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## Two tiers of judicial officers

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### Abstract

In this article I reflect on the conception, methodology and findings of a study of judicial officers' psychological wellbeing undertaken by a team comprised of two psychology and two law researchers. I am one of the lawyers. The article unpicks the unexpected significance of court hierarchy for those on the bench and the ethical challenges arising from judges' revelations of their exposure to potentially lethal degradation and abuse. Law, and I as a lawyer, view the adjudication process as outcome oriented. Judges are less visibly "human" than parties, lawyers and witnesses. Instead, judges present and perform the Law. This lawyer anticipated judges' tasks of deploying legal knowledge at high levels, confronting graphic evidence and high profile unfair public criticism would be prominent triggers to invoking judicial stress. My psychology colleagues drew on psychological trauma literature that suggests that unlike first responders, judges are high-achieving professionals exercising authority in complex, highly visible, but isolating environments. The study's findings were surprising, debunking my expectation of relatively homogeneous judicial experiences. Instead, they showed that the impact and nature of magistrates' exposure to workplace trauma is sui generis.

### Key words

Judges' work; magistrates; coping; "toxic emotional overload"

### Resumen

En este artículo reflexiono sobre la concepción, la metodología y los resultados de un estudio sobre la salud psicológica de los funcionarios judiciales realizado por un

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I wish to thank my research colleagues in the UNSW Judicial Traumatic Stress Study (UNSW Study), Dr K. O'Sullivan and Professors Prue Vines and Richard Kemp for their support of this article, and Dr O'Sullivan, Professor Juliet Bourke, Professor Sharyn Roach Anleu for their comments and suggestions.

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equipo formado por dos investigadores/as en psicología y dos en derecho. Yo soy uno de los investigadores especializados en derecho. El artículo desvela la inesperada importancia de la jerarquía judicial para quienes ocupan los estrados y los retos éticos que plantean las revelaciones de los jueces sobre su exposición a una degradación y un abuso potencialmente letales. El derecho, y yo, como abogada, consideramos que el proceso de adjudicación está orientado a los resultados. Los jueces son menos visiblemente “humanos” que las partes, los abogados y los testigos. En su lugar, los jueces presentan y ejecutan el derecho. Esta abogada había previsto que las tareas de los jueces de desplegar conocimientos jurídicos a altos niveles, enfrentarse a pruebas gráficas y a críticas públicas injustas de alto nivel serían desencadenantes destacados para invocar el estrés judicial. Mis colegas psicólogos se basaron en la literatura sobre traumas psicológicos que insinúa que, a diferencia de los primeros intervinientes, los jueces son profesionales de alto rendimiento que ejercen su autoridad en entornos complejos, muy visibles, pero aislantes. Los resultados del estudio fueron sorprendentes, pues echaron por tierra mis expectativas de que las experiencias judiciales fueran relativamente homogéneas. En cambio, demostraron que el impacto y la naturaleza de la exposición de los magistrados al trauma laboral es sui generis.

### **Palabras clave**

Trabajo de los jueces; magistrados; afrontamiento; “sobrecarga emocional tóxica”

## Table of contents

1. Introduction .....	S255
2. Australian Courts and the 2019 Study .....	S257
2.1. A short overview of Australia’s courts .....	S257
2.2. The 2019 study.....	S258
3. The complexity of context .....	S265
3.1. Justice in high volume.....	S265
3.2. Judicial career life and death.....	S267
3.3. Conduct transgressions, career “death” and mental health.....	S269
4. Speaking of a sensitive topic.....	S270
4.1. The empirical researchers’ dilemma .....	S270
4.2. Reporting descriptions of judicial psychological distress.....	S271
5. Concluding on “a different world” .....	S272
References.....	S274
Cases, coroners’ reports, judicial conduct reports .....	S277
Legislation.....	S277

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## 1. Introduction

This article traces my responses to and reflections on the conception, methodology and findings of a 2019 empirical study surveying the psychological wellbeing of Australian judicial officers in the state of New South Wales (Hunter *et al.* 2021, O'Sullivan *et al.* 2022). Judicial wellbeing is a topic outside my usual research orientation. Typically, I examine criminal trial processes, including their history, laws and their contemporary challenges. However, I was invited into the project by the lead psychology researcher, with two more researchers subsequently joining to create a team of four, evenly split between law and psychology. I took the view that judges' roles in trials, and hence their capacity to support the courtroom process was a sufficient fit with my research focus even though measuring impacts on psychological wellbeing is beyond my expertise.

My reflections below arise primarily from my early doubts that the judicial workplace would be a fertile locus for stress and trauma, particularly compared to pressures described in the psychological research literature regarding work pressures of first responders and allied support workers (Bride 2007, Lee *et al.* 2017). Compared to these workers, I surmised that the judiciary's capacity to wield law's coercive force within their courtroom empowered them sufficiently to deal with the pressure points of judicial work. The lead researcher, a psychology colleague, conceived of the project by drawing on his discipline's literature, discussed below. This literature suggests that unlike first responders, judges are high-achieving professionals exercising authority in complex, highly visible, but their vulnerability to psychological pressure arises from their isolating environments where for some, their working day is impacted by vicarious trauma and by threats. In deferring to this research focus, I accepted that it was justifiable to employ the survey-focus of previous psychological studies. Absent the psychology literature, my inclination was to proceed with interviews and ethnographic observation that would add contextual detail and facilitate the revelation of unexpected factors. However, a strength in the proposed survey methodology was that it was based on validated psychometric measures. These measures create a capacity to establish a baseline of impact on judicial officers' wellbeing with precision and they allow comparison with research that has applied the same psychometric scales to different population groups. I reasoned that if this methodology established the presence and extent of a problem, follow up studies could interrogate why and how a problem manifests and how it might be addressed.

My scepticism for focusing on judicial wellbeing arose from several sources. First, I harboured the view that courtroom pressures were likely to create more psychological harm to defendants, victims of crime, witnesses and their families than to those on the judicial bench. I surmised however, that if any court level was likely to place its judicial officers under psychological pressure, it was most likely to be in the state's intermediate court, known as the New South Wales District Court. I discuss the state's court hierarchy below, but for present purposes it is relevant to appreciate that these intermediate level judges preside over back-to-back jury trials. As a lawyer, I am aware that these judges typically experience a high-pressured curial environment because they preside over a parade of child, as well as adult, sexual assault prosecution trials. For example, the 2021 New South Wales District Court Annual Report indicates (at p. 16) that "the number of sexual assault trials registered in 2021 was 571 compared to 512 in 2020 and 577 in 2019.

Of these, 284 trials involved child sexual assault compared to 263 in 2020 and 307 in 2019.” Such trials require judges to resolve complex legal and procedural issues that are typically vigorously contested by defence lawyers testing prosecution witnesses’ accounts where vulnerable witnesses can be subjected to extensive and gruelling cross-examination. Trial judges are guaranteed complex legal challenges mixed with a daily trail of emotionally laden graphic evidence. The District Court judge’s task is further complicated by the adversarial dynamic of Australian trials that limits judges’ capacity to intervene to protect such witnesses, such that a judge’s attempt to protect a witness may readily trigger an appeal ground. These dynamics add complexity to what is an intrinsically demanding workload. I reasoned that in all, these judges are likely to carry significant psychological burdens.

