)
- Procedural Applications/collaborate
- Costs
- Timelines for resolution
 - a) ADR-Med/JSC
 - b) Judicial Determination

PEACE JURISPRUDENCE APPROACH OF THE CMC JUDGE

- Main concerns and needs of clients
- Possible outcomes
- Risk assessment
- Reflection legal outcomes vs Concerns
- Collaborative mechanisms to improve respective client(s) futures



PRACTICAL STRATEGIES OF PEACE JURISPRUDENCE

- ❖ Lit med lit models: Cai Trading LLC v Kiowa Rice Limited and Public Grains Investment Limited CV2017-02150 CV2017-02151
- ❖ Healing conferences
- ❖ Pre- Judgment resolution hearings: Jai Mahabir et al v Patrick Edwards et al CV2016-02033, Priya Marajh v Jeevan Marajh CV2016-02804

The National Carnival Bands Association v The Minister of Community Development Culture and Arts CV2018-00359

- Dealing with emotional content of disputes
- Affirming and empathising with parties
- Working with parties to find durable solutions
- Explaining the result (visual aids)
- Providing a legal outcome accompanied by a non-binding guide for the parties' future



MOVING FROM “JUDGE DECIDES” TO “JUDGE SETTLES”

Judge settles rift between Carnival bands association

DEREK ACHONG

High Court Judge Vasheist Kokaram has resolved a long-standing dispute over which two associations representing Carnival bands should be on the board of the National Carnival Commission (NCC).

In a 68-page judgment delivered at the Hall of Justice in Port-of-Spain yesterday afternoon, Kokaram ruled that Community Development, Culture and Arts Minister Nyan Gadsby-Dolly acted fairly and rationally when she chose the T&T Carnival Bands Association (TTCBA) over the National Carnival Bands Association (NCBA) at the end of a mas audit last year.

“There may have been different methods by which a representative could have been chosen. However, this by no means suggests that the process of utilising a mas audit was a flawed one,” Kokaram said.

The dispute arose in 2017 when Gadsby-Dolly appointed NCBA president David Lopez to the NCC board for six months.

The TTCBA challenged the decision as it claimed that it should have been selected as it represents more bands than the NCBA.

In response, the NCBA alleged that NCBA is the only body recognised to represent mas bands as it was incorporated by an Act of Parliament in 2007.

The NCC’s legislation only states that the body with the designation of being “most representative of carnival bands” should be selected but does not specifically name either of the bodies.

In his judgement, Kokaram ruled that the NCBA did not have a vested right to be appointed to the board.



Justice Vasheist Kokaram

“Much like designing the mas, the alleged imperfections of the process contended by the NCBA were insufficient from detracting from the overall picture of legality, regularity and procedural propriety of the minister’s actions,” he said.

While Kokaram noted that Gadsby-Dolly made the right decision in selecting TTCBA president Rosalind Gabriel for the NCC board, he noted that a similar balancing exercise would have to be repeated when making the appointment after her term ends.

As part of the judgment, Kokaram encouraged the opposing organisations to make the best out of their position on the NCC.

“The roles that they play are under the larger banner of the survival and development of our mas which is a unique indigenous cultural product with historical significance and vast potential for the future development of our nationhood and the character of our people,” Kokaram said as he encouraged the parties to work together to help find solutions to major issues affecting the mas fraternity.

As the NCBA brought the claim challenging Gadsby-Dolly’s decision, it was technically liable to foot the minister’s legal bill for defending the claim. The TTCBA, which was an interested party in the case, also requested legal costs as it claimed that it was forced to intervene as it alleged role in the decision-making process was questioned.

However, after assessing the conduct of the parties in the legal dispute, the public interest in resolving the issue and possible oppressive nature of such an order, Kokaram ordered the NCBA to pay 50 per cent of the minister’s legal costs and 25 per cent of the TTCBA’s.


The NCBA was represented by Anthony Vieira, Rikki Harnanan, Justin Phelps and Elena Da Silva-Ottley, while Shiv Sharma, Kiel Taklalsingh and Jamie Maharaj represented the TTCBA. Karlene Seenath and Amrita Ramsook represented the minister.

