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## **Empirical research with judicial officers: The biography of a research project**

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### **Abstract**

This article examines the history of a large multi-year, national empirical research project into the Australian judiciary undertaken by the two co-authors. We consider the different phases of the project, discuss what worked and what did not, and offer some suggestions for future research involving judicial officers and their courts. The research project entailed negotiating collaboration with and access to judicial officers and court staff on a national, state and local basis. Reflecting on this experience confirms the

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importance of collaboration with the courts and judiciary and researcher independence from them. Collaboration provides extensive access, supporting a long term, multi-method research design, and providing findings that are original, robust and valuable to the judiciary. It is equally important to maintain researcher independence: to ensure that courts and government commit to researcher control of data, its analysis and application, recognising that the courts cannot censor findings, presentations or publications. Collaboration and independence require generating and maintaining long term relationships, so that research leads to robust original scholarship that benefits judicial officers, courts, and the publics they serve.

### **Key words**

Courts; judicial officers; research collaboration

### **Resumen**

Este artículo examina la historia de un amplio proyecto nacional de investigación empírica plurianual sobre el poder judicial de Australia emprendido por las dos coautoras. Se examinan las diferentes fases del proyecto, se discute lo que funcionó y lo que no, y se ofrecen algunas sugerencias para futuras investigaciones en las que participen funcionarios judiciales y sus tribunales. El proyecto de investigación implicó negociar la colaboración y el acceso a los funcionarios judiciales y al personal de los tribunales a escala nacional, estatal y local. Reflexionar sobre esta experiencia confirma la importancia de la colaboración con los tribunales y el poder judicial y la independencia del investigador respecto a ellos. La colaboración proporciona un amplio acceso, apoyando un diseño de investigación a largo plazo y multimétodo, y arroja resultados que son originales, sólidos y valiosos para el poder judicial. Es igualmente importante mantener la independencia del investigador: garantizar que los tribunales y el gobierno se comprometan a que el investigador controle los datos, su análisis y aplicación, reconociendo que los tribunales no pueden censurar las conclusiones, presentaciones o publicaciones. La colaboración y la independencia requieren la creación y el mantenimiento de relaciones a largo plazo, de modo que la investigación dé lugar a sólidos conocimientos originales que beneficien a los funcionarios judiciales, a los tribunales y al público al que sirven.

### **Palabras clave**

Tribunales; funcionarios judiciales; colaboración en las investigaciones

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## 1. Introduction

Research projects have a biography (Berger and Berger 1972). The conception, birth, life, career, key events or moments, disappointments, dramas, and challenges as well as more ordinary, mundane aspects of a research project all form part of its life course (Elder *et al.* 2003). Some projects have longer lives than others and can be chronologically tracked, yet like all careers, at the outset, where the project will go and how it will end are unknown. A biography is only apparent in retrospect, with the benefit of hindsight. Biographies are shaped by the contexts, environments, web of interrelationships, and opportunities in which they are embedded. Factors external to a research project – the broader research and funding environment, the host institution – affect its direction, resources and duration.

This article tracks the biography of a research project which has undertaken extensive empirical research into the Australian judiciary and its courts since 2000. Its purpose is to document the many methodological considerations and practical issues that emerge in empirical research with judicial professionals and courts, as a contribution to this special issue based on papers from the workshop: “Empirical research with judicial professionals and courts: Methods and practices” (see also Banakar 2000, Banakar and Travers 2005, Halliday and Schmidt 2009). The article first describes the Magistrates Research Project (MRP),<sup>1</sup> later renamed the Judicial Research Project (JRP). It then discusses the importance and nature of collaboration when initiating, designing, funding and undertaking empirical research into the courts and judiciary. The article then discusses the importance of collaboration in regard to two early research phases: the first national survey of magistrates and a national observation study of magistrates courts. The article next offers advice to potential researchers, recognising that, while collaborative relationships are essential to the career of a judicial research project, they may not be sufficient. It concludes by assessing how the judicial and research landscape has changed over past decades and considers some implications for socio-legal empirical research.

Our multi-year national research project into Australia’s judicial officers and their courts commenced in 2000 as the MRP, with a national focus on the first instance courts. As the research grew and expanded to include courts at all levels, it was renamed the JRP, after consultation with individuals and organisations who had been collaborators in the first phase of the research<sup>2</sup> (see Dias *et al.* 2023 for a biography of a similarly large-scale, long-term collaborative multi-method project).

To develop biography of this research project, this article relies on two kinds of data:

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<sup>1</sup> In Australia, the term “magistrate” refers to members of the judiciary who preside in the lower state and territory courts, except in the Northern Territory where magistrates were given the title “judge” in 2016. Australian magistrates are paid judicial officers, with legal qualifications, and are appointed until a fixed retirement age, in contrast to magistrates in England and Wales. The term “judge” indicates those who preside in the intermediate and higher state and territory courts and all national courts. In this article, the terms “judicial officer” and “judiciary” are used to refer to any member of the judiciary, regardless of court level or type.

<sup>2</sup> Unless otherwise stated, we refer to our research as the JRP, or “the Project” to include the earlier MRP.

1. Kathy Mack (KM) and Sharyn Roach Anleu (SRA) recollections, memories of the decisions and actions as part of initiating, planning, funding, undertaking and disseminating the research; and
2. Material from the Project archive.<sup>3</sup>

In addition to producing and disseminating findings and outputs – presentations, publications, books, articles for various audiences – the Project (MRP and JRP) has generated a large archive of artefacts produced as part of the research process, from research design, data gathering, analysis through to communication of results. This archive, electronic and paper, includes multiple drafts and final versions of correspondence (letters, emails), ethics applications, grant applications, minutes and agendas of research team staff meetings (research assistants, project administrator, chief investigators), pilot and final completed surveys, court observation coding sheets, interview protocols, presentations and papers, as well as audio recordings of interviews and court proceedings and transcriptions, plus various handwritten notes and memos (Lofland *et al.* 2005, Denzin 2009).

The approach in this article is akin to oral history or autoethnography (Cook 2014).<sup>4</sup> Our reflections and reflexivity, combined with material from the research archive, generate key themes regarding what worked and why, potentially useful to other researchers in planning similar projects. Our focus is on the early stages of the Project, as these have been critical to our ability to undertake a multi-method research project lasting over two decades. The scaffolding or infrastructure created in the early stages enabled building on pre-existing networks, and establishing new relationships, to garner support for the research and to ensure its value to diverse audiences. The Project addresses several major themes:

- Everyday work attitudes and experiences among judicial officers in all court levels;
- Judicial practices in court, especially in lower courts;
- Courts and change, including gender and judging;
- Impartiality and legitimacy;
- Judicial work and emotion, including humour;
- Judicial workload allocation; and
- Discipline and performance issues.

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<sup>3</sup> In order to maintain confidentiality and unidentifiability regarding some of the documents we have given them the format of Doc # with their date, and deleted names. A list of these documents can be found in the Annex at the end of this article.

<sup>4</sup> Dusdal and Powell (2021) summarise: “While not generalizable, this retrospective, self-reflexive autoethnography synthesizes lessons learned and risks in carrying out [collaborative research]” (p. 237). The authors continue: “Autoethnography, as a research method, uses researchers’ own experiences in describing and evaluating beliefs, practices, and experiences in particular contexts; it recognizes and values researchers’ social embeddedness (...) [it] combines content analysis of documents with interviews to support retrospection” (*ibid*).

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These themes have been investigated through various studies and different kinds of data, which can be thought of as stages in the Project's biography or life cycle.<sup>5</sup>

Conventionally, the first stage in research design is formulating the research question(s). The focus then shifts to selecting the method(s) to address the question(s). However, a successful project undertaking empirical research into courts and the judiciary requires a different process, especially generating collaborations of various kinds in which the framing of the research questions and methods are developed in an iterative fashion.