A second unanticipated revelation from the 2019 study’s findings was the impact of media commentary on judicial officers, drawing on the fact that judges are generally unable to speak out against media criticism, even if it is unfair or unwarranted. Such commentary might sensationalise an outcome, particularly a sentencing decision perceived as too lenient or a grant of bail that was previously refused by police. The bulk jury trial courts, that is, District Courts, appeared to me to be heavily frequented by court reporters. This is particularly notable in New South Wales in the large court precinct known as the Sydney Downing Centre. This building houses several intermediate court courtrooms, as well as first instance magistrates’ courts (known in New South Wales as Local Courts). Journalists and TV crews are often seen during the day, and later on the television news, door-stopping litigants’ or lawyers as they exit the building.

Of course, I was familiar with Roach Anleu and Mack’s research exposing the intense emotional labour expended by Australian magistrates in masking their feelings during the courtroom “passing parade” of “absolute misery” of lives damaged by the intersection of disadvantage, addiction, mental illness and the criminal justice system. As well, Roach Anleu and Mack’s research shows magistrates are psychologically burdened by the intergenerational consequences of such harms writ large (Roach Anleu and Mack 2005). However, conversations with some District Court judges describing the personal toll from vicarious trauma when they preside over child sexual trials led me to anticipate that these judicial officers were the most likely sector of the judiciary to experience potential psychological injury.

My assumptions were mistaken. The study’s findings revealed that wrangling legal complexity did not rate as a significant pressure-point for a particular cohort of judicial officer. Nor did District Court judges’ management of jury trials stand out as a special psychological burden on their well-being. Further, judges’ concern about adverse or unfair reporting was shared relatively evenly across all court levels. However, the magistrates’ court was prominent as a judicial workplace of stress and trauma. This revelation of the pressures on magistrates led me to explore other perspectives that might shed light on psychological pressures generated by NSW magistrates’ work. First, I compared the volume of cases before this first instance court relative to the higher courts, and second, as three coronial reports were handed down as we were analysing our survey findings, I also drew on two Victorian and one New Zealand coronial report that throw light on courtroom pressures. Finally, as a result of respondents’ survey comments, I examined available NSW judicial conduct inquiry reports. These three

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categories of additional data offer some excellent insights into a magistrates' day. These data sources are not perfect in triangulating the survey's psychometric results. For example, the timing of the magistrates' workplace-related deaths is just before and just after the administration of the survey in August 2019, and these judicial officers were not working in NSW. But they were in closely analogous jurisdictions. Judge Ronayne's circumstances, in a New Zealand intermediary court, are the most remote, but in this instance the coroners' observations transcend this limitation by the depth of the examination of the challenges facing judicial officers. These other sources link a number of potential triggers in the mundane business of a first instance Australian court. This article concludes with some reflections on the dilemma we researchers faced with the graphic nature of respondents' scenario examples, causing me to reflect on how a researcher handles sensitive findings.

## 2. Australian Courts and the 2019 Study

### 2.1. *A short overview of Australia's courts*

Australia's federated political system places judicial work in either the state/territory or the federal court system. All the judicial officers surveyed in the 2019 study worked in a state court that has both criminal and non-criminal jurisdictions. For ease of exposition, and because – in broad terms at least – criminal cases appear to dominate the field of judicial traumatic stress, the following summary is framed in terms of New South Wales courts' criminal case work.

The Australian court hierarchy is typical of courts globally in that the severity of courts' sanctions flowing from a conviction determines the court level for hearing a particular case. Homicide trials and the most serious major crimes dominate the highest court. In New South Wales, as in other Australian states, this is known as the Supreme Court. As mentioned earlier, an intermediate court level exists in all the large Australian states, but not in the state of Tasmania, the Australian Capital Territory and the Northern Territory). In New South Wales, this level is known as the District Court. It hears the remainder of the most serious criminal charges, that is, all non-homicide serious offences, including significantly serious fraud, breaking and entering premises, robbery and sexual assault and other crimes of serious violence (NSW BOCSAR 2022). Like the Supreme Court, in the District Court most contested criminal prosecutions are determined by a jury of twelve citizens.

The magistrates (Local Court) jurisdiction is limited to summary offences and to certain indictable offences permitted to be finalised before a magistrate. While the Local Court hears the least serious criminal charges, such as traffic and vehicle regulatory offences, applications and breaches for Apprehended Violence Orders, bail, Community Service Orders, and acts causing injury that is insufficiently serious for the intermediate court jurisdiction, it has increasingly gained jurisdiction over significant criminal offences. Local Court judicial officers can adjudicate on prosecutions for sexual assault, child pornography, less serious fraud, and deception, as well as resisting arrest and bribery of officials. These magistrates can order a term of imprisonment of up to two years for a single offence, and up to five years for several offences.

## 2.2. *The 2019 study*

The aim of the 2019 study was to fill gaps in the international psychological research that point to the significance of work-related stress and vicarious trauma in the judiciary but have not identified with precision the actual incidence and impact of these pressures on judicial officers.

### 2.2.1. Previous research

In Australia, Roach Anleu and Mack have pioneered socio-legal understanding of judicial work, particularly in the magistrates' court. Their studies have explored emotional labour, work-related stress and wellbeing in general, as well as characteristics associated with job satisfaction. Their studies are based on surveys, court observations and interviews and have produced findings important to appreciating magistrates' heavy workload and high levels of stress. Roach Anleu and Mack have also identified ways in which judges manage work-related stress, including strategies for debriefing (Roach Anleu and Mack 2005, 2014, 2017, 2021). The first Australian psychological study focusing on judicial work applying psychometric measures regarding the impact of stress and trauma was undertaken by Schrever *et al.* (2019). Schrever relied on a range of validated psychometric measures in a survey and interview format. Schrever *et al.* (2022) found that magistrates reported significantly higher levels of stress, exhaustion, distress, and anxiety, and lower levels of autonomy and relatedness than higher court judicial officers. Schrever's findings support those of Roach Anleu and Mack, identifying high psychometric scores on measures of burnout and secondary traumatic stress, and levels of alcohol use.

Internationally, the early psychological research in relation to the judiciary was dominated by North American studies (Zimmermann 1981a, 1981b, Harris *et al.* 2001, Jaffe *et al.* 2003). These studies identified the isolated nature of judicial work, and the challenge of burnout in the judiciary. They typically relied on large-scale surveys and brought to light the presence of threats and vicarious trauma as issues impacting on judicial wellbeing. Later studies, using surveys and interviews have linked vicarious trauma to judges' exposure to sexual and non-sexual violence and established the adverse impact of trauma on judges' health and their work, including their job satisfaction (Chamberlain and Miller 2009, Flores *et al.* 2009, Resnick *et al.* 2011, Miller *et al.* 2018, Edwards and Miller 2019). More recently a US national judicial wellbeing survey has identified a broad array of recommendations (Swenson *et al.* 2020, 19–32). These range from self-care strategies, ready access to health and allied health professional care, peer support, phone helplines, induction programs, strategies that communicate and demonstrate prioritising judicial well-being (including risk factors such as vicarious or secondary trauma), and specific measures to address caseload and staffing pressure points. Interestingly, the authors also recommend that judicial conduct commissions have capacity to offer interventions and resources that directly target psychological health, rather than addressing conduct as a disciplinary matter.