FOREIGN EXCHANGE RATES

APRIL 29, 2019

CURRENCY	CASH	BUY	SELL
US	6.1500	6.6059	6.7793
Can	4.6391	4.8832	5.2739
Stg	8.1519	8.5809	9.2572
Euro	7.0484	7.4194	8.0130
Yen	*****	0.0593	0.0638
Swiss	*****	*****	6.8032
EC	2.2272	2.4209	2.6170
Bdos	2.7086	*****	3.5092

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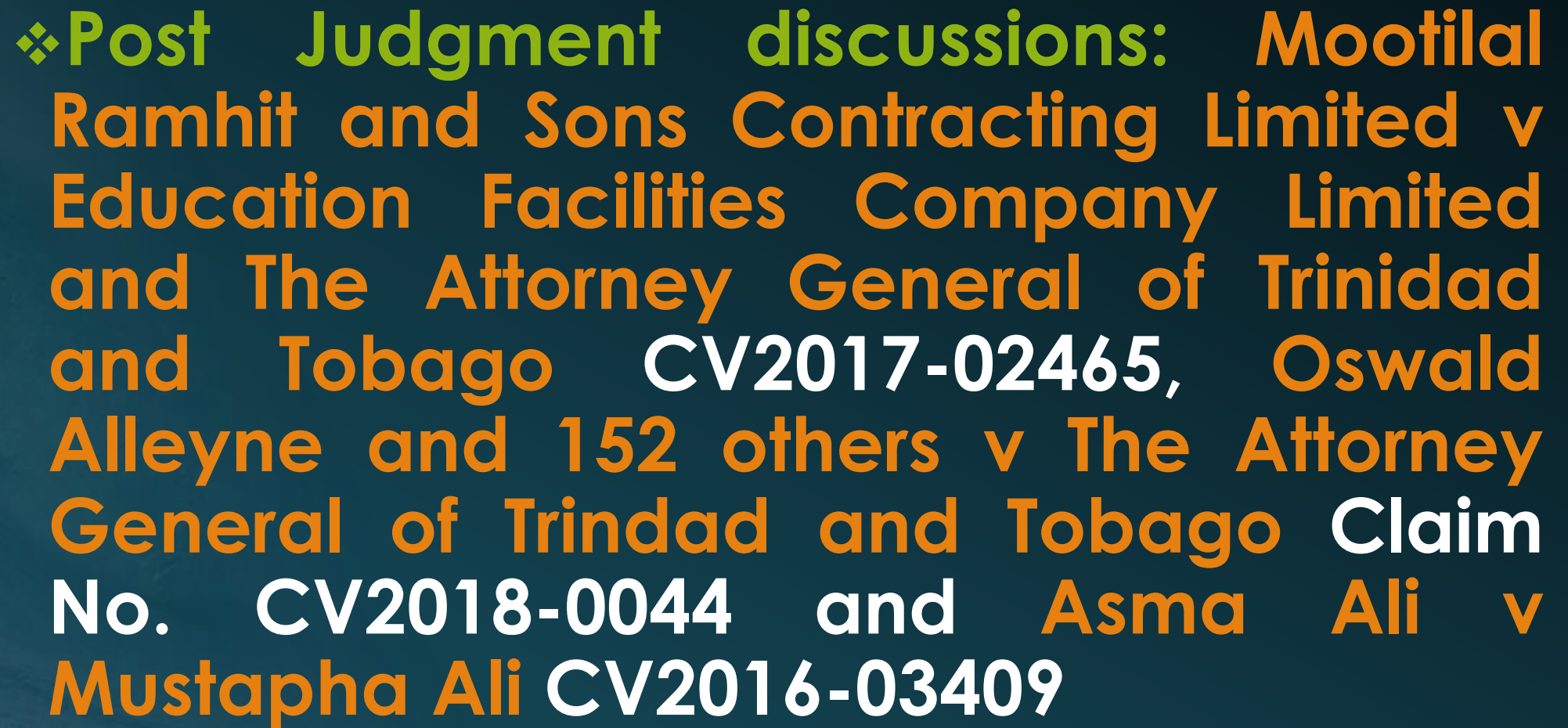
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❖ **Post Judgment discussions:** Mootilal Ramhit and Sons Contracting Limited v Education Facilities Company Limited and The Attorney General of Trinidad and Tobago CV2017-02465, Oswald Alleyne and 152 others v The Attorney General of Trinidad and Tobago Claim No. CV2018-0044 and Asma Ali v Mustapha Ali CV2016-03409

POST JUDGMENT CONFERENCE- MEMO TO THE PARTIES

The Court thanks the parties for volunteering to attend a post-judgment conference. The Court re-emphasises that these conferences are entirely voluntary in nature, confidential and solution-focused.

The Judge's role in these conferences would be purely facilitative to assist the parties in implementing any initiatives which they both view as a beneficial outcome of litigation.


Arising out of the discussion a number of initiatives have been identified as:

a) ---

b) ---

c) ---

The conference will be held on ----- for the parties to update the Court on these initiatives."



