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JUDICIAL STRESS, THE UNMENTIONABLE AND THE UNDENIABLE: A SUMMARY OF AUSTRALIA'S FIRST EMPIRICAL RESEARCH MEASURING STRESS IN JUDICIAL WORK

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Abstract: *Judicial work is complex and rewarding, but can also be isolating, relentless and at times emotionally draining. In recent years, the topic of judicial stress and wellbeing has become the focus of increasing discussion and contemplation the world over, within judicial conferences, judicial journals and even the mainstream media. Despite this broad and growing interest, the topic has historically received scant research attention. As such, in most Commonwealth jurisdictions many questions remain about the nature, prevalence, severity, and sources of judicial stress. The empirical landscape, however, is beginning to change. This article sets out the rationale for robust research into the psychological impact of judicial work, and then summarises the key findings from a recent large-scale study of judicial stress and wellbeing in Australia which served as the author's doctoral project through the University of Melbourne.*

Keywords: judicial wellbeing – judicial stress – burnout – secondary trauma – alcohol use – mental health – relatedness – autonomy – impacts of judicial stress – organisational sources of stress – systemic responses to judicial stress

INTRODUCTION

This short article summarises the key findings arising from my doctoral research on the psychological impact of judicial work in Australia. Specifically, the research project set out to empirically examine the nature, prevalence, sources and impacts of work-rated stress among Australian judges and magistrates, all with a view to understanding the extent of the problem and the best ways of responding to it. It was the first such research to be conducted in Australia, and among the first internationally.

A STORY FROM AUSTRALIA

It is important to acknowledge that the topic of judicial stress is one that only very recently became the subject of conversation, let alone empirical research. Historically, it was taboo. This is illustrated remarkably well by the story of how the public conversation on judicial stress first began in Australia.

It is the story of a battle waged by conference paper between two senior Australian judges in the mid-1990s: Justice Michael Kirby, then President of the New South Wales Court of Appeal, and Justice James Thomas of the Supreme Court of Queensland. At a superior court judges conference in 1995, Justice Kirby presented and then published a paper in the *Australian Bar Review* entitled 'Judicial stress: An unmentionable topic'. In this paper, and a follow-up published in the *Australian Law Journal* in 1997 entitled 'Judicial stress: An update', he made the case for a more open conversation about stress in judicial work, citing several incidents of what he termed 'judicial breakdown'. He then asked:

Are these and like cases evidence of a declining judiciary? Are they no more than judges who are human beings straying from traditional and exceptional standards? Or do these cases evidence a larger problem which can be summed up as the impacts of stress upon members of an over-stressed profession?

Vindicating Justice Kirby's choice of title for this paper, Justice Thomas presented and then published a reply paper in the *Australian Law Journal* entitled 'Get up off the ground' in which he accused Justice Kirby of jumping on 'the stress bandwagon' which he said would 'release howls of derision' from the profession and the public. Justice Thomas went on to say

that judges needed ‘adrenaline, or pressure, to produce [their] best work’ and that any lapses in judicial conduct were ‘more to do with character than stress’. He concluded by urging his fellow judges ‘not to treat this subject seriously’, warning that:

If we formalise the subject, stress management course will be thrust upon us. They will become the new compulsory major in continuing judicial education. Kirby J’s paper will run into its 15th edition. We will be taken to have admitted that we need outside assistance. Stress managers will be supplied. These will soak up much needed funds that we could use for something else. The less assistance that we invite or get from outsiders, particularly departmental bureaucrats, psychiatrists and management consultants, the better.

Justice Kirby, who, shall we say, was not one to let an opponent have the final word, published his own reply article in the same journal—‘Judicial stress: A reply’ in which he argued that Justice Thomas’ position proceeded from ‘denial of stress’ and then said:

Whilst it is true that some judges will cope with stress by denial, there will be others who actually may need assistance yet feel disinclined to talk about it, or are even perhaps unaware that they may have a serious problem.

With that, Justice Kirby, Justice Thomas, and the Australian judiciary generally, remained silent on the topic of judicial stress for the best part of 20 years.