## 2. Collaboration

One feature that stands out in this Project is the extensive engagement with professional associations, courts, judicial officers, court administrators and other staff, as well as government departments, at inter-personal and organisational levels. This involvement engendered mutual trust in several ways, especially by careful explanations of and scrupulous attention to confidentiality and anonymity for participants, and a commitment to voluntary participation (see Dias *et al.* 2023, for discussion on "building a trustful environment").

Collaboration can include a range of activities and associations, including communication, consultation, and shared contributions. It can involve tight or loose alignment among researchers and research participants, or research partners (Katz and Martin 1997). Our collaboration with judicial officers and courts entailed:

1. Shared development of key research questions and themes, as listed above.
2. Communication and information sharing, explaining what we proposed to do to address the emerging research questions, and seeking advice and assistance in relation to designing and undertaking specific phases of the research.
3. Seeking endorsement through expressions of support from key individuals and institutions. This support enhanced the credibility, legitimacy, and success, of the Project.
4. Listening and responding to concerns, especially regarding confidentiality, anonymity, identifiability, and more generally, about the nature of academic scholarship and the value of social science research to courts and the judiciary.

Establishing and maintaining the extensive relationships among researchers, formal institutional partners, individual judicial officers and court administrative staff take large amounts of time and effort, for researchers and partners, which may not have been fully anticipated by any of the participants at the outset of the research. For partners and researchers, responding to questions is a constant feature of all phases of the research.

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<sup>5</sup> National Consultations with magistrates 2000–01; Magistrates Survey 2002; National Court Observation Study 2004–05; National Survey of Magistrates 2007; National Survey of Judges 2007; Judicial Officers and Workload Allocation Study 2007–12; National Interviews with judges and magistrates 2012–13; and cases and materials relating to judicial discipline, impartiality and bias in Australia and the United States 2015–2021.

Explanations often need repeating, and new questions arise, as circumstances change, and new individual and institutional participants become engaged in the research.

The collaborative research process entails considerable reflexivity on the part of researchers (Holmes 2015).<sup>6</sup> Reflexivity is “an emotional, embodied *and* cognitive process in which social actors have feelings about and try to understand and alter their lives in relation to their social and natural environment and to others” (Holmes 2010, 140; emphasis in original). The research setting is a microcosm in which the researcher must deal with unfamiliar situations, uncertainty, new contexts and the unknown attitudes and feelings of research participants, both imagined and experienced. Reflexivity means that the researcher must adjust their own thoughts and feelings as they interact with specific research collaborators and participants. “Emotional reflexivity is about reflecting and acting in response to one’s own and other people’s feelings” (Holmes 2015, 64).

The collaborative process can involve tradeoffs for all participants, as goals and interests will not always align among courts, government, judicial officers, professional associations and researchers. Similarly, tradeoffs can result from practical constraints, some unanticipated. The effort to manage these aspects of collaboration can entail emotion work (Hochschild 1983). Researchers may need to suppress emotions such as frustration and impatience to instil in potential collaborators (and research participants) feelings of trust and confidence (Dickson-Swift *et al.* 2009, Fitzpatrick and Olson 2015, Bergman Blix and Wettergren 2015). More positively, researchers and collaborators can share feelings of satisfaction at successful outcomes of combined effort. The remainder of this section addresses:

- Creating and recognising opportunity;
- Forming a research partnership and generating funding;
- Consulting widely as the basis for initial research design; and
- Conducting data collection for the *Magistrates Survey 2002* and national court observation study.

Publication of findings and enabling future opportunities are addressed in later sections, before the discussion and conclusion.

### *2.1. Create and recognise opportunities: The birth of the Project*

Researchers’ activities and professional or even personal networks that precede a research project can affect, even determine, the opportunity for research. A researcher may not realise at the time that they are setting the groundwork for a future research collaboration or enduring relationship. Examples of such activities and connections leading to the Project include:

- Involvement with courts and professional associations that include judicial officers;

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<sup>6</sup> Reflexivity can also be a research topic. In our research interviews we asked judicial officers to consider their reflexivity that is how they adjusted their feelings and thoughts in relation to interactive moments in the courtroom and beyond (Roach Anleu and Mack 2019, 2021).

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- Presentations to judicial audiences at various conferences and meetings or as part of judicial professional development;
- Writing for judicial professional publications;
- Organising academic events to include judicial officers; and
- Teaching in areas where the judiciary can be involved and seeking their involvement, such as by consulting on course materials or giving guest lectures.

(Also see Mark 2023, for the importance of personal connections developed through her role on the American Bar Association's COVID-19 Task Force.)

What became the MRP and JRP began when KM was approached in 1999 by a senior magistrate to undertake research into the magistracy. This magistrate was involved with the Australian (now named Australasian) Institute for Judicial Administration (AIJA) and with the Australian Association of Magistrates (AAM)<sup>7</sup> which had some funding, generated via membership fees, and an interest in encouraging empirical research on magistrates. The approach to KM reflected the magistrate's previous acquaintance with KM's university civil procedure teaching initiative and her involvement in the AIJA. KM then raised the possibility of this new research direction with SRA.

This description of how the Project originated could be characterised as luck: SRA and KM were in the right time and the right place. It may also reflect the notion of luck attributed to the Roman philosopher Seneca: "Luck is what happens when preparation meets opportunity" (or "chance favours the prepared mind" [Louis Pasteur 1854, lecture at University of Lille]). Both authors had a track record in empirical socio-legal research with courts and legal professionals. It can also be characterised as an example of the strength of weak professional or personal ties (Granovetter 1973), as the approach to undertake research came from professional acquaintances and networks.

Another key feature of the Project's birth is the collaboration between SRA and KM. KM is a legal academic, with an undergraduate degree in social science and a background in criminal law practice in the United States. SRA is a social scientist, with a law degree, whose PhD dissertation was on the legal profession in the United States (see Casaleiro and Jesus 2023, on challenges of interdisciplinary/cross disciplinary work; and Branco 2003 on difficulties for a law trained scholar to use sociological research methods). Before this Project, SRA and KM had undertaken an empirical investigation into the production of guilty pleas. This national research project was proposed and funded by the AIJA and overseen by an advisory committee constituted by judges, court administrators, Directors of Public Prosecution, Legal Aid directors and defence lawyers.<sup>8</sup>

The approach to undertake research into the magistracy came at a special juncture for SRA and KM. We had completed the bulk of the work on the guilty plea project and were moving towards undertaking more individual research within our respective home disciplines. However, when approached by AAM, with what was clearly a special

<sup>7</sup> In 2022, AAM was amalgamated with a larger judicial officers' association and no longer has an independent identity.

<sup>8</sup> Findings were published as a monograph (Mack and Roach Anleu 1995) and disseminated in several professional and scholarly presentations and publications (see Mack *et al.* 2017).



opportunity, we said “yes”. This led to further discussion with AAM and its national executive committee, resulting in an offer of multi-year funding. In addition, we received some funding from the AIJA. Following these initial discussions and the funding offer, we became collaborators with AAM, to plan and undertake a research project into the magistracy.<sup>9</sup>

## *2.2. Forming a research partnership and generating funding*

Perhaps the most important initial aspect of a mutually beneficial collaboration is for the researchers to be candid about the potential advantages to all participants and the limits that might exist (see Mulcahy and Tsalapatani 2023, for discussion of concerns about research team and stakeholder shared goals, and the values and problems of “co-production”). For example, magistrates were concerned about lack of respect from government and the wider public for how hard they work, the lack of status and recognition as judicial officers, and work-related stress. SRA was interested in investigating the everyday work of the judiciary from a sociological perspective, addressing questions asked of occupations generally, but rarely if ever of the judiciary, such as professionalisation, the entry of women, the workplace context, job satisfaction, and emotional labour. KM was interested to undertake further socio-legal research into the courts, especially in relation to criminal matters (see Casaleiro and Jesus 2023, on challenges in defining research concepts and questions and methods in interdisciplinary and multi-method research).