Beyond the US, Rossouw and Rothmann in South Africa have found that most judges reported gaining job satisfaction from their strong sense of serving justice and making a difference in society (Rossouw and Rothmann 2020a, 2020b). In Britain, Thomas' U.K. *Judicial Attitude Survey*, has sought feedback on a raft of issues relating to judges'

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motivation and morale. It has been administered on four occasions between 2014 and 2022, enabling it to measure longitudinal trends. While it reported on stress in the workplace, the survey frames stress in terms of workload, support and time constraints and also addresses broader issues, such as judicial attitudes to leadership in the courts, personal safety concerns, sense of being valued and respected, job satisfaction, and inclination to leave the judiciary prior to retirement (Thomas 2015, 2017, 2021, 2023).

### 2.2.2. The 2019 study: methodology and findings

The research preceding the 2019 study identified events of potential impact on judicial officers' wellbeing, but Roach Anleu and Mack and Schrever aside, did not identify with any precision the nature of that impact, or where in the court system, those pressure points are located. The 2019 study sought to provide that specificity, picking up on vicarious trauma and threats as pressures identified in the earlier research. As outlined below it sought to identify and measure the causes and impact of stress and trauma on judicial officers by way of online survey. This survey was administered through the independent state statutory body, the Judicial Commission of New South Wales. The Commission drew on its comprehensive distribution list of all state judicial officers, and of a large cohort of retired or acting judicial officers. It also assisted with the construction, distribution of the survey, sending one follow-up reminder. The researchers timed the distribution of the survey around judicial conferences where it was also mentioned informally by speakers. The Commission hosted an advisory committee of judicial officers from all court levels that guided refining and finessing the survey's scope and some of its language. Heads of jurisdiction varied in their active promotion of the survey to judicial officers, with Chief Magistrate being particularly energetic in this respect. Finally, the Commission ensured no re-identification had emerged in judicial officers' responses.

Survey responses were received from two hundred and five of 371 (55%) judicial officers. These responses were overwhelmingly from judicial officers from the Local Court - that is, with 125 (61%) magistrate respondents. Significantly lower response rates came from the Supreme Court (10%, n=21) and the District Court (11%, n=23).<sup>1</sup> We can only speculate on the reasons for this difference in magistrates' rate of response compared to that of judges in the higher courts. As mentioned, we know that magistrates were strongly encouraged by their head of jurisdiction to participate, but it is impossible to determine whether this encouragement and the high level of magistrates' participation is due to Local Court magistrates' recognition of unaddressed pressures on psychological wellbeing, or for other reasons.

Survey questions were directed solely to psychological measures of stress and trauma. To these ends the study employed two scales: the Kessler 10 Scale (K10), which is commonly used by psychologists to measure general wellbeing and the Impact of Event Scale – Revised, known as the IES-R, that measures symptoms linked to post-traumatic stress disorder (PTSD). The IES-R scale, like the K10, gauges psychological well-being through a strictly standardised set of questions. The survey did not distinguish the different levels of the court hierarchy, nor did they invite responses about job

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<sup>1</sup> The second highest category of responses was the cohort that did not specify their court: 17.6%.



satisfaction. Instead, judicial officers were questioned on general stress and traumatic stress with three contexts being a particular focus:

- *threats* made to judicial officers.
- *vilification* of judicial officers; and
- *vicarious trauma* in their work.

I have some complicated reflections arising from my deference to a survey methodology that is primarily reliant on validated psychometric measures. While these measures gauge the extent of the problem for those with the psychological expertise to appreciate the significance of the scale, they are cryptic when interpreted by non-psychologists. Further, the scores alone do not offer direction on the mechanisms that may be utilized to address the identified problems. However, once placed within a matrix of other sources informing on the work of judicial officers – effectively, a triangulation of data - combined with the personal nature of judicial officers’ responses, the psychometric scales assist to translate what might be otherwise considered individual challenges, into identifiable systemic workplace ones. In addition, the psychometric scales strongly support recognition that judicial work is court-specific rather than homogenous in its incidence and impact on judicial officers’ psychological wellbeing.

Another feature of the psychometric scale questions is that they are directed to a person’s feelings, for example the K10 scale questions ask “how often a respondent felt ‘everything was an effort?’”, or how often they felt “so sad that nothing could cheer you up?”, or “feelings of worthlessness”? In the IES-R scale respondents are asked how often their feelings regarding a nominated incident “were kind of numb” or if they possessed feelings of being “watchful and on-guard”. These questions appear likely to prompt openness and reflectivity from respondents by (as discussed below), inviting respondents to take off their super-human mask within the relative privacy of an online de-identified survey. However, as discussed in Part 4, this openness ultimately created challenges in reporting our findings on the specifics of the impact of vicarious trauma.

### 2.2.3. Summary of findings

Overall, the study’s findings reveal high levels of stress and traumatic stress. On the K10 scale of psychological distress, 25.9% of respondents scored in the “moderate” range, 18.9% of them scored in the “high” range, and 9.8% in the “very high” range. This distribution of distress is much higher than that measured in the general population. For example, O’Sullivan *et al* (2022) refer to an Australian study by Andrews and Slade (2001) of over 10,000 adults having a “low” (10-15) mean K10 score of 14.2 and 68% scoring “low” or less than “low” in psychological distress (that is, below a K10 score of 15). With respect to the measures relating to vicarious trauma, three quarters (75.1%) of the judicial officer respondents reported exposure to events that potentially raised vicarious trauma. On the IES-R trauma measure, 30.3% of the 124 respondents who completed this section of the survey scored higher than the cut-off commonly used to indicate a probable diagnosis of PTSD (O’Sullivan *et al.* 2022).

Overall, relative to the other courts, magistrates in the Local Court reported being more exposed and impacted by potential distress events. These events created greater impact on both their general wellbeing and in generating trauma-related symptoms (O’Sullivan *et al.* 2022). Specifically, the 0–88 point IES-R measure of the impact of traumatic stress,

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was eleven points higher for Local Court magistrates than for their higher court judicial colleagues. Magistrates endorsed more potential sources of vicarious trauma with consequent greater traumatic impact than their colleagues in the higher courts. However, they experienced marginally less vilification. Regarding threats, compared to the other judicial officers, magistrates experienced more significant numbers of threats, and these impacted on them significantly if they worked in regional courts. Probably the most alarming finding was that a high percentage of magistrates' IES-R scores rated with a severity of the "probable PTSD diagnosis category" or greater (O'Sullivan *et al.* 2022). The findings indicate that these high scores arose from magistrates' excessive workload and the three targeted causes of traumatic stress – threats, vilification and vicarious trauma. The K10 and IES-R findings establish that there is a significant work-related psychological wellbeing problem, particularly in relation to Local Court judicial officers. Further, we can identify that vicarious trauma and threat, combined with a high-volume caseload, are significant and potentially serious psychological pressures on judicial officers in the Local Court. The data indicates that evidence of sexual violence on a child or an adult most commonly generated vicarious trauma, and that judicial officers experience serious threats more often in court, in person, than elsewhere.