To borrow a phrase from esteemed researcher of judicial emotion, Professor Terry Maroney, there has been, it seems across the world, a ‘persistent cultural script of judicial dispassion’ and invulnerability which has, until quite recently, silenced any discussion about the human dimension of judging. Certainly, when I started working with the Australian judiciary in 2007 this was not a conversation that was being had. Around 2015, however, when my doctoral project commenced, the conversation on judicial stress reopened in Australia, this time to a more welcoming reception. It has since become the focus of judicial speeches, conferences and media commentary—both in Australia and

overseas. What was lacking, however, was empirical research to inform the discussion and to underpin any systemic responses that courts and governments might want to put in place. In Australia, as in most of the world and certainly most of the Commonwealth, there remained no psychologically grounded data on the nature, prevalence, sources and impacts of judicial stress.

WHAT WE ALREADY KNEW ABOUT JUDICIAL STRESS

Prior to specific empirical research being conducted, the existing literature pointed to four pertinent facts relevant to the question of judicial stress which together served to underscore the need for robust empirical research in this area.

Judicial Officers are Senior Members of a Stress-Prone Profession

Commencing in the United States in the 1950s, followed by Australia in 2005, and then by countries across the Commonwealth and the world, there are now scores of studies on lawyer stress putting beyond doubt the scale and magnitude of the problem globally. Two consistent findings warrant emphasis here:

- Three separate studies, each from different continents and spanning three decades, all reported that lawyers are more stressed than other professional groups; and
- Two studies from different continents have found that lawyers are three times more likely than the general population to experience depression

The robustness of these two findings across time and geography, coupled with the dozens of additional studies reporting high rates of distress, anxiety, alcohol misuse, and disordered eating, within the profession, point to a pervasive and enduring issue of stress and mental illness among lawyers. In many countries, legal regulators and professional bodies have taken action to address this issue through systemic reform and regulation. The knowledge that the legal profession world-wide is grappling with this undeniable and alarming mental health problem, begs the question: to what extent does this problem extend to those at the pinnacle of the profession—the judiciary.

Many Aspects of Judicial Work are Inherently Demanding

The early discursive literature on judicial stress, written principally by retired and sitting judges (including Justice Kirby from Australia) and the professionals who worked with them, point to a number of aspects of judicial work that are likely to give rise to stress. The suggestions of these papers are summarised in Figure 1 below and constellate into three broad categories: stressors of workload, stressors of work type, and stressors of work culture.

Stressors of Work Load:

- Increasingly high caseload
- More documents
- More laws
- No designated time for writing judgement
- Extra duties of office
- Limited opportunity to delegate

Stressors of Work Type:

- Adversarial system – conflict and disagreement
- Highly emotional and tense
- Managing mental illness of court users
- Traumatic material
- Making decisions that significantly impact on people's lives

Stressors of Work Culture:

- Isolation
- Media and appellate court scrutiny
- Public forum
- No feedback
- No management
- Stress denying culture
- Expression of emotion and opinion constrained
- Longevity of service

Figure 1: Sources of judicial stress discussed in the early discursive literature

Although these ideas are based on personal experience and anecdote, rather than empirical research, they plainly represent a highly demanding combination of work factors. To be

faced everyday with very high and increasing workloads, high intensity work involving distressing subject matter and distressed individuals, high responsibility and high stakes in one's decision making, and a working environment characterised by professional isolation, intense scrutiny, a stigmatisation of stress, and limited supportive feedback, amounts to a cocktail of risk factors for occupational stress. What this early writing suggests is that, even under the best of circumstances, judicial work is highly demanding and it would seem only natural that judges would be impacted by these demands from time to time. Furthermore, whether or not directly impacted by the work, it is nonetheless a very demanding role to be fulfilling if simultaneously dealing with a significant stress or crisis in one's personal life.

Judicial Officers are not Immune to Stress, Struggle and Despair

In recent years, the theoretical literature on the demands of judicial work has been matched by judges and former judges speaking publicly about their own experiences of stress and vicarious trauma on the bench.

In 2017, two striking judicial testimonials came into circulation. The first was an account by a recently retired American judge, the trauma reaction she experienced when she was called up for jury service shortly after her retirement. In an article entitled 'The price I paid for being a 'good judge'', retired Judge Karen Adam writes in an article published on the US National Judicial College website:

Vicarious trauma is real... Day after day and case after case, a judge is required to hear about terrible things that happen to people but cannot respond physically or emotionally in a naturally human way. However horrific the testimony and exhibits, a judge must remain dignified, calm, respectful. Emotions must be buried... Remaining stoic in the midst of this much trauma was incredibly difficult, but I did it. At a steep cost.