These initial discussions identified issues regarding distinctions between magistrate and judge, that the term magistrate was outdated, judicial independence, appointments, terms and conditions, jurisdiction and work of magistrates, court structures, judicial administration and management, court governance, composition of magistracy, and judicial education (Doc#26; Doc#27). While the goals and capacities of all participants did not align precisely, they were complementary. AAM recognised that there was limited or no capacity or expertise among magistrates or within the AAM to undertake such research; a researcher, familiar with magistrates courts, would need to be engaged to undertake any empirical research.

Discussions and further consultations, described below, enabled balancing tradeoffs to generate a project that was satisfactory for all participants. To achieve this, it is important to identify the questions that are of interest and importance to courts and judicial officers that can (and cannot) be addressed through empirical research, and for scholars to be clear about limits of what research can reveal. Outlining reasonable timelines for the research is paramount. It is also essential to clarify who are the partners of the research project: the professional association, the chief magistrates, all magistrates? While leaders of a court or a professional association may identify issues as concerns to the membership, it is essential to consult more widely with individual judicial officers, to distil key issues and challenges facing the judiciary, especially in their everyday work.

An especially important aspect of our collaboration was the presence of one or more champions, people within the judiciary or court administration who strongly advocated for the Project. Some of these may have had a formal role as project advisors or liaison;

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<sup>9</sup> In addition, we received some funding from the AIJA.

others we only learned of their positive, and often crucial, influence later. These champions grasped the value of the research for their organisations, as well as having confidence in our capacity as researchers, and so enabled the Project to go forward at several key stages, especially in relation to institutional support for funding.

It would have been possible to take the initial AAM funding as a consultancy. However, as academics in a balanced role – teaching and research – research is more important for career development and professional interest than a consultancy.<sup>10</sup> Focussing on scholarly aims to create new knowledge, and our own academic interests, led us to apply for an internal University-Industry Research Collaborative Grant (UICRG) to provide funds to match the AAM contribution (Doc #31). Leveraging the initial AAM contribution provided several advantages: it appealed to AAM by expanding the scope of what could be done and generated a more attractive research agenda for us. The additional funding from the UICRG provided a model which demonstrated to the courts, especially the chief magistrates and the heads of the various court administrations and funding agencies (CEOs), that the courts could obtain a great deal more high-quality research than from their funds alone. The CEOs and the chief magistrates especially grasped the value of this for their goals and were supportive when we came back to request funds from the courts for a national Australian Research Council (ARC) Grant.<sup>11</sup>

Another advantage of having the UIRCG was to create a more formal, though perhaps not equal, partnership. It made clear that the University and its priorities, and ours as researchers, had to be taken seriously by the courts and judiciary, since there was an institutional University stake and commitment, matching the institutional commitment of AAM (and eventually the courts, and the ARC). This increased our independence from, and leverage with, the courts.

Commitments from the courts, AAM, the University and the AIJA supported a successful application for a large grant (2002–2004) (Doc #32). This entailed formal partnerships with all courts and funding agencies, AAM and the AIJA for them to provide cash and in-kind contributions and for the University and KM and SRA as researchers to undertake the research as described in the grant application. As with the earlier UICRG, this formal relationship enhanced practical engagement from the courts as well as our independence as researchers.

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<sup>10</sup> The Australian Research Council defines research as “as the creation of new knowledge and/or the use of existing knowledge in a new and creative way to generate new concepts, methodologies, inventions and understandings. This could include the synthesis and analysis of previous research to the extent that it is new and creative. (...) This definition of research is consistent with a broad notion of research and experimental development comprising ‘creative and systematic work undertaken in order to increase the stock of knowledge – including knowledge of humankind, culture and society – and to devise new applications of available knowledge’ as defined in the ARC funding rules” (Australian Research Council 2017, 9, quoting OECD 2015).

<sup>11</sup> The Australian Research Council is an independent body established within the government. It funds research across a wide range of disciplines (except medical research) through competitively awarded grants to individuals, research teams and large-scale centres. (Medical research is largely supported through the National Health and Medical Research Council). Project grants provide funds to university researchers for research undertaken with an external partner, who supplies funding and in-kind support for the research.

The way funding was managed is an example of the importance of being candid and reflexive about disciplinary and institutional perspectives and goals, as this may help identify areas of common ground with collaborators, as well as potential obstacles. It also involves additional work for all participants, to apply for and meet the requirements of grant funding bodies. This may entail explicit tradeoffs, especially in relation to the control that a single funding source might have, as well as ongoing negotiations among the funding agencies, researchers and research participants.

### *2.3. Consultations*

The main component of this first stage of project development was to undertake consultations with individual magistrates, chief magistrates and court administrators, to identify key issues facing magistrates and their courts and to generate support for a large national project. This provided the groundwork for an application to the ARC for a Project Grant (see Mark 2023, for discussion of exploratory interviews as first phase). Consultations with individual magistrates (n=46) were designed to canvass wide-ranging views on the current issues facing the magistracy, especially regarding changes to their role and function to inform the scholarly development of a research proposal. Consultations with Chief Magistrates and court administrators in every state (n=6) and territory (n=2) sought to garner their support for financial and in-kind contributions as part of a grant application as a formal partner.

Consultations with individual magistrates were open-ended and conversational, to cover five main areas:

1. The organisation and role of the magistracy
2. Magistrates' tasks responsibilities and everyday activities
3. Professional/industrial issues
4. Relations with other personnel in the justice system
5. Demographic and social issues (Doc #22)

Consultations with chief magistrates and CEOs were sometimes undertaken individually, but also entailed attending meetings of Council of Chief Magistrates or with the CEOs who also met collectively. This was a considerable advantage as those parts of government that funded courts varied considerably in different jurisdictions, including attorneys-general departments, departments of justice, or independent courts administration authorities.

Seed funding enabled KM and SRA to travel to attend meetings and engage in individual face to face consultations.<sup>12</sup> Engagement with key players individually and collectively, though demanding on all participants, was crucial to generate the mutual respect and necessary trust. The consultations enabled us to listen to, be aware of and respect judicial needs and perspectives, and to access varied viewpoints, positive and negative. This process confirmed that views are not universal across the judiciary, even at a single court level or in one state or territory (see Mulcahy and Tsalapatani 2023, for discussion of surprise at judicial and civil servant enthusiasm for research).

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<sup>12</sup> As the Project is national, and Australia is geographically large and diverse, travel can be expensive and time-consuming.

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Some chief magistrates, magistrates and court administrators were very keen on the research, others reluctant. We wondered, but cannot know, if the support we eventually received from all chief magistrates would have been forthcoming, if we had not been present at several meetings with them, perhaps because we were able to respond directly to questions or because our presence modified or even silenced some of the criticism and generated peer pressure from supporters of the research.

We also became aware of how views can change. One aspect of collaboration that we had not anticipated was the impact of changing chief magistrates and CEOs, which occurred regularly after the first few years of the Project (Docs #3, #4). At one extreme, one chief magistrate had to resign and was later imprisoned (Doc #6), though the conviction was subsequently overturned. In contrast, another chief magistrate who had just been appointed at the beginning of the Project remains a chief magistrate today.

One example of how these consultations contributed to research directions, and to the tradeoffs we needed to make as researchers, involves addressing magistrates' workload. During an early stage of consultations (in 2001), several magistrates expressed resistance to proposed research seeking detailed information about hours worked. This reluctance seems to have stemmed from unease about performance evaluation, and the perceived potential for compromising judicial independence, especially given the recent and still incomplete recognition of magistrates' judicial status (Roach Anleu and Mack 2008). We discussed various direct approaches to researching workload, but these were rejected at that time as being too sensitive. Later, as a result of the greater trust and confidence, we were able to undertake an in-depth study specifically focussed on judicial workload and work allocation (Mack *et al.* 2012).