As mentioned above, the scores, even when calibrated according to the categories of threat, vilification and vicarious trauma, do not however, explain the dynamics of these pressure-points. For example, is vicarious trauma that is collateral to receiving certain evidence, avoidable or can it be mitigated by particular actions? Could a judicial officer gain resilience by less intense exposure, or by forewarning? Or is the impact of vicarious trauma inevitable in the context of the judicial obligation in certain kinds of work to receive accounts of severe violence, disadvantage and human degradation? The findings in relation to threats may (and do) establish a strong case for court security, but should efforts be better placed into litigant support? How or why these threats occur? Is there a mental health issue in the community, intersecting with criminal justice incidents, that might be addressed in some other way? Is the pace required to address the volume of cases before magistrates, giving rise to these dangers? These questions are not answered by the psychometric scales.

That said, the survey also elicited graphic detail that helped to explain differences across court levels by seeking description of examples from judicial officers who indicated that they had experienced a threat, vilification or had been exposed to trauma-related material. Questions also invited respondents with the following format: "Thinking of the MOST DISTRESSING incident that you have experienced at work, please say briefly what it was" before leading into questions on the IES-R scale. Open-ended text boxes throughout the survey led to further exposition of judicial officers' workplace experiences. For example, in response to the above "MOST DISTRESSING" incident question, intermediate court (District Court) judges' responses tend to focus on graphic evidence of human depredation. In relation to threats in the courtroom, only one District Court judge described an in-court incident, not about evidence. It was a party in the court room "pointing his finger at me and yelling that 'you will regret this'" while in the court above, the Supreme Court, two responses also referred to "verbal abuse" (following the refusal of bail) and a self-represented litigant on video link being "aggressive abusive manipulative [and] insulting". However, and compared to the higher courts, I did not anticipate the alarming escalation into overt violence described

by magistrates' experiences of in court threats. Magistrates described attempted assaults in court by litigants, such as "running toward [the] bench" with another describing two "incidents of accused persons running to attack me on the bench. One restrained on the floor of the Court, the other stopping less than a metre away". They also described intimidating conduct, such as a person sending

hundreds of emails to the court – many of which were threatening to me [and] one day he walked into my court carrying a long bag of sorts and sat directly opposite me. (...) I had no sheriff or any security.

There were also references to magistrates "being stalked" and to death threats, including on the magistrate's family. Another magistrate described how close to the surface fear of a conduct complaint might be when they raised their voice, seeking to quell in-court commotion during a litigant's violent outburst. The situation concerned "an unrepresented woman who was hysterical, abusive, aggressive and argumentative" neither following direction nor unwilling to leave the courtroom. The magistrate continued,

The situation appeared to be out of hand and I was not prepared to leave the Court room with Court staff, practitioners and members of the public present and possibly in clear danger. It was difficult as I had to be firm and loud (... to gain some attention and control) and I was still overcome by the thought of a possible complaint being made to the Judicial Commission.

One magistrate stated: "Death threats - I have had several serious threats on my life." Another described their inability to discriminate between two "worst" incidents - a prisoner threatening to rape his/her children or being "trapped with senior counsel who bullied me and the XX complainants from beginning to end". The magnitude of raw disinhibited and frightening emotion descending into a courtroom caught me by surprise. The totality of these descriptions reveal a workplace where, despite magistrates' positions of authority, they are besieged by a huge volume of work while regularly dogged by extreme, negative experiences, particularly in court. Such exposure to challenges, often identified by magistrates to explain how their courts operate "differently" from higher courts, provided a nuanced and thicker understanding of the risk posed to magistrates' wellbeing and gave meaning to the psychometric scores. They revealed these risks as actual (indeed daily) occurrences, not merely apprehensions or theoretical concerns. There were two topics that stood out in magistrates' survey comments. The first was the quality of legal representation and the second was the experiences relating to appeals.

#### 2.2.4. Let down by lawyers?

The Local Court, as the lowest tier court, is where junior lawyers typically begin their careers, with experienced practitioners tending to present their cases before the higher courts. This may explain why, aside from one Supreme Court judge referring to "difficult parties or counsel", none of the responses from the District or Supreme courts referred to pressures from lawyers' treatment of witnesses. However, Local Court magistrates were vocal on the topic. Several referred to the challenge of maintaining a fair process where poorly trained and aggressive lawyers failed to understand the limitations on permissible questioning of witnesses. Similarly, Roach Anleu and Mack's surveys of Australian judicial officers found that 70% of Supreme Court judges agreed that legal

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representatives are well prepared always or often compared with only 38% of magistrates, and 47% of intermediate court judges (2017: 46). In my research one magistrate pointed out in the context of a victim witness exposed to a lawyers' irrelevant, impermissible, demeaning and retraumatising questions,

... [i]It is an issue in the Local Court because while there are a large number of excellent and appropriate legal professionals, there are also unfortunately a large number who lack appropriate legal knowledge and court craft/expertise.

Another magistrate indicated that they

[c]an't pick a most distressing (event). Sometimes it might be a particularly rude and bullying practitioner, sometimes it might be an image of abuse. Sometimes it might be the treatment of a witness by [legal] representatives in the proceedings.

The significance of the quality of legal representation requires some additional unpacking. Poor legal representation can place a presiding judicial officer in a complex and conflicted situation should they consider it necessary out of fairness to a witness to prevent lawyers' continuing their questioning. The complexity arises because adversarial principles dictate that a presiding judge should rarely intrude on a party's presentation or testing of a case, meaning that if judges attempt to intervene but fail to manage the various constraints on them, they may attract appeal processes. This would explain why such situations were described by a survey respondent as "stressful and at times exhausting".

#### 2.2.5. Appeals

Tellingly, I did not anticipate the feedback from the 2019 study relating to Local Court litigants' wide scope for appeal and the high level of dissatisfaction expressed by Local Court magistrates. This wide scope of appeal reflects the court's historical roots where stipendiary magistrates evolved from a police magistracy (Golder 1991, 30). A system of wide appeals was a safety valve to provide a level of protection should there be a failure in the integrity of the first instance process. However, the breadth of contemporary appeals fails to recognise, as one magistrate respondent noted, that nowadays NSW magistrates often possess "considerable legal experience in the higher courts" indicating that this professionalism should lead to a narrowing of appeal grounds in keeping with the Supreme Court oversight of the intermediate level court. Another magistrate, also advocating for existing appeal bases to be narrowed, was more cutting – referring to appeal outcomes as often "incomprehensible" and "morale sapping", serving "to heighten a lack of respect for the local court particularly amongst some organisations of public lawyers..." (emphasis added). Another two magistrates explained the negative impact of an appeal process that permits a defendant a second chance despite no legal error, one stating that it makes

the potential outcomes capricious and subject to the personal view of whatever District Court Judge may hear the matter. In my opinion these DC [District Court] decisions are often impacted upon the judicial officer's lack of experience in the Local Court jurisdiction (...)