Later in 2017, an experienced and still-sitting magistrate from New South Wales, David Heilpern, presented a public lecture for Australia's peak body for lawyer wellbeing entitled 'Lifting the judicial veil: Vicarious trauma, PTSD, and the judiciary – a personal

story'. (The resulting article has since been published in the New South Wales government's *Handbook for Judicial Officers*.) Magistrate Heilpern described his personal experience of post-traumatic stress disorder due to the cumulative exposure to traumatic case content in his many years at the court:

I dealt with over a dozen [child pornography] cases within a couple of months. I started dreaming of these children and the torment perpetrated upon them. I would wake up in the witching hour screaming, sweating and panicked. I thought it would pass but it did not... I began thrashing around in my sleep making it impossible for my wife to remain in bed for fear of being struck.

Not long after these accounts were published, Australia suffered the tragic loss of a Victorian magistrate to suicide. Devastatingly, over the following two years, her death would become the first of three judicial deaths by suicide in Australia. If there remained any lingering notion that judges are somehow above or immune to experiencing the full range of human emotion and experience while sitting, these accounts and tragedies must surely put it to rest.

Judicial Wellbeing Matters—and Not Just to Judicial Officers

As the above section of this article demonstrates, judicial wellbeing is important for individual judicial officers, because it is well established that stress undermines the psychological and physical health of the person who experiences it. This much is obvious. However, because of the position that judicial officers occupy in our legal system and society, their individual stress has the capacity to have a broader impact. In this regard, judicial wellbeing is also important for court users, including litigants, legal professionals and court staff, because—as decades of psychological research have demonstrated—stress undermines our capacities for emotional regulation and impulse control, making it more likely that we will behave in ways that we later regret.

Beyond the interpersonal effects of stress, judicial wellbeing is also potentially important for the integrity of judicial decisions, because—as research in the field of cognitive psychology has shown—stress can also undermine our

objectivity and critical thinking, leading potentially to more stereotypical and conservative decisions and decisions that preserve the status quo.

This final point is illustrated vividly by a study published in 2011 by Shal Danziger et al. in the *Proceedings of the National Academy of Sciences* entitled 'Extraneous factors in judicial decisions'. These researchers looked at the decisions of parole officers in Israel over a 10-month period, and analysed them for two things: whether parole was granted or refused, and the ordinal position of the decision over the course of the working day. They found that parole was significantly more likely to be granted at the start of the working day, after morning tea, and after lunch—and the odds that parole would be granted declined linearly between snack breaks. As the parole officers became fatigued, rushed and depleted of blood sugar, they became predictably more likely to make the conservative and status quo-upholding decision of denying parole. If such everyday stressors can have such a marked effect on Israeli parole officers' decisions, it is likely that similar factors may influence judicial decisions in other contexts.

WHAT WE NEEDED TO KNOW

As can be seen, there was good reason to expect that judicial officers experience occupational stress, given the high rates of stress within legal practice and the inherently stressful nature of judicial work. There was also good reason to think this stress could have a negative impact on judges and the courts. What we did not have was empirical data on the nature, prevalence and severity of stress experienced by judicial officers in Australia, to inform the discussion and to underpin any organisational and systemic responses the courts might consider. It was to address this gap, that I undertook my doctoral research on the topic.

AUSTRALIA'S FIRST RESEARCH MEASURING JUDICIAL STRESS

My doctoral research through the Melbourne School of Psychological Sciences at the University of Melbourne was the first empirical and psychologically grounded research on judicial stress and wellbeing in Australia, and among the first internationally.

Five Australian courts from summary to appellate levels participated in the project. One hundred and fifty-two judicial officers participated in a survey, and 60 went on to participate in in-depth interviews. The survey incorporated the use of a number of standardised and validated psychometric instruments for measuring different forms of stress—many of which has been used in earlier research on lawyer stress and population mental health studies.

Overall, the research project sought to answer four broad questions:

1. *Are* judicial officers stressed?
2. *Which* judicial officers are most stressed, and *why*?
3. What are the sources and *impacts* of judicial stress?
4. How could courts better *respond*?

These questions are answered across three studies – Studies 1 and 2 have been published, and Study 3 will be published soon.

Study 1: Are judicial officers stressed?

The project's first study—published under the title 'The psychological impact of judicial work' by the author, Carol Hulbert and Tania Sourdin—appeared in 2019 in the *Journal of Judicial Administration* published in 2019. It sought to answer first research question above—Are judicial officers stressed?—by comparing judicial officers' levels of stress (measured as non-specific psychological distress, mental ill-health, burnout, secondary traumatic stress, and alcohol misuse) with those of lawyers, other professionals, and the general Australian population.