On some occasions, we faced robust challenges to the proposed research. Early consultations with individual magistrates and chief magistrates identified concerns about a previous magistrates survey, undertaken by other researchers, in relation to domestic violence. Some insensitive written comments from a few magistrates in response to questions in the survey document were quoted in a final report, which in turn were reprinted in a daily, tabloid-style newspaper. It was apparently not clear to the magistrates in that earlier survey that their comments could be quoted verbatim in the reporting of findings, even though anonymously.

During an interview, a magistrate vehemently asserted that they understood the nature of social science research, stemming from this earlier negative experience of a survey, resulting in strong feelings of scepticism regarding its value. This situation required immediate reflexivity on the part of the researcher to reflect on and respond to their own feelings during the interaction, and to assess this magistrate's feelings implied by their language, facial expression and sitting position (Barrett 2017). The successful completion of the interview involved emotion work by the researcher to maintain a calm demeanour and not become defensive, argumentative or display anger toward the judicial officer. This previous survey experience, and the feelings it elicited in the judiciary, made generating participation in our research more difficult.

Because we were aware of this previous experience, and the attitudes and emotion it generated, we emphasised the voluntariness, confidentiality and anonymity of our research and provided detailed information about how data would be used and

presented. We were mindful that we needed to be especially careful, so that we would not damage the prospects of our own future research or for other researchers.

#### *2.4. Collaborating on research design and data collection*

Following on from the consultations and the initial research partnership development, the Project proposed three central research directions:

1. Who are the magistrates?
2. Everyday work of the court; and
3. Magistrates courts and social services.

These topics were initially addressed via a national mail back survey sent to all magistrates and then through a national observation study of magistrates courts, including examination of court files. The next sub-sections discuss collaboration in relation to the *Magistrates Survey 2002* and the court observation research.

##### *2.4.1. The Magistrates Survey 2002*

In a collaboration it is essential to seek feedback early and often about research methods and respond to comments and suggestions: agree when appropriate or disagree respectfully, with clear explanations (Becker 1998). The process of developing and administering the *Magistrates Survey 2002* exemplifies the effort and tradeoffs involved.

An early draft of the *Magistrates Survey 2002* (Doc #11) was distributed among industry partners in February 2002. The survey instrument took the form of a paper booklet, to be completed, and mailed back to the researchers. The draft survey had six sections with a mix of close ended, Likert scale response categories and open-ended questions to address:

- Career background: education, employment history
- Current position/work
- Judicial functions
- Job satisfaction
- Family / work
- Demographics

We received detailed feedback (in writing) from several magistrates through February and March 2002 (Docs #12, #13). There was general agreement that questions about various skills or qualities important for a magistrate in the performance of daily tasks, and career background information were valuable. Others expressed concern about the intrusiveness of some survey questions, and discomfort that the information could be used to affirm negative stereotypes of magistrates, the potential for misuse of data, selective reporting, and potentially damaging findings. There were also questions about relevance to their work as magistrates: 'How does this [survey] help me do my job?'

One chief magistrate sought comments from four magistrates and in a cover letter writes: "As you can see there is considerable concern about the current draft (...) I reiterate my concerns and restate my objection to what to me is predominantly a demographic survey being circulated to Magistrates (...). For my part it would seem to me that Part 3, Judicial Functions, is the only relevant part of the survey (...)" (Doc #13). One of the four

magistrates identified questions that “appear to be *inoffensive*” (emphasis in original) such as year of appointment, positions, important skills/qualities for a magistrate, but signalled other questions as “offensive and intrusive”. Another was concerned about “scope for the material to be used as the basis for sensational damaging assertions about magistrates, on grounds not related to their performance of their magisterial duties” (Doc #13).

Some considered the proposed questions about who in the respondent’s household undertook various family and domestic tasks, including care of children, and demographic information, as highly intrusive questions that “seek to obtain personal, and sometimes highly confidential, information”. “Magistrates might well ask themselves why any survey ostensibly about their professional office should make inquiries on matters that have no bearing on their official functions and duties” (Doc #13). These are “highly intrusive questions about the domestic affairs of Magistrates, unrelated to professional responsibilities” which another magistrate cautioned: “Will be seen as slanted feminist questions” (ie a negative assessment) (Doc #12). There was more extreme hostility: “I find this draft survey objectionable, offensive, intrusive, and some parts just silly” (#13) but this magistrate did indicate that “some parts of Q23 [“In your view, how important are the following quality or skills for a Magistrate”] may be relevant to ask, but I’m not sure to what end.”

Some of the concerns expressed by magistrates in these comments imply negative emotion, including hostility and outrage, which caused the researchers to reflect on their own reactions to these criticisms. The draft survey sent was very much a draft and may not have been sufficiently well developed to share at that point. Nonetheless, the responses and the input provided were essential for developing the survey and maintaining collaboration. We revised the survey, taking on some, but not all the negative comments. For example, we removed the draft question: “What were the reasons (from your point of view) that you were chosen as a Magistrate?” The questions regarding family/work intersections, including questions about the household division of labour were retained.

A pilot survey sent to at least one magistrate in each jurisdiction generated additional feedback (with a return date of 29 August 2002; Doc #30). Further opportunities to exchange views with magistrates took place at several conferences, such as the AIJA’s magistrates conference July 2001 in Melbourne and another in Brisbane in September 2002 (Doc #23), as well as at a national magistrates conference in June 2002. We were able to explain the logic and rationale of surveys in general and this one in particular, describing the kinds of questions, the pilot testing, importance of response rates and the benefits of the survey.<sup>13</sup>

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<sup>13</sup> These occasions provided opportunities to respond to questions and encourage general discussion and engagement with the survey (Dillman 1978). These presentations used overheads, not PowerPoint, as that technology did not exist at the time (Doc #23).

We wrote to all chief magistrates in September 2002 (Doc #3) indicating we have been invited to attend the Council of Chief Magistrates meeting in October 2002 and that we planned to send out the survey to all magistrates<sup>14</sup> across the country.

The areas of strong agreement about survey's value, the robustness of the initial criticism, and our capacity to respond and resist by revising some, but not all, of our proposed questions, demonstrates the independence and agency we had achieved. That we undertook significant modifications, which in our view improved, rather than limited the value of the survey, demonstrated to the courts and judicial officers that we were willing to listen to them, and to work to balance differing views within the judiciary itself.

We needed several kinds of information from the courts to administer and analyse the survey. We wrote directly to the chief magistrates asking for lists of active magistrates and their locations, and mailing addresses for all magistrates, as these were not publicly available. After the survey we requested information on (1) year of birth and (2) year of appointment of all magistrates in their court – emphasising that we did not want the names of individual magistrates. As we explained: “This information is critical for us to be able to assess the representativeness of the magistrates who responded to the survey; that is, to assess the relative similarity between the sample of respondents and all magistrates” (Doc #5).

Wider local or state issues can also affect judicial officers' engagement with research. For example, issues and controversy surrounding one chief magistrate, and related concerns about judicial independence, likely caused a relatively low survey response rate from magistrates in that jurisdiction (Doc #7). These circumstances also led to concerns being expressed about the financial structure of the grant (Doc #9) and about a draft article circulated for comment (Docs #8, #16).