❖ **Creative problem solving in judicial outcomes:** Establishing a prison reform fund instead of awarding exemplary damages (**Jason Raymond v The Attorney General of Trinidad and Tobago** CV2016-00029)

❖ **Geeta Ragoonath v Ancel Roget** CV2015-01184 **Karen Tesheira v Gulf View Medical Centre Limited** CV2009-02051



PEACE JURISPRUDENCE IN CIVIL CASE MANAGEMENT

LESSONS LEARNT

- The case is not a number
- Creating the environment for peace
- Creating empathy
- Building hope
- Future oriented
- Acknowledging history
- Family, Culture, Tradition and Religion



Key features of Peace Jurisprudence in Civil Case Management continued....

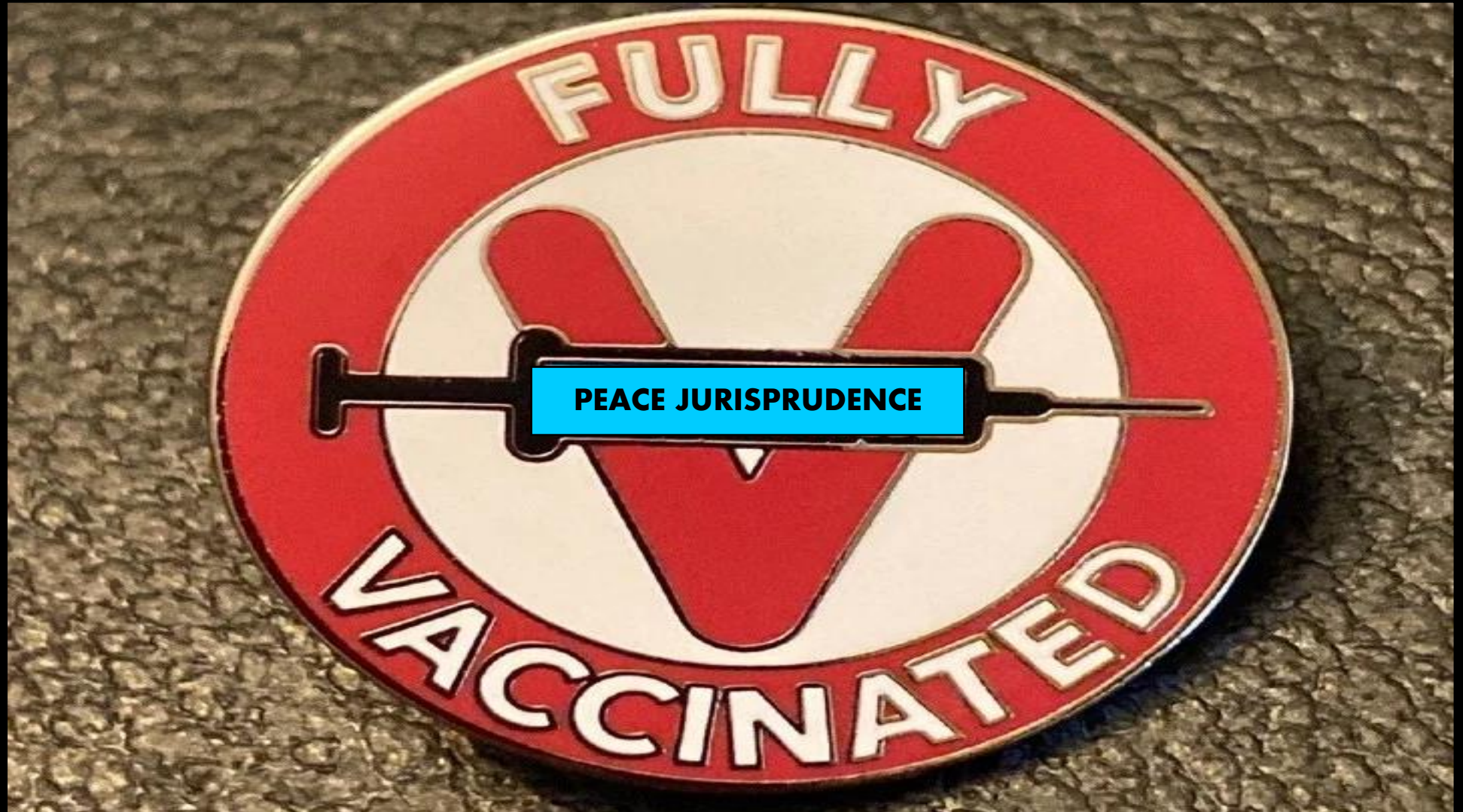
- Co-opting help
- Recognising the problem and explanations
- Keeping control and agenda setting
- Revolving door litigation and the search for permanent solutions
- Buy in and good faith
- National Development and Community Building

THE EVOLVING TRIAL

- Seating
- Evidential rules?
- Cross examination
- Expert evidence
- Drafting judgments-
Letters to litigants
- The New Circle



COLLABORATIVE JUSTICE-PEACE JURISPRUDENCE



THE DAYS OF PEACE JURISPRUDENCE