The key findings of Study 1 were:

- On a standardised measure of 'non-specific psychological distress', 52.9 percent of judicial officers scored in the moderate to very high ranges (compared with 32.8 percent of the general population, and 62.6 percent of solicitors, and 68.5 percent of law students);

- Three-quarters (75.2 percent) of judicial officers had scores on at least one of the three burnout factors (exhaustion, cynicism, and reduced professional efficacy) that indicated some level of burnout risk, with 20 percent scoring over the cut-off for burnout;
- The overwhelming majority (83.6 percent) of judicial officers reported experiencing the negative effects of secondary traumatic stress (arousal, avoidance, intrusion) in the one week prior to completing the survey, with almost one-third (30.4 percent) scoring within the range for which formal assessment for post-traumatic stress disorder may be warranted—a rate similar to several groups of American social workers, but dramatically higher than the 12-month population prevalence of PTSD in Australia (4 percent);
- On the World Health Organisations 'Alcohol Use Disorders Identification Test', almost one-in-three (30.6 percent) judicial officers scored in the range indicating problematic alcohol use—putting them on par with the rest of the Australian legal profession (32 percent), but in markedly more worrying territory than the general population (18.8 percent);
- Despite this, judicial officers' reported levels of mental health concerns were comparatively low. Their reported rates of 'moderate to severe' depressive and anxious symptoms were dramatically lower (approximately one third) than those reported by lawyers, and slightly lower also than those suggested for the general population; and
- In addition, 62 percent reported finding judicial office a little or much less stressful than their previous careers, and 76 percent reported experiencing personal wellbeing and satisfaction related to their work most or almost all of the time.

In a nutshell, Study 1 found that, yes, judicial officers are stressed at a level comparable to the general population; however, the pattern of judicial stress is different to that within the broader legal profession. It showed that judicial officers have a stress problem—

manifesting as elevated levels of psychological distress, burnout and secondary trauma—but, unlike the rest of the legal profession, this stress problem has not so far led to a widespread mental health problem among the Australian judiciary.

Study 2: Which judicial officers are most stressed and why?

The second study was published in 2021 by the same authors in the journal in *Psychiatry, Psychology and Law* under the title ‘Where stress presides: Predictors and correlates of stress among Australian judges and magistrates’. Having established that Australian judicial officers are stressed, Study 2 looked at the occupational and demographic drivers of judicial stress.

In particular, Study 2 considered the impact of ‘basic psychological needs satisfaction’ on judicial stress—that is, whether judges’ stress levels vary depending on how frequently and deeply they experience ‘autonomy’, ‘competence’, and ‘relatedness’ within their work. The notion of basic psychological needs satisfaction arises from a very well-established model of human motivation and wellbeing known as ‘Self-Determination Theory’, and has been found to better predict lawyer wellbeing than all demographic and life-style factors in a large-scale American study entitled ‘What makes lawyers happy: A data-driven prescription to redefine professional success’ published in the *George Washington Law Review* in 2015 by Lawrence and Kennon Sheldon.

The key findings of Study 2 were:

- Judicial stress in all forms and across jurisdictions was predicted by the extent to which judicial officers’ ‘basic psychological needs’ of autonomy, competence and relatedness were satisfied within their working environments. Relatedness satisfaction (*i.e.*, the number and quality of authentic and trusting collegial relationships a judicial officer experiences) was the best predictor of judicial wellbeing;
- The only demographic factor that was robustly associated with levels of judicial

stress was jurisdiction: judicial officers in the high-volume, lower courts (including magistrates) were significantly more stressed across a range of measures than judges sitting in the higher courts. The greatest disparity was in levels of burnout exhaustion. There were no differences in judicial stress levels according to age, gender, seniority, geographical location, or even area of legal practice;

- The higher stress experienced by lower-court judicial officers was almost entirely explained, statistically speaking, by their lower levels of basic psychological needs satisfaction—especially autonomy and relatedness; and
- Interestingly, alcohol use was not correlated with any other measure of stress—*i.e.*, more stressed, burned-out, or traumatised judges were not more likely than their happier colleagues to be engaging in problematic levels of alcohol consumption. This suggests that alcohol misuse is not a widespread symptom of stress or a coping strategy among the Australian judiciary but is, rather, a cultural feature of the profession from which they are drawn.

Study 1 revealed a judiciary not yet in a mental health crisis, but under considerable stress. Study 2 showed unequivocally that it is judicial officers in the high-volume, lower courts that experience the most stress, and this appears to be due to fewer opportunities for them to experience autonomy and relatedness within those courts.