Another magistrate reinforced this "us and them" response, referring to the "constant annoyance" of "sentencing" appeals taking the form of a complete re-hearing. The irritation of one magistrate was pithily summed up by their mode of engagement with

appeal determinations: “I do not open emails that advise Appeal results - I hit the delete key everytime”. Another referred to not being concerned with being overturned on appeal “unless it appears completely irrational” and yet another referred to the apparent personal dimension particular to one appellate judge’s overturning of their determinations. Overall, these seven magistrates’ responses suggest that appeals, and particularly sentencing appeals, generate a perception that magistrates’ work is disrespected by higher courts (with a reciprocating lack of respect from magistrates regarding appellate determinations). The “us and them” motif is further propelled by the magistrate above who described a perceived lack of respect for the Local Court from “public lawyers”. In contrast, the two single comments regarding appeals by District and Supreme Court judges are less emotionally charged. One higher court judge expressed slight exasperation towards the appeal court and a flash of emotion came from the single comment by another judge regarding appeals where it was perceived the appeal bench made unwarranted or inaccurate remarks. However, it was only Local Court magistrates’ reactions to appeals that engendered a strong sense that they were being second-guessed unfairly because *their* court confronted different – that is unique - circumstances compared to the work of superior courts.

That judicial officers’ experiences of work diverge significantly across court levels challenges a common premise of psychological research that treats judicial work as homogenous. As well as the volume of cases, discussed further below, there are other differences in working conditions, and in particular the degree of support provided to judicial officers. Local Court magistrates rely solely on court administrative staff while, in addition to court administrative support, District Court judges have the support of a judge’s associate, and Supreme Court judges benefit from the equivalent of two judges’ associates to assist with research and the management of their judicial load.

Overall, the magistrates’ comments indicated that their stress arose in unexpected, complex, and subliminal ways. For me, as mentioned earlier, the study’s findings based on psychometric measures ensured that magistrates’ descriptions of events assumed a meaning that spoke to the broader system, and not merely to individual experiences. We see illustrated in Part 4, judicial officers’ uncharacteristic openness in their responses, potentially aided by the psychological framing of the survey. For example, in explaining the impact of particular events, one District Court judge referred to “tears” and three magistrates made similar references. As suggested earlier, this uncharacteristic emotional openness in responses - for example, acknowledging that “tears are welling in my eyes now as I type this”, suggests to me that the language of feelings used in psychological wellbeing measures framing the survey may have facilitated greater frankness from magistrates.

Ultimately, these comments, and the identification of a problem without enough context to understand how it manifests, led me to explore other sources that could provide qualitative dimensions to the psychometric measures. My explorations, described below in Part 3, reinforced my conclusion that the findings effectively converted the original conception of the 2019 study as a broad review of judicial well-being into a study of magistrates’ experiences of the impact of their workplace on their health. The findings were clear in identifying the different scale of impact on magistrates compared with their judicial peers in higher courts.

Now, with the benefit of these psychometric scale findings, the remainder of this article shifts to my exploration of what a study, based on quantitative scores means when they fall short in telling us about magistrates' psychological pressure points. This exploration took me from the findings to reflect on our methodology, and from that methodology, to explore what was lost and what was gained by the psychometric scales that speak to the existence of a workplace problem, but do not identify how or why that problem exists in first instance courts but appears absent or muted in the higher courts. It is my thesis that one cannot explore research methodology without reference to the strength or weaknesses of its findings. The methodology of reliance on psychometric data has strengths, but other sources of data reveal its weaknesses. These are coronial reports, judicial conduct complaint reports, and statistics of courts' caseloads. In turn, the individualised nature of coronial and judicial conduct inquiries, potentially of limited value in understanding systemic pressures on courts, gain broader traction in their capacity to reflect collective experiences.

What follows is a brief survey of the relative caseloads across all levels of NSW courts before I move to examine coronial reports that were published in Victoria and in New Zealand following investigations into the suicide deaths of two Australian and one New Zealand judicial officer (New Zealand Coroners Court 2021 [Ronayne]; Coroner's Court of Victoria 2020a [Dwyer]; Coroner's Court of Victoria 2020b [Myall]). These reports provide detailed examinations of the working life and pressures on two magistrates. As formal inquiries into an unexpected death, they are, in effect, case studies that have the capacity to add meaning to what lies behind the study's psychometric scores. In addition, New South Wales judicial conduct complaint inquiry reports fortified magistrates' unsolicited survey responses and brought into sharp relief my own, and my co-researchers' struggle with the heightened sensitivity associated with reporting respondent magistrates' details descriptions of workplace pressures. I address these topics in Part 4 in relation to the researchers' dilemma in reporting details of incidents generating traumatic stress.

### 3. The complexity of context

#### 3.1. *Justice in high volume*

Huge workload list days of 140 matters trying to have the clear thought process to deal with the matters properly, not being able stop having to sit late hours to get through and having to make serious decisions under huge pressure.

(NSW Local Court Judicial Officer (Magistrate), 2019 survey response)

As Roach Anleu and Mack in 2017 observed, the modern magistrates' court invariably runs with high volume caseloads. To accommodate the pressure of numbers these courts are structured to adjudicate cases in a simplified and streamlined manner. This process is rationalised by the limitation that magistrates' courts hear the least serious offences, namely, summary offences. However, the traditional assumption underpinning simplification sits poorly with the growth in serious criminal allegations being heard in magistrates' courts. The banner quote above captures the "huge pressure" and intensity entailed in magistrates making "serious decisions" rapidly in a single day, and day after day. It, and the magistrates' comment that the "Local Court [is] continually being used to take the overload from District Court by increasing our jurisdiction without proper

resources or even recognition” prompted me to investigate the volume of work across the court levels. The available court statistics are reproduced in Table 1, below.

Several confounding factors should be noted when interpreting these statistics. For example, the figures relating to defendants and hearings refer only to criminal cases, but the total number of judicial officers adjudicate in both civil and criminal cases. Further, the Table does not include the extent to which courts have relied on acting judicial officers. It is notable that defended hearings (trials) vary in complexity and length, with trials in the higher court typically occupying more days than lower court hearings. For example, in the District Court each trial in 2021 averaged approximately 10 days (District Court 2021, p. 16) and criminal trials in the Supreme Court averaged in a range from 4.8 and 5.7 weeks (Supreme Court 2021, p. 28). Nevertheless, even allowing for these potential distortions, we see that the administration of justice in the Local Court measures its “defendant load” in tens of thousands, while the District Court measures its “defendant load” in thousands, the Supreme Court load is calculated by reference only to double digits.<sup>2</sup> This snapshot from 2022 points to vastly different experiences of judicial work in terms of caseloads in each court.

TABLE 1

	Local Court	District Court	Supreme Court
<b>Judicial officer numbers (AIJA 2022) **</b>	147	81	54
<b>Total number of defendants per annum</b>	134,610 defendants	3,437 defendants	85 defendants
<b>Defended hearings (trials)</b>	14,244 (9.5%)	699 (20%)	64 (75%)
<b>Sentenced upon plea of guilty per annum</b>	80,337 defendants	2,523 defendants	15 defendants
<b>Appeals</b>		5,827	[2021 figures available below]*

Table 1. Judicial criminal caseloads in New South Wales Courts: 2021.

(Source: NSW Bureau of Crime Statistics and Research [2018-2022]. These figures exclude Children’s Court defendants [numbering between 5,796 with approximately 900 finalised in defended hearings]: see BOCSAR Report.)

(\* Supreme Court 2021. Not included: appeals to Supreme Court and courts of appeal caseloads [346 (CA) and 421 (CCA) in 2021), bail lists [2,126 in 2021) and non-criminal caseloads.)

(\*\* Totals do not differentiate criminal and non-criminal allocations.)