One issue we had not anticipated was expectations of timing in relation to the production and reporting of findings. Chief magistrates expected research results very soon after the *Magistrates Survey 2002* was sent out, not realising the array of tasks involved in moving from completed survey booklets mailed back to generating preliminary findings: logging each returned survey booklet; setting up the statistical framework using the Statistical Package for the Social Sciences (SPSS); data entry and cleaning; transcribing the open-ended questions into a Word document; coding open-ended questions and entering those into SPSS; running data outputs; selecting variables for further analysis; preparing charts and tables; writing explanatory text. We incorporated some information about the detail of data analysis into early reports, presentations, and publications (Mack and Roach Anleu 2008). This information also showed magistrates and the industry partners more clearly how the funds were being spent.

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<sup>14</sup> One issue we had to resolve, along with the courts, was who are “magistrates” for the purposes of the survey. Do we include acting magistrates, registrars who sometimes sit as magistrates, retired magistrates who also sometimes sit as special magistrates? These roles differ from jurisdiction to jurisdiction. At the time of the 2002 survey, there were no part-time magistrates, but there were in the 2007 surveys, another axis of concern about identifiability.

It is essential to be clear about confidentiality and anonymity and to be scrupulous in maintaining it. This was especially significant for the Project, in light of the concerns expressed during the consultations, based on experiences with a previous survey. Detailed and precise explanations may be needed about how quotations in responses to open-ended questions in surveys might be used, and how anonymity can be protected (see Hunter *et al.*, 2008, on drafting a survey to “create little possibility of inadvertent identification” in an online survey). On the first page, the *Magistrates Survey 2002* booklet addressed identifiability:

Please do not write your name or address on this form. The information provided is anonymous. It will be reported in summary form; we may quote from those questions which ask for a written response. Individuals will not be identifiable either directly or indirectly by inference in any resulting presentation, publication or other communication.

Nonetheless, we received questions about anonymity and identifiability. An email from one magistrate stated: “My principal concern is that I am well and truly identifiable if not on the first page, then certainly by the second and by the end I may as well sign it .. it’s glaringly obvious to most!!” (Doc #2). Our response explained that the survey booklets were analysed collectively to identify patterns of responses, and no analysis was undertaken of each individual survey booklet. In addition, the Project website contains a detailed explanation regarding confidentiality and anonymity, based on material circulated to magistrates. At the other extreme, one high-profile judicial officer deliberately identified himself in his response, including a letter stating that his views were well known.

Each mailed survey booklet included a letter of support (from a suggested template which we provided) from the chief magistrate of the state/territory of the recipient, stating:

I urge you to complete the questionnaire fully and promptly. At the same time, it is important to emphasise that participation by any individual magistrate must be entirely voluntary. Magistrates may decline to respond to the survey as a whole or to particular questions. Equally, magistrates may choose to be as candid as they wish, as anonymity is assured. No information will be available which will enable me or the researchers to identify the responses of any individual, either directly or indirectly by inference. (Doc #24)

A letter from AAM, in similar terms, was included in the survey package mailed to the magistrates (Doc #25).

In sum, the front-end effort in advance of the *Magistrates Survey 2002* was huge, but it paid off. The response rate was 48 per cent.<sup>15</sup> While establishing rapport is crucial to undertake research, there will always be non-participants in research projects, where the choice to participate is genuinely voluntary, and researchers will not know their reasons.

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<sup>15</sup> Responses were received into January 2003, after two follow-up letters sent to all those mailed a survey expressing thanks to those who had returned the survey and reminding those who did not of the importance and confidentiality of the survey and reassuring them there was time to complete the survey. The survey was sent to 434 magistrates, and 210 surveys were returned (for more detail see Roach Anleu and Mack 2017, 179–182). The judiciary has been described as ‘difficult to study’ (Dobbin *et al.* 2001, 287) and response rates to surveys mailed to judicial officers vary widely (Appleby *et al.* 2019, Thomas 2023).



The next stage in the research design was a series of court observations. These entailed new and different kinds of collaboration, with more engagement with court staff.

#### 2.4.2. Court observations: Multi-faceted collaboration

Observations of the general criminal list, non-trial proceedings, including taking guilty pleas and sentencing, were undertaken in each state and territory, including metropolitan, suburban and regional locations.<sup>16</sup> These observations were undertaken almost entirely by SRA and KM together. On a few occasions observations were conducted by a research assistant with either KM or SRA (Roach Anleu *et al.* 2015, 2016).

By undertaking the field work ourselves, we were able to maintain, build on and extend the engagement which was developed during the earlier consultation and planning stages. The relationships forged with the chief magistrates and court administrators, the formal research relationship created by the grant, and connections with other magistrates, via AAM, the AIJA, the consultations and presentations at the various conferences and meetings, all contributed to the success of designing, planning and conducting the court observations.

Before visiting a court, each magistrate who might be observed was sent information detailing the research strategy (Doc #28). Because of local scheduling practices and constantly changing schedules and rosters, it was rarely possible to identify in advance the magistrate who would be conducting the criminal list, either because the roster was not prepared as far in advance as we needed for our planning, or because of last minute changes. The cover letter introduced us as researchers and stated explicitly the purposes of the court observations, what would happen to the resulting data and gave assurances of anonymity and confidentiality. It stressed that the research was not a performance evaluation of either an individual magistrate or a court. The letter also indicated that the magistrate could decline by returning a card to the researchers in an enclosed stamped envelope with guarantees that this decision would remain confidential to the researchers. A separate information sheet provided details of the research project and the rationale for court observation research strategy (Doc #29). This process was needed to comply with research ethics requirement for informed consent from human subjects of social research, even though the court proceedings observed were open to the public. This approach contrasts with an earlier court observation study in which it was decided not to inform the court of the researchers' presence but to sit anonymously in the general body of the court and record what was seen and heard (Legal Studies Department 1980) (see Branco 2023, regarding the need for authorisations for photographs of courts).

Later, as part of scheduling dates and locations, we again attempted to directly contact any magistrate who might be observed, to provide another confidential opt-out opportunity. Such contact was not always possible as rosters are sometimes not set until a week or even a day before. For each court visit, wherever possible, we offered to meet with any magistrate either before or after the court observations to answer any questions or to hear any views. These conversations were not recorded formally, though sometimes field notes were taken. As we undertook this preliminary work, it seemed

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<sup>16</sup> Thirty court sessions observed between August 2004 and July 2005 in 20 locations, including all capital cities, five suburban, and four regional locations involving 27 different magistrates comprising a total of 1287 matters.

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that some heads of jurisdiction may have tried to handpick which magistrate(s) we would observe, but we could not be certain about this.

For each location we proposed to visit, we contacted the court staff well in advance, to explain the nature and purpose of the research and to seek their assistance in facilitating our observations and access to the court records. Relationships with court staff and registrars were especially important to facilitate access to the court premises and courtrooms, and to enable access to court files for information that was not clear during the observation itself, such as details of the charges, information about the defendant, including demographic information or prior offences, and details of the court order. A research assistant undertook much of the file review, which was often done on the same day as the observations, when files were readily available. This process involved outstanding cooperation from busy court staff. On the day before the first scheduled court observation, at least one of the researchers visited the court to meet with relevant staff, and sometimes the magistrate, to answer any questions about the research project, view the courtroom, and obtain a copy of the list of the next day's cases. (See Branco (2023) on the difficulty of finding courts, especially via public transport.)

During the observations, we became aware that, in some courts, the sessions observed were being audio-recorded (see Hannaford-Agor 2023, regarding the need to be aware of structures, practices, and terminology across multiple jurisdictions). It then became our routine practice to request audio tapes, electronic audio files or typed transcripts (paper or electronic) that might be available. These were supplied, in one form or another, for all but one jurisdiction, where proceedings are not recorded. The ready supply of this material, not anticipated in the design phase and at some inconvenience and cost, reflects the strong collaborative relationships generated by this stage of the Project.

