



Articles

Judicial Stress

*The Hon Justice Michael D Kirby AC CMG**

An unmentionable topic

Judging can be a stressful business, yet stress is a subject which neither judge nor advocate is supposed to admit, still less write about. They are members of learned professions subject to the cultural inhibitions inherited from the English tradition of the bench and bar. The Australian phlegmatic self-image may even reinforce this inherited model. Judicial officers are subject to the role imperatives of an occupation still overwhelmingly made up of men. In common with most inherently stressful occupations, they share the conventional disinclination to recognise and to speak openly about this unmentionable topic. However, recent studies have shown that lawyers are amongst the traditional professions most likely to suffer from depression and stress. Judges have been found in studies to evince 'alarming' levels of tension and stress. According to the recent biography *Learned Hand: The Man and the Judge*,¹ even a great judge such as Hand was 'amazingly insecure', thinking himself weak and even cowardly; his low view of his own abilities only sporadically uplifted by his growing fame.

The time has come to break the silence. Bringing stress out of the judicial closet will be good for us all. I can write about the topic because, after 20 years in various judicial offices, subjected to a lot of stress over that time by the work, the legal profession, the media and, on occasion, my colleagues, I feel I can discuss stress without the embarrassment which others might feel. By identifying its causes, classifying its features and suggesting a few solutions, I may contribute usefully to the orientation of those who are beginning their lives as judicial officers. What I say may also have relevance to other judges, lawyers and others. Judicial stress is just one variety of stress in human beings but daily exposure to sharp differences, disputes and argumentation render judicial officers specially vulnerable as a group.

Others in Australia have referred to judicial stress. Justice Thomas of the Supreme Court of Queensland has written a delicate insight into the human problems of judicial life in Australia, which was thought suitable for publication for the edification of American judges.² However, in Australia, generally stress in the judiciary is mentioned only obliquely: not spoken of directly.

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1 Gerald Gunther, Knopf, New York, 1994.

2 J B Thomas, 'A down-under circuit: the life of a judge in the remoter parts of Australia' 74 *Judicature* 208 (1991).

In the United States, special support systems have been established for some judges, such as those working in rural areas. Their particular variety of judicial stress has engaged considerable attention in that country.³ Beginning in the 1980s, it became relatively common in judicial training courses in the United States to provide a programme on judicial stress and how to handle it.⁴ Dr Isaiah M Zimmerman, a psychologist, was first invited to speak on the topic at the 1980 conference of Chief Judges of the United States. His essay, reproduced in the *Judges' Journal* of the American Bar Association, became a classic.⁵ It was also considered relevant to judges in Canada.⁶ Stress invoked a rash of articles in the early 1980s, most of them by psychologists, lecturing judges on their high levels of stress and how to manage it.⁷

This writing did not make it to the Antipodes. Yet now, even in England, as the rules against judicial comment were loosened in the 1980s, judges have come to reveal the fact and causes of some of their feelings of stress. I regret to say that one of the chief causes disclosed by some judges is 'the sting of humiliation when [the judge's] sentences are overturned by the Court of Appeal'.⁸

The attention to stress in judicial life is paralleled by a renewed concern about stress in the life of the practising lawyer. In New Zealand, lawyers were placed in the 'high risk category' for stress, particularly for their susceptibility to alcohol dependence.⁹ The reason why this should be so was explained by a leading Canadian barrister, Mr Gordon Tweedie, who admitted to long-term alcohol and drug dependence and described the professional stresses which had brought about the vulnerability of particular practitioners. He also mentioned the special vulnerability of judges. According to Mr Tweedie:

In our society we isolate judges. . . All of a sudden a lawyer at 40 goes from fraternising with friends to becoming a judge. He can't golf, go to dinner or socialise with his former colleagues. An active man [sic] is now isolated and lonely. It leads to the old expression — if you're hungry, angry, lonely and tired, you are one step from a drink.¹⁰

One group which has been examined most closely from the point of view of stress is law students. A major survey was carried out in the United States to examine the role of legal education in producing psychological distress

3 K Fahnestock, 'The loneliness of command — One perspective on judicial isolation' 30 *Judges J* 12 (1991).

4 67 *ABA J* 1100 (1981).