While the District Court judge presides over an unrelenting pace of back-to-back trials running approximately two weeks each, providing sentencing determinations where they can be inserted into spare days or half days, for the Local Court magistrate, the bulk of their work is sentencing determinations, managing processes, and juggling adjudication - all in large volume. In addition, the magistrates handle over 100,000 bail decisions annually. Bail consideration, apprehended violence orders, and breaches of

<sup>2</sup> Further, defended hearings, unlike the common approach in European courts, are the only ones where evidence supporting guilt or non-guilt is placed before the court. A guilty plea proceeds without any formal court review of the strength of the prosecution case, directly to sentencing.

both may not involve complex legal issues, but they are often reported as attracting disappointment that manifests in confronting ways. One magistrate responded in the 2019 survey, that “[a] feature of work in Local Courts is frequent outbursts by people in Court”. Former Magistrate Heilpern, speaking in 2017, evoked the regularity of triggered outbursts of “violence and other trauma that we, on the Local Court bench in particular, are exposed to on a daily basis” describing waiting for the eruption that would follow “when I said the magic words bail is refused” (Heilpern 2020).

High caseloads do not of themselves explain the 2019 study’s psychometric trauma scores for first instance court judicial officers. The 2020 coronial reports of the suicide deaths of Magistrates Dwyer and Myall in 2017 and 2018 help in this regard. They provide a snapshot into the lives of judicial officers that, in the case of the Victorian suicide deaths are explicitly linked to workplace stress. While the strength of these reports is in their granularity, they reflect just two Victorian magistrates’ working lives. For this reason, the capacity for their experiences to reflect the same cohort depends on the commonality of workplace environments. For one, Dwyer, her experiences shed light on challenges that a new magistrate may meet when leaving legal practice and taking on judicial work. In particular, the impact of the extent to which her specialization in her prior legal practice create was an impediment to her transition into judicial work. The coroner’s description of Magistrate Myall’s commitment to social justice, itself an interesting counterpoint to the vista of state bureaucratic power presented by McBarnet (discussed below), gives emotional texture to the impact of unfair media commentary, capturing the vilification dimension of the 2019 survey. These magistrates, from the Victorian Magistrates’ Court, appear to have succumbed to pressures that appear to be characteristic of the modern Australian magistrates’ working life. The 2021 New Zealand coronial report of District Court Judge Ronayne’s suicide also adds insights to what might be termed an underbelly of judicial pressures.

### 3.2. *Judicial career life and death*

Judicial skills clearly do not materialise upon the taking of the oath of office but are acquired over months, if not years, of experience. Those skills include but are not limited to a thorough understanding of civil and criminal practice and procedure, complex sentencing principles and acquiring a sense of an appropriate sentencing range for a particular offence, working under extreme pressure with large court lists, being the sole decision-maker where the decision can have major consequences for a person’s financial security or liberty, conveying detailed reasons for decisions both orally and in writing, and dealing with difficult litigants and, at times, difficult legal practitioners.

(Magistrate Ian Guy, Coroner’s Report (Dwyer), [110])

Jacinta Dwyer took her life in October 2017. She had commenced as a magistrate in February of that year, but she resigned for mental health reasons in July 2017. The coroner reported that “[i]t is clear the onset of Ms Dwyer’s mental illness was connected with her role as a magistrate”, added to the pressures she faced adapting her specialised experience “in family law, family violence, and child protection” to the broader legal skills required in the magistracy, and also raised questions regarding recruitment, induction training and support for new magistrates. The report described her as a “skilful and diligent lawyer” who worked hard to build up her knowledge for the significant amount of criminal work before the court but “struggled with feeling



overwhelmed and being out of her depth". These challenges may have placed pressure on some pre-existing vulnerabilities, but Dwyer's capacity as a skilled and effective magistrate was not under question. Indeed, she was described as "generous, reliable, professional, cheerful, and productive", "intelligent, thoughtful, very capable, and with an ideal demeanour" (Coroner's Report, Dwyer, [18], [21], [28], [38], [108]).

In March 2018, Victorian Magistrate Myall committed suicide. Like Magistrate Dwyer, Myall's sources of stress were work-related. The coroner reported that he was "sensitive, caring, and thoughtful", traits which "brought with it a tendency to agonise about decisions to be made in court" (Coroner's Report Myall, [20]). The coroner added (at [42]) that Myall was "a person totally committed to his role as a judicial officer and ... passionate about social justice issues and its impact upon the justice system and in particular upon the disadvantaged". In addition, Myall

was clearly troubled by issues such as legislative changes impacting on sentencing options and subsequent incarceration rates, funding issues (...) and the rights of defendants to appear at Court. (...) [and] a desire to ensure unrepresented persons were not disadvantaged in court, the extra time needed to formulate reasons, and very significant worry over decisions he made. (...) He felt pressure from the media in the cases he heard and was troubled by recent criticism. (Coroner's Report, Myall, [43], [45], [46])

Magistrate Myall is described as expressing exhaustion and frustration as well as long working days. He was also a "highly respected magistrate who displayed courtesy, compassion and an utter commitment to his role", with an "exceptional work ethic" and "clearly passionate about his work, but it is clear work was his main stressor" (Coroner's Report, Myall, [4], [17]).

New Zealand, District Court Judge Robert Ronayne took his life in 2020. While not of the Local Court, nor part of the Australian judiciary, the coronial report is interesting for its examination of literature informing on judicial stress, and also because I had begun the 2019 study anticipating that District Courts would be the most likely pressure point for judicial officers.<sup>3</sup> While Ronayne had personal and relationship issues that appeared to trigger his suicide, workplace pressures were also manifested in his behaviour. The coroner noted that "[t]he material and content of his work was distressing, sad and periodically traumatic" (NZ Coroner's Report (Ronayne), 2021, [43]) and he reported on Ronayne's "high workload, long work hours, and high expectations of himself regarding the quality of his judicial decisions", and his "sense of self-worth (...) closely linked to work performance" played a role. The Report referred to Ronayne "'blowing up' in court and being stressed over work not previously considered challenging. Colleagues also noted elevated levels of stress and a tendency to become excessively agitated" (NZ Coroner's Report (Ronayne), 2021, [19]). In addition, his Honour also drew on observations from Mr Dromgool, Judge Ronayne's counsellor, who considered

Judge Ronayne was 'isolated' due to his role as a judge. (...) Judge Ronayne did not appear to have a well-developed sense of how to track and discharge his own distress and Mr Dromgool thought there was a risk of secondary Post Traumatic Stress Disorder due to the exposure to distressing material and the 'toxic emotional overload' it caused.

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<sup>3</sup> It should be noted that the New Zealand court structure differs from that in New South Wales. Its District Courts also contain Community Magistrates, and there is no separate magistrates court.