Among the questions that remain, perhaps the two most pressing are: How does stress impact judicial officers and their work?, and What can be done about it? These questions were explored in Study 3, which brings together the experiences and ideas expressed by judges and magistrates in their interviews.

Study 3: What are the sources and impacts of stress, and how could courts respond?

Sixty judicial officers spoke passionately and candidly about the human dimension of judging—the sources of stress, the sources of satisfaction, their strategies for coping,

and their ideas for how courts could better support judicial wellbeing. Their accounts were detailed, thoughtful, and at times deeply moving, describing in 60 different ways the rigors of reconciling the ideals of judicial office with the human reality.

Six overarching themes emerged from their words, which will be described in detail in the forthcoming report of Study 3:

- *Workload is an issue for almost everyone*—at every level of the court hierarchy, judicial officers described their workloads as relentless and unsustainable, whether due to crushing daily lists and frantic courtroom environments in the lower courts, or the scale and complexity of trials and the ceaseless build-up of reserve decisions in the higher courts;
- *Most judicial officers feel that the sources of stress are increasing*—due to dramatic up-ticks in case-loads, the pace of legislative change, case complexity, electronic evidence, and self-represented parties, as well as a growing climate of hostility towards the courts reflected in tabloid media commentary and occasional attacks from the executive arm of government;
- *Stressors of ‘injustice’ are felt most keenly*—both the pain of not seeing justice done in their courtrooms, and more personal feelings of injustice when the demands of the job are coupled with experiences of inequity or unfairness; and
- *Discussing stress and seeking support remains somewhat stigmatised*—many judicial officers expressed concern that sharing experiences of stress with colleagues or participating in wellbeing initiatives might be equated with weakness or unfitness;

And yet:

- *Alongside stress, there is a deep sense of job satisfaction*—despite speaking frankly about the many pressures of the role, which at times can be overwhelming, almost all judicial officers also spoke of

loving their jobs, and the privilege and professional pride they derive from it; and

- *Judicial officers sourcing the most enjoyment from the role are those who prioritise their own wellbeing.* A sizeable minority of judicial officers had developed deliberate practices and strategies to proactively manage stress, in most cases stemming from a conscious respect for the emotional dimension of the work and sober awareness of its capacity to impact wellbeing. These were the people who spoke most enthusiastically about their work.

There were also dozens of well-considered ideas for organisational and systemic responses to judicial stress which clustered around ways to better manage workflow and to promote engagement in proactive wellbeing initiatives. When judicial officers were asked to consider what it would take for these ideas to become reality, two overarching conditions for judicial wellbeing reform were identified:

1. *Judicial wellbeing requires judicial time*—enacting judicial wellbeing initiatives felt either impossible or like another source of stress while judicial workloads did not enable work time to be allocated for non-court activities. The thrust of this theme was that, within the many and complex demands of judicial work, there is an irreducible need for time, space, reflection and integration, so that the demands of the role may be experienced as meaningful challenges rather than as a crushing burden. The conclusion was that this may require a radical and systemic rethink of the legitimate expectations and activities of judicial office; and
2. *Judicial wellbeing requires committed leadership*—judicial officers wanted those with the formal and cultural power within the court system to take this matter seriously—to give it priority commensurate with that given to other court business—and to demonstrate the courage, curiosity and humility to challenge existing practices, the prevailing culture, and their own pre-conceptions around the human limits and impacts of judicial work.

CONCLUSIONS

Australia's first empirical research measuring judicial stress has revealed a judicial system under considerable stress. Burnout and secondary trauma have been shown to be prominent features of the judicial stress experience. It has also shown that courts in which judges have fewer opportunities to experience autonomy and relatedness—in Australia, the high-volume lower courts—are likely to be significantly more stressed than courts where judicial autonomy and collegial connection are stronger. The interview data provided a rich picture of the sources and impacts of judicial stress; that data also

indicated some clear pathways for effective intervention to enhance judicial wellbeing. Chief among the questions that remain is the question of the extent to which these findings would hold in jurisdictions outside Australia. In recent years, similar research has been undertaken in several other Commonwealth countries; however, the great majority of jurisdictions are still in the dark about the psychological health of their serving judiciaries. It is hoped that the Australian research, and other studies that have followed, will pave the way for more regions to embark upon projects aimed at better understanding and responding to the stress in judicial work.

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