5 I M Zimmerman, 'Stress — what it does to judges and how it can be lessened' 20 *Judges J* 4(8) (1981).

6 Above note 5, (1984) 26 *Canadian J Crim* 6, *sub nom* 'The judge and stress'. See also R Ray 'Help is available for addicted lawyers and judges' (1991) 18 *CBA National* 26.

7 C R Showalter and D A Martell, 'Personality, stress and health in American judges' 69(2) *Judicature* 83 (1985). See also S Abrahams, 'Workshop examines way to help disabled judges' 65 *Judicature*, 327 (1982); M Middleton, 'Judges told how to deal with stress' 67 *ABA J* 1100 (1981); R Sangeorge, 'Psychologists says judges suffer from stress' 108 *NJLJ* (1981).

8 R English, 'Judgment days', *BBC Worldwide*, July 1994, 16.

9 [1986] *Lawtalk* (#241), 3.

10 See Ray, above note 6.

among law students and new lawyers.¹¹ It was found that, whereas law school should be the very place in which practitioners learn to cope effectively with the demands of the legal profession, attention to the psychological well-being of law students was actually stunted by the process of their legal education. At best, stress and how to cope with it was completely ignored.¹² At worst, excessive workloads, serious problems with time management, over-crowded, impersonal lecture rooms, and concentrated attention on analytical skills without equal regard to inter-personal development produced very high distress levels. They were found to have actually prevented the alleviation of symptoms and the preparation of law students for good lawyering.

Given that Australian law schools, at least at the time when most judicial officers of today were trained, followed much the same model as those described in the United States study, it is little wonder that lawyers are so frequently criticised for their lack of skill in dealing with clients, witnesses and each other. The judicial officer in Australia today is typically the product of a legal education system which, in the United States, produced extremely high levels of psychopathological symptomatology and recurring depression. Perhaps in our more robust and easy-going country, our lawyers were immune from some of these outcomes but the parallels are uncomfortably close.

As evidence that Australian lawyers are beginning, belatedly, to turn their attention to this issue, one has only to look at recent issues of the professional journals. In the Victorian *Law Institute Journal*, a recent article told of the breakdown of a lawyer named Tom, who reacted to professional stress with sleeplessness and a constant sense of impending doom. He eventually turned to alcohol. He could not escape for a time, because he refused at first to acknowledge the real causes behind his symptoms.¹³ In New South Wales, the Law Society in its Journal urged upon its members the ultimate lesson of *Donoghue v Stevenson*, namely, that lawyers should demonstrate a duty of care to themselves. They should be alert to their special susceptibility to the diseases of civilisation, including cardiovascular disease, diabetes and stress.¹⁴

In the United States, concern about the impact of legal stress upon the actors in the drama of litigation has now extended to jurors. The National Center for State Courts has reported new initiatives to cope with the stress-related symptoms suffered by jurors, particularly in long cases. Their symptoms range from the mild to the severe. They are most acute where jurors are sequestered, cut off from their families and friends, and exposed to repeated re-examination of highly distressing, haunting facts; a gruesome murder or horrible automobile or aeroplane accident.¹⁵

At the conference of the International Bar Association ('the IBA') in Melbourne in October 1994, another oft-forgotten group at last came into their own. The spouses and partners of lawyers (and one might add, judges) are also

11 G Andrew H Benjamin et al, 'The role of legal education in producing psychological distress among law students and lawyers' 2 *American Bar Foundation Research J* 225 (1986).

12 Above note 11, at 226.

13 'Tom — One lawyer's story' (1990) 64 *Law Inst J (Vic)* 1020.

14 J Brown, 'Physical fitness — The duty of care to oneself' (1990) 28 *Law Soc J (NSW)*, Nov 68. See also M R Liverani 'Mid-life crisis or epiphany?' (1994) 32 *Law Soc J (NSW)* Oct, 46 at 47.

15 'Juror stress: What price do jurors pay?' 19 *NCSC Report* #10,3 (1992).

subjected to stress. It can come from shared anxieties, from the experience of lonely absences and from just empathising with a companion under seemingly inescapable pressure. For the first time, the IBA included a session in its conference, addressed by psychologist Dr Richard Gates, on how the 1990s have led to increased demands