He also notes that the combination of a sense of isolation and secrecy removes one of the vital protective features of nurturing a relationship. (NZ Coroner's Report (Ronayne), 2021, [32])

In the context of the coroner noting the impact on Ronayne of the "added weight of fear of public scrutiny and disapprobation", of most significance is the coroner's observation that

the emotional support and culture of care that exists for judges should be an immediate matter for further examination given the known risks attached to their role - the combination of secrecy, isolation and exposure to traumatic material is a known risk factor [for self-harm]. (NZ Coroner's Report (Ronayne), 2021, [33])

While the intemperate displays by Ronayne are in stark contrast to the silent struggles of Magistrates Dwyer and Myall, Ronayne shared similar features of dedication to those describing Myall. His colleagues described in terms of his "dedication to his role and his drive to ensure a high quality of his work (...) [and as] a hard and dedicated worker" (NZ Coroner's Report (Ronayne), 2021, [37]). The coronial report referred to "growing international evidence" regarding research indicating judicial officers' risk of heightened "psychological distress, anxiety, depression, secondary trauma, burnout, and alcohol dependence". It noted

... the isolation and loneliness of the role, prolonged exposure to traumatic material, high workload, public scrutiny and emotional labour (the process of managing or suppressing feelings and expressions to fulfil the emotional requirements of the job).

(NZ Coroner's Report (Ronayne), 2021, [47], citations omitted)

We next turn to reports from judicial conduct complaint inquiries - a feature raised on occasion in the 2019 survey responses. In New South Wales, these complaint inquiry proceedings take place under the Conduct Division of the Judicial Commission of New South Wales.

### *3.3. Conduct transgressions, career "death" and mental health*

The cumulative effect of witnessing violence towards and the degradation of others is a trauma which has a detrimental effect on one's life, functioning and relationships. It is like an osmosis and manifests itself both physically and psychologically. Experience on the bench makes little difference to coping; we all have the same exposure.

(NSW Local Court Judicial Officer (Magistrate), 2019 survey response.)

There are four judicial conduct inquiry reports available on the Judicial Commission's website. All four reports indicate periods where these judicial officers have struggled with mental ill-health. Their detailed tracing of judicial lives under stress thickened my appreciation of judicial work at the courtroom coalface. Three of the four cases feature magistrates. These three reports showed mental health issues, work pressures and behaviour inconsistent with the judicial role intersecting. In two of the cases before the Conduct Division, work-related trauma (a death threat and vilification) combined with workload stress. For example, the report regarding Magistrate Betts stated that "[i]n 2002, while presiding at the Bankstown Local Court, she [Magistrate Betts] was subject to a death threat, which was treated as credible". Five years later, in a Sydney suburban Local Court where "[s]ecurity was minimal, and some incidents occurred. The workload at the court was heavy", and "[o]n occasions the magistrate (...) encountered verbal

aggression from litigants. It appears that she has also encountered some difficulties in relating to professional colleagues". The inquiry also observed that "an uncle was killed in a motor vehicle accident in particularly distressing circumstances" (Conduct Division, Judicial Commission of NSW, 2021). Magistrate Betts was found to have suffered anxiety. It was found that after she took herself off prescribed anti-depressant medication that she exercised pre-judgment, behaved in an intemperate, discourteous and bullying manner to litigants and to legal representatives, including failing to provide adequate opportunity for submissions.

Contemporaneous medical notes relating to Magistrate Burns referred to her job as "stressful" and it was accepted that mental illness was "a contributing factor" to her misconduct, however the adverse findings regarding her behaviour went "to the heart of the judicial function". The inquiry noted that Magistrate Burns had recently moved to a busy country circuit from a city multi-court precinct. This meant her role was "very different to a city role, and the work much more varied". Inadequate induction was raised by the counsel as a contributing factor, and there was evidence from a retired magistrate that Burns "was always meticulously prepared" and "the volume and complexity of the work involved in the circuit would have been sufficient to extend the most senior of Magistrates" (Conduct Division, Judicial Commission of NSW, 2018).

In all, these multiple perspectives on the magistrates' workplace experiences strengthen and explain the survey findings. There are imperfections in these data sets. For example, the timing and location of the magistrates' workplace-related deaths are before and after the survey was administered, and in analogous, but not the same jurisdictions. Nevertheless, while laying these differences on the table, the impact of psychological distress in a first instance court environment, at least for the Victorian instances – speaks to the potential triggers in the mundane business of the court, potential biases that may arise from solely one source - coronial report, conduct inquiry or survey, to be exposed. The detailed reports allowed the quantitative dimensions of the psychometric surveys to be understood qualitatively, revealing the complexity of judicial working lives, with the individual placed centre-stage but without individuating workplace experiences. The totality provides pictures of judicial officers' experiences in granular detail and excoriating frankness. These, particularly the open-ended survey responses by magistrates, reinforced the private nature of the impact of these pressures and their uneasy fit with the public role of judges. They show the capacity of stress and trauma to threaten judicial lives and careers, and as such they speak to the emotional potency of judicial workplace stress. Importantly, the sources validated the finding that workplace pressures on judicial officers in the Local Court are significant and potentially very serious.

In Part 4 we move from the causes and context of psychological pressures on judicial officers to the inhibitions on reporting such a sensitive topic.

## **4. Speaking of a sensitive topic**

### *4.1. The empirical researchers' dilemma*

It is common to feel shame, weakness, helplessness and an urge to withdraw from others, not only due to stigma, but also through the distorting effects of the change in mental state, the illness itself, on self-esteem, cognition, energy, judgement and,

crucially, on social relationships. What is difficult in this process is how to share distress and personal problems with strangers (...). It requires a high level of trust, a leap of faith.

(Professor Patrick McGorry, psychiatrist, 2005, 10)

Recognising that fear of stigma and discrimination regarding psychological distress means disclosure requires “a high level of trust, a leap of faith”, from the beginning the team of four researchers acted with extreme caution in collecting and reporting our findings (McGorry 2005, Morgan *et al.* 2021). Pertinent with respect to the demographic of respondents to the survey, McGorry has observed that “shame mixed with desperation” is common when “mature, often successful and normally assertive people”) seek help for themselves or for someone they know is unwell (McGorry 2005, 10). To build legitimacy and trust, our first step was to give the judiciary a voice in drafting the survey. This was achieved through an advisory committee made up of judicial officers nominated from each level of the court hierarchy. The draft survey was made available to advisory committee members for refinements, including enhancing de-identification measures to ensure they were not thwarted by overly inclusive demographic data.

The Judicial Commission of New South Wales is held in high esteem amongst the NSW judiciary for their judicial education programs and their online resources. For this reason, the researchers viewed the Commission’s willingness to host the survey as potentially enhancing trust in the survey’s integrity, particularly given the sensitive topics. While this third-party hosting fulfilled that dimension of our research integrity obligations, it came with a potential complication given the sensitive and stigmatising matter of psychological well-being because a separate section of the Judicial Commission receives and examines complaints about judicial officers. It was only magistrates in survey responses who expressed concern about a formal complaint, but they did so on several occasions. On three occasions magistrates nominated a complaint about them as the most distressing incident they experienced. Their distress presumably arises from the statutory powers of the Commission to convene a formal investigative body that, if it reports adversely, can begin the process for recommending a judicial officer’s removal (*Judicial Officers Act 1986 (NSW)*, s 41; *Constitution Act 1902 (NSW)*, s 53).

While, Australian law is showing signs of enlightenment (*Kozarov v Victoria*, 2022), the stigmatising nature of psychological illness created a dilemma for the 2019 study’s researchers. We were conscious that judicial officers are often held, and hold themselves, to “superhuman standards”, creating extra pressure on de-identifying the potentially highly sensitive content of survey responses.