In the court observations, as researchers we participated in the "natural setting of the court room" (Roach Anleu *et al.* 2015, 145). While courtroom hearings are usually publicly accessible, our reasons for access were as researchers and this was known to the magistrate and court staff. In some courts, the magistrate mentioned at the beginning that there were researchers undertaking observations. On a few occasions when court was adjourned during a session, lawyers approached one or both observers and asked about our presence and activities, attesting to their implicit assessment that we were "out of place".

Having obtained the access we sought, we then needed to make decisions about how we would conduct the observations in each location. For example, arranging where observers are located in a research setting is often complex. In each courtroom, informal norms operate about who sits where in the public gallery and where legal practitioners and other participants or observers including journalists are seated. These norms can be different in different courtrooms.

An observer's physical location in the courtroom inevitably shapes the range of participants and activities that can be observed. Given the nature of a courtroom layout, observers had to be close enough to the bench and bar table to see and hear participants, with sufficient space for paperwork and rapid note taking, as well as aiming to be as unobtrusive as possible. Our locations ranged from seats in the public gallery, chairs against the wall at the side of the courtroom, or in areas set aside for the press. Wherever

located, the observers sat side by side. Similarly, in their research in the English Crown Court, Jacobson *et al.* (2015) indicate they sat mostly in the public gallery, though on occasion they were asked to sit in the seating reserved for probation officers and other officials. By comparison, in her research on judges and their work, Darbyshire sat – “in and out of court” – beside the 40 judges she observed, shadowed and interviewed (Darbyshire 2011, 2). In court observations in the Netherlands, Irene van Oorschot (2021) sat on the bench with the judges and was similarly robed. In his ethnography of the Conseil d’Etat and the making of French administrative law, Latour observed interactions in the public tribunal room as well as “behind the closed door where the cases were discussed, or, as they say ‘reviewed’” (Latour 2002/2010, viii). It is, of course, possible that our presence may have affected the behaviour of the magistrate during the proceedings. However, our formal observations were consistent with our earlier informal court attendance before undertaking the project, and our data revealed a wide range of judicial behaviour. This is consistent with other research findings “that any effect will be fairly minor, given the pressure to get through a list and the likelihood that judges will act accordingly in their ‘usual’ manner in order to achieve this” (Hunter *et al.* 2008, 86).

### 3. Publication of findings

One key feature of our research collaboration was our ability to maintain control of the data set and our right to continue to draw on it. We generated and maintained close collaboration but did not cede control or power to censor our findings or when and how they were communicated. Several factors supported this. First, independence is something judicial officers value for themselves, and so were able to understand the importance of research independence. Second, it was clear that the research findings would be more valuable for judicial officers and courts if the researcher is transparently independent. Third, maintaining strict researcher control over the data is the only way to guarantee the confidentiality and anonymity of the information they gave. This was especially important given the tensions within some courts among judicial officers, chief magistrates and/or court administration and government.

As part of the grant process, it was necessary to have a formal written Research Collaboration Agreement with all partners (Doc #1). This document provides for another important aspect of researcher independence from possible encroachment from the courts, though also imposing a practical burden of consultation.<sup>17</sup>

The Research Collaboration Agreement established key elements of our collaboration that extend to this day: our obligation to send out pre-publication drafts, to respect confidential information, and our right to publish regardless of objections (clauses 8.8, 10.4). These provisions have safeguarded our independence, making our work easier,

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<sup>17</sup> Clause 8.2 of the Agreement provided: “AAM and the Magistrates Courts recognise that under the policy of the University, the results of the work on the Project have to be publishable and agree that the researchers engaged on the project shall be permitted to present the Project Information at symposia, meetings and to publish it in books, journals, theses or dissertations, or otherwise of their own choosing.” Clause 8.5 stated: “Before publishing the Contact Officer for the Project must give a copy of the material to be published to each of AAM and the Magistrates Courts.” Finally, clause 8.6 indicated: “AAM and the Magistrates Courts each has one calendar month to advise the Contact Officer in writing of any objection to the publication and must give reasons for the objection and may suggest alterations to the material to be published.”

though the obligation to consult prior to publication has created additional work over many years. Though we did not appreciate the Project's longevity at the point of making the agreement, it is appropriate that we are obligated to disseminate findings and publication information to the judiciary throughout the lifespan of the research.

Over the past two decades, we have sent out drafts of every paper submitted for publication seeking comment from chief magistrates and the AAM executive (Doc #14) (see Appleby and Roberts 2023, on chief justices as responders to research). Some chief magistrates circulated the drafts to all magistrates in their jurisdictions (Doc #18). We have often received comments on papers, mostly expressions of appreciation at receiving them (Docs #17, #19, #21, and a few suggestions, for example, corrections or specific information on state/territory legislation, procedures and practices (eg Docs #15, #17, #18, #20, #21).

Many research reports, progress reports, and updates, were prepared and sent directly to AAM and chief magistrates, rather than or before submission for academic refereed publications. We also provided specially prepared reports at the request of individual chief magistrates, AAM or other professional associations (see Appleby and Roberts 2023, on chief justices as commissioners of research), and these sometimes entailed continuing communication and elaboration of findings (Doc #10).

#### **4. Enabling further research**

After completing the *Magistrates Survey 2002* and the National Court Observation Study, the Project continued to undertake other research in collaboration with courts and judicial officers. The *Magistrates Survey 2002* established the foundation for a second magistrates survey and for a judges survey in 2007. Planning and undertaking the 2007 surveys entailed building relationships with all trial and appellate courts, state and federal, the Council of Chief Justices, the Council of Chief Judges and a new professional association, the Judicial Conference of Australia (JCA).<sup>18</sup> as it then was. Perhaps there was a view among judges that the information generated by our research with magistrates would provide only a partial picture of the national judiciary, and engagement by the entire judiciary was essential for complete information. We also had a sense that the judges and the JCA did not want to appear less open and engaged with research relative to magistrates.

Undertaking the national court observations personally generated valuable understanding of court management and engagement with court administrators. This laid the groundwork especially for the work allocation study. As noted above, at the beginning of MRP, there was considerable resistance to studying magistrates' working hours. At a later stage, the question of researching workload issues revived, articulated as: "What is a fair day's work for a magistrate?" Our project on workload allocation was undertaken nationally with three courts (and the AIJA) as formal partners.

Since the work allocation research, we have also undertaken a national program of interviews of judges and magistrates across state courts, investigating courts and social change. More recently we have undertaken an investigation of judicial conduct guidance. We have drawn on all phases of the Project's research for a deeper

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<sup>18</sup> The JCA later became the Judicial Officers Association (JOA).

investigation into judicial impartiality and emotion in everyday judicial work. Using multiple, interrelated and iterative methods, and building from one study to another, enabled us to address a range of questions informed by the concerns of the judiciary and courts, guided by our own research interests and expertise.

While such collaborative relationships are essential to the career of a research project into the judiciary, they may not be sufficient. We had considerable support from a wide range of heads of jurisdiction and professional associations to undertake another project, but unfortunately the grant application was not successful (the grant scheme overall has a success rate less than 20%). This lack of funding was one factor in the turn, in our later research, to the use of cases and other publicly available materials (see Cahill-O'Callaghan 2023, and Opeskin 2023, on the use of secondary data).

## 5. Discussion and conclusion

This project developed in ways that we did not anticipate at its inception. Certainly, we did not expect a 20+ year lifespan, still evolving in new directions. Each stage led to new research questions, new proposals, new research strategies, new grant applications, new research collaborators, and wider international reach. All phases of the empirical research, and each method used, drew on networks established from the beginning, gradually widening throughout its life course. It is critical to maintain these relationships in various ways by:

- Offering to give presentations or individual reports to judicial audiences drawing on findings.
- Responding promptly to requests, and positively wherever possible.
- Communicating often and clearly; we provided brief progress reports for the AAM executive, Council of Chief Magistrates, Council of Chief Judges/Justices (Docs #33, #34).
- Providing information about publications, presentations other outcomes from the research.
- Seeking information from courts and the judiciary about their use of findings; they will not necessarily communicate this to researchers as a matter of course.
- Sending other kinds of correspondence, for example an end of year message via email, congratulations regarding new appointments, retirements, and honours.
- Recognising and expressing gratitude for their contributions, and the demands on them to provide it, especially court administrators and acknowledge their role in presentations and publications.