#### 4.2. Reporting descriptions of judicial psychological distress

We were conscious that the respondents might, as a class, suffer embarrassment and negative media scrutiny or, as individuals, be identifiable (or even misidentified) and suffer negative consequences. To this end, we limited our reporting of findings to the quantitative aspects of the study, deciding to hold off, at least, initially from disclosing, in a publication (Hunter *et al.* 2021) that is directed toward the judiciary, judicial officers’ extended responses to the survey. Despite our thorough de-identification strategies, we were concerned a reference to a judicial officer’s gender, or to their court, combined with

an unusual factual feature, might re-identify them to colleagues, and their statements of emotional distress might cause them embarrassment. This was reinforced by the vivid nature of judges' and magistrates' descriptions of their experiences. They included simply unimaginable descriptions of truly awful inhumanity – of child sexual abuse, of “[b]rutality to women (mainly) which involved viewing broken bones, bruising, smashed faces and neck bruising after being choked”, and many contexts in which there was displayed callous disregard for severe harm to others. Some of the described child abuse occurred on victims as young as 4 months of age. The graphic detail of these experiences was too confronting to leave with the research assistant supporting the study and the experiences cannot be reported here verbatim because, aside from the distress that might be caused, we wondered, is brutality to a four-month-old baby sufficiently unique that it is likely to identify the judicial officer? And is the scenario of a smashed woman's face common enough to report, or might it too, be an indirect identifier? Other detailed scenarios one hopes are singular incidents, but we just do not know whether they might potentially identify a respondent judicial officer, or whether the diet of abuse before the court makes not rare (for example) a mother insisting her daughter accompany her on prison visits to her abuser, or a bystander taking no action to call authorities when aurally witnessing the infliction of frightful injury to a small child.

The researchers' responses to the distressing content is heightened by magistrates' own reflections. These included, as mentioned earlier, references to tears, with one magistrate who stated that in a child pornography case “the images [were] so distressing I found it hard to stop crying”, and another who noted that “[t]he impact is obvious in colleagues' noticeable distressed moods, it's not uncommon to find someone in tears.” Another magistrate, “questioned whether I had lost all compassion”.

## **5. Concluding on “a different world”**

If the lower courts seem to present a different world from the image we carry in our heads from the higher courts, then it is hardly surprising; in law that is exactly what they are. The law has created two tiers of justice, one which is geared in its ideology and generality at least to the structures of legality, and one which quite simply and explicitly is not.

(McBarnet 1981, 189)

While all judicial officers apply the same law to determine bail applications, sentence offenders, sanction breaches of court orders, and preside over hearings (and higher courts determine appeals), these processes manifest differently in each court level. This is because judicial officers work in such diverse environments that the same categories of judicial work are re-shaped by far more than legal categories and the severity of criminal sanctions. Scholarly examinations of magistrates' courts such as by Roach Anleu and Mack have exposed the many pressures on magistrates around caseloads, the emotional demands of their work, deficient court facilities and administrative support (Roach Anleu and Mack 2017), however the explicit link of these pressures to enlarging magistrates' vulnerability to severe psychological pressure was not apparent, at least when the 2019 study undertook its survey. Since then, Schrever's ground-breaking work has brought these matters into the open (Schrever *et al.* 2022)

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Certainly, this researcher did not anticipate how much the context surrounding magistrates' work impacted adversely on their daily lives and hence on the psychological safety of the Local Court as a workplace. This is despite knowing that higher court judges operate at a pace that permits Law's rules and processes to synchronise with its fair process aspirations. For magistrates however, they are required to apply the same rules and processes but in bulk. In addition, they adjudicate with a great proportion of self-represented and vulnerable people before them who possess little of the understanding and self-sufficiency of those with legal representation before the higher courts. Magistrate Myall's work environment strikingly illustrated the human dimension of the challenges. Magistrate Myall's desire to ensure justice was served, particularly for self-represented litigants, shows the ease with which his high case load colluded with his commitment to meet the Law's ideals, forcing him to work "extra time ... to formulate reasons", while facing media criticism and ultimately breaking his wish to live. In short, these features, in the under-resourced environment of the Local Court, conspire to create a potentially toxic mix. I now recognise the profound irony that exists with the actual accounts of judicial officers' working lives removing the hidden nature of these challenges, but the need for these accounts to sit under-the-radar for all the protective reasons identified by the High Court in *Kozarov's* case, by Professor McGorry and in other respects described above.

It resonates with me that the Cambridge Dictionary online description of the adjective "magisterial" as "having or seeming to have complete authority". This is because it aligns with the British sociologists' -- Doreen McBarnet and Pat Carlen -- descriptions of magistrates' work as located in positions of empowerment (Carlen 1976 103-112, McBarnet 1983, 21). As Roach Anleu and Mack have noted (2017, 142), Carlen's study observed magistrates' direct connection with litigants was orientated towards control and supplication, not as we see in the aspirations of Magistrate Myall, to explaining process and supporting an unrepresented litigant. Relative to those before this court, there is much strength in these researchers' observations. However, their perceptions also align with what Heilpern (2017) describes as the "veil of assumption", namely that judicial officers' power and expertise makes them super-human. McBarnet and Carlen's theses powerfully describe the experiences of those before these British magistrates' courts, but -- and this is in terms of an Australian application -- they fulfil the trope that judicial experience is relatively homogeneous in manifesting state power. While I recognise the important points of distinction between the courts with lay magistrates described by McBarnet and Carlen and 21<sup>st</sup> century Australian magistrates' courts with their experienced, highly skilled, legally trained magistrates, when I commenced the 2019 study, I drew on these British sociologists' assumptions about a relatively homogeneous judicial experience, believing that magistrates' work reflected empowerment. I drew parallels in the modern NSW Local Courts with those observed in Scotland by McBarnet. For example, that in both magistrates' courts lack the legal choreography of the higher courts, described by McBarnet in terms of "the mental image of law carried into the courts".

The solemnity, the skills of advocacy, the objections, the slow, careful precision of evidence, the adversarial joust, none of these taken-for-granted legal images are in evidence. It seems to be another world from the legal system we have learned about in books, films, and television. (McBarnet 1983, 123)

Instead, magistrates manage court business in a dynamic and almost personal process, talking directly to those before the court – either because they are self-represented, or because they speak past their legal representatives. McBarnet’s critique through her typology of two tiers of justice – that business in British magistrates’ courts is treated as too trivial for the Law’s structures of due process - has resonance in the 21<sup>st</sup> century NSW Local Court. Certainly, the reduced resourcing and rapid processing of matters in Local Courts compares unfavourably with higher courts’ fully resourced legal learning, orderliness, formality, and adversarial contestation.

However, what is incomplete in these accounts of British magistrates’ courts is the invisibility of the magistrate as a human. Nor is there room to appreciate the frustrated aspirations to meet Law’s ideals amongst these highly skilled legally trained magistrates, as described in coronial reports. The consequences of the Local Court’s enlarged jurisdiction are exacerbated by the lack of restructuring to support magistrates’ “serious” decision making. Hence there is too little backroom support to support the increased caseload and increased legal complexity. Exposure to in-court violence, to threats and vilification are an inevitable dimension of increased caseloads. All these features are in a court that recognizes, at least in the context of appellate surveillance, a “them and us” dimension of their work and that of higher courts. McBarnet and Carlen are correct. Magistrates’ courts are unlike others. Instead, they are places of potential trauma for both those on the bench and those in the dock.

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