Some key advice can be summarised from our research experience and collaboration discussed above:

- Generate a wide range of activities and involvement with courts and the judiciary to create opportunities for research.
- Be ready to recognise and act on opportunities, however daunting.

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- Seek out champions within the courts, including judicial officers and court administrators, and in related professional associations or agencies such as judicial education providers.
  - In order to construct a mutually beneficial collaboration, be reflexive about your own disciplinary and institutional perspectives and goals.
  - Be candid about what benefits a proposed research project offers to them and to you.
  - Be clear about the limits of what research can reveal, and about timelines.
  - Seek feedback early and often about research plans, methods, progress; agree where possible, disagree respectfully with clear explanations.
  - Be very clear about how confidentiality and anonymity will be achieved and scrupulous about maintaining it.
  - Do as much face-to-face work yourself as possible, not through research assistants.
  - Control the data yourself and ensure the right to draw on it in the future.
  - Do not cede control over communication of findings or power to censor.
  - Seek support, not permission.

Following this advice entails a great deal of work beyond the core elements of empirical research itself, and collaboration will inevitably involve tradeoffs of varying degrees of difficulty for all participants. It is important to recognise that, there may have been some unique and non-replicable elements of this research (see Mulcahy and Tsalapantanis 2023, on the “danger of presenting a rosy picture of working with judges which will not be experienced by all who embark on similar projects”).

Over the past two decades, the judicial and research landscapes have changed significantly. Some courts and related government departments have ethics or research committees and other institutional processes that can increase the time and effort needed for planning and undertaking research.<sup>19</sup> While we sought support from heads of jurisdiction, we did not seek their permission to conduct the research, though this may now be needed in some courts. We and the judges and magistrates took the view that they were each independent judicial officers who could decide whether to participate by completing the survey instrument, accepting our presence to conduct the court observations, agreeing to be interviewed, or providing additional information. Judicial participation had to be voluntary; the head of jurisdiction could neither require nor prohibit individual judicial officer’s involvement. While we sought endorsement letters from heads of jurisdiction for each of the surveys and the court observations, the letters clearly emphasised the independence of each judicial officer’s decision whether to participate. In this way, judicial independence was of considerable assistance to our research.

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<sup>19</sup> See for example the UK Courts and Tribunals Judiciary (2020) guidance on making requests for judicial participation in research and requiring a formal application. It provides that: “Research seeking the participation of judicial office holders will be sent for consideration to the relevant Head of Division or the Senior Presiding Judge”.

The university environment has also changed, with increased reliance on metrics for evaluating research, its impact, publication, and workloads. This may make generating research reports directly for research partners and publishing in professional journals less attractive to academics, who may experience pressure to publish in high-ranking academic journals. At the same time, there are increasing expectations that research will have a measurable impact outside academia, so that research with external participants is encouraged (Mulcahy and Tsalapatanis 2023). Research reports directly to end-users may be classified as Non-Traditional Research Outputs, and thus receive formal recognition by the university. Pressures to seek external funding and produce income for individual universities have increased, as have expectations for international collaboration and large research teams.

The field encompassing empirical research into/with the judiciary has expanded considerably since our Project began. The variety and depth of empirical research on the judiciary in various countries and legal systems highlighted at the workshop is just one example of the increasing attention on the judiciary as a professional occupation and the court as a workplace. While these developments create more challenges for original, robust, independent empirical research involving judicial officers, it is still possible to create opportunities for and to undertake collaborative research successfully. This can benefit courts and the publics they serve, as well as advancing new socio-legal knowledge.

## References

- Appleby, G., and Roberts, H., 2023. Studying judges: The role of the Chief Justice, and other institutional actors. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1713>
- Appleby, G., et al., 2019. Contemporary challenges facing the Australian judiciary: An empirical interruption. *Melbourne University Law Review*, 42(2), 299-369.
- Australian Research Council, 2017. *ERA 2018: Submission guidelines* [online]. Commonwealth of Australia. Available at: <https://web.archive.org/au/awa/20220302235108mp> /<https://www.arc.gov.au/file/3781/download?token=Wq9o-CbM>
- Banakar, R., 2000. Reflections on the methodological issues of the sociology of law. *Journal of Law and Society* [online], 27(2), 273–295. Available at: <https://doi.org/10.1111/1467-6478.00154>
- Banakar, R., and Travers, M., 2005. *Theory and method in socio-legal research*. Oxford/Portland: Hart.
- Barrett, L.F., 2017. *How emotions are made: The secret life of the brain*. Boston: Houghton Mifflin Harcourt.
- Becker, H.S., 1998. *Tricks of the trade: How to think about your research while you're doing it*. Chicago/London: Chicago University Press.
- Berger, B., and Berger, P.L., 1972. *Sociology: A biographical approach*. New York: Basic Books.

- Bergman Blix, S., and Wettergren, Å., 2015. The emotional labour of gaining and maintaining access to the field. *Qualitative Research* [online], 15(6), 688–704. Available at: <https://doi.org/10.1177/1468794114561348>
- Branco, P., 2023. Analysing courthouses' spaces, places and architecture: Some methodological outlines. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1692>
- Cahill-O'Callaghan, R., 2023. When you cannot ask the judge: Using the case to explore judicial culture. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1745>
- Casaleiro, P., and Jesus, F., 2023. *Judicial working contexts as a field of interdisciplinary empirical research*. Paper presented at “Empirical Research with Judicial Professionals and Courts: Methods and Practices”, Oñati, Spain, 23–24 June.
- Cook, P.S., 2014. “To actually be sociological”: Autoethnography as an assessment and learning tool. *Journal of Sociology* [online], 50(3), 269–282. Available at: <https://doi.org/10.1177/1440783312451780>.
- Courts and Tribunals Judiciary, 2020. Judicial participation in research projects [online]. 16 October. London: Judicial Office. Available at: <https://www.judiciary.uk/guidance-and-resources/judicial-participation-in-research-projects/>
- Darbyshire, P., 2011. *Sitting in judgment: The working lives of judges*. Oxford/Portland: Hart.
- Denzin, N.K., 2009. *The research act: A theoretical introduction to sociological methods*. New York: Routledge.
- Dias, J.P., Conceição, G., and Henriques, M., 2023. Conducting socio-legal research in Portugal: from the experience of the Permanent Observatory for Justice to the study of working conditions in courts. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1735>
- Dickson-Swift, V., et al., 2009. Researching sensitive topics: Qualitative research as emotion work. *Qualitative Research* [online], 9(1), 61–79. Available at: <https://doi.org/10.1177/1468794108098031>
- Dillman, D., 1978. *Mail and telephone surveys: The total design method*. New York: Wiley.
- Dobbin, S.A., et al., 2001. Surveying Difficult Populations: Lessons Learned from a National Survey of State Trial Court Judges. *Justice System Journal*, 22, 287–307.
- Dusdal, J., and Powell, J.J.W., 2021. Benefits, motivations, and challenges of international collaborative research: A sociology of science case study. *Science and Public Policy* [online], 48(2), 235–245. Available at: <https://doi.org/10.1093/scipol/scab010>
- Elder, G.H., Johnson, M.K., and Crosnoe, R., 2003. The emergence and development of life course theory. In: J.T. Mortimer and M.J. Shanahan, eds., *Handbook of the Life course* [online]. Boston: Springer, 3–19. Available at: [https://link.springer.com/chapter/10.1007/978-0-306-48247-2\\_1](https://link.springer.com/chapter/10.1007/978-0-306-48247-2_1)



- Fitzpatrick, P., and Olson, R.E., 2015. A rough road map to reflexivity in qualitative research into emotions. *Emotion Review* [online], 7(1), 49–54. Available at: <https://doi.org/10.1177/1754073914544710>
- Granovetter, M.S., 1973, The strength of weak ties. *American Journal of Sociology* [online], 78(6), 1360–1380. Available at: <https://doi.org/10.1086/225469>
- Halliday, S., and Schmidt, P., eds., 2009. *Conducting law and society research: Reflections on methods and practices*. Cambridge University Press.
- Hannaford-Agor, P., 2023. "How exactly is it done here?" Conducting cross-jurisdictional research with judges and court staff. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1702>
- Hochschild, A.R., 1983. *The managed heart: Commercialization of human feeling*. Berkeley: University of California Press.
- Holmes, M., 2010. The emotionalization of reflexivity. *Sociology* [online], 44(1), 139–154. Available at: <https://doi.org/10.1177/0038038509351616>
- Holmes, M., 2015. Researching emotional reflexivity. *Emotion Review* [online], 7(1), 61–66. Available at: <https://doi.org/10.1177/1754073914544478>
- Hunter, C., Nixon, J., and Blandy, S. 2008, Researching the judiciary: Exploring the invisible in judicial decision making. *Journal of Law and Society* [online], 35(S1), 76–90. Available at: <https://doi.org/10.1111/j.1467-6478.2008.00426.x>
- Jacobson, J., Hunter, G., and Kirby, A., 2015. *Inside Crown Court: Personal experiences and questions of legitimacy*. Bristol: Policy Press.
- Katz, S.J., and Martin, B.R., 1997. What is research collaboration? *Research Policy* [online], 26(1), 1–18. Available at: [https://doi.org/10.1016/S0048-7333\(96\)00917-1](https://doi.org/10.1016/S0048-7333(96)00917-1)
- Latour, B., 2010. *The Making of Law: An ethnography of the Conseil d'Etat*. Trans.: M. Brillman and A. Pottage. Cambridge: Polity Press. (Originally published in 2002).
- Legal Studies Department, 1980. *Guilty, your Worship: A study of Victoria's Magistrates' Courts*. Bundoora: La Trobe University.
- Lofland, J., et al., 2005. *Analyzing social settings*. Routledge: New York.
- Mack, K., and Roach Anleu, S., 1995. *Pleading guilty: Issues and practices*. Carlton: Australian Institute of Judicial Administration.
- Mack, K., and Roach Anleu, S., 2008. The National Survey of Australian Judges: An overview of findings. *Journal of Judicial Administration* [online], 18(1), 5–21. Available at: <http://ssrn.com/abstract=2623437>
- Mack, K., Roach Anleu, S., and Tutton, J., 2017. Pleading guilty: Issues and practices – A socio-legal research case study. *Journal of Judicial Administration*, 27(1), 21–44.
- Mack, K., Wallace, A., and Roach Anleu, S., 2012. *Judicial workload: Time, tasks and work organisation*. Melbourne: Australasian Institute of Judicial Administration.
- Mark, A., 2023. Perceptions of administrative policymaking authority: evidence from interviews in three state court systems. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1706>

- 
- Mulcahy, L., and Tsalapatani, A., 2023. Handmaidens, partners or go-betweens: Reflections on the push and pull of the judicial and justice policy audience. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1707>
- OECD, 2015. *Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development* [online]. Paris: OECD. Available at: <https://doi.org/10.1787/9789264239012-en>
- Opeskin, B., 2023. Lazy data? Using administrative records in research on judicial systems. *Oñati Socio-Legal Series* [online], 13(S1-this issue). Available at: <https://doi.org/10.35295/osls.iisl.1624>
- Roach Anleu, S., and Mack, K., 2008. The professionalization of Australian magistrates: Autonomy, credentials and prestige. *Journal of Sociology* [online], 44(2), 185–203. Available at: <https://doi.org/10.1177/1440783308089169>
- Roach Anleu, S., and Mack, K., 2017. *Performing judicial authority in the lower courts* [online]. London: Palgrave. Available at: <https://link.springer.com/book/10.1057/978-1-137-52159-0>
- Roach Anleu, S., and Mack, K., 2019. Impartiality and emotion in everyday judicial practice. In: R. Patulny et al., eds., *Emotions in late modernity* [online]. Abingdon/New York: Routledge, 253–266. Available at: <https://doi.org/10.4324/9781351133319>
- Roach Anleu, S., and Mack, K., 2021. *Judging and emotion*. London: Routledge.
- Roach Anleu, S., Bergman Blix, S., and Mack, K., 2015. Researching emotion in courts and the judiciary: A tale of two projects. *Emotion Review* [online], 7(2), 145–150. Available at: <https://doi.org/10.1177/1754073914554776>
- Roach Anleu, S., et al., 2016. Observing judicial work and emotions: Using two researchers. *Qualitative Research* [online], 16(4), 375–391. Available at: <https://doi.org/10.1177/1468794115579475>
- Thomas, C., 2023. *2022 UK Judicial Attitude Survey*. London: UCL Judicial Institute.
- van Oorschot, I., 2021. *The law multiple: Judgment and knowledge in practice*. Cambridge University Press.

## **Annex: Documents cited or referenced**

1. Research Collaboration Agreement (7 February 2002)
2. Email from magistrate to authors regarding confidentiality (19 December 2002)
3. Letter from authors to chief magistrates (3 September 2002)
4. Letter from authors to magistrate (1 October 2002)
5. Letter from authors to chief magistrates (13 June 2003)
6. Letter from authors to xxx (name of recipient redacted to preserve anonymity) (7 July 2003)
7. Letter from authors to xxx (name of recipient redacted to preserve anonymity) (24 March 2004)
8. Letter from authors to magistrate (15 September 2004)
9. Letter from authors to magistrate (5 October 2004)
10. Letter from authors to magistrate (11 December 2003)
11. Draft version of *Magistrates Survey 2002* (18 February 2002)
12. Comments from magistrate on the draft survey (February 2002)
13. Letter from magistrate, enclosing comments from four other magistrates on the draft survey (19 March 2002)
14. Email from authors to chief magistrate seeking comment on a draft article (11 March 2004)
15. Comments from magistrate to authors on a draft article (6 October 2005)
16. Email from a chief magistrate to authors raising concerns regarding a draft article and authors' response
17. Email from magistrate to authors, commenting on a draft article (6 November 2004)
18. Email from chief magistrate to authors, commenting on a draft article and correcting legislation references in a footnote (8 June 2004)
19. Email from magistrate to authors, commenting on draft article (21 May 2004)
20. Email from magistrate to authors, giving an additional comment to earlier email (see doc #15 above) (6 October 2005)
21. Letter from chief magistrate, enclosing comments from two magistrates on draft article (23 November 2005)
22. Written outlines for consultations (December 2000)
23. Detailed notes for presentation to the AIJA magistrates conference, Brisbane (11 September 2002)
24. Cover letter from chief magistrate to magistrates with *Magistrates Survey 2002* (October 2002)

25. Cover letter from AAM to magistrates with *Magistrates Survey 2002* (October 2002)
26. Association of Australian Magistrates, *Future Directions for the Magistracy* (Discussion Paper, 1994)
27. Research Proposal entitled "The Magistrate in the 21<sup>st</sup> century" from a chief magistrate (1996)
28. Preliminary letter for court observations
29. Information sheet re court observations
30. Pilot version of *Magistrates Survey 2002* (August 2002)
31. UICRG progress report to University (July 2001)
32. Grant application for *The Changing Role of Magistrates Courts* (April 2001)
33. Project report to AAM Executive (May 2001)
34. Project progress report (November 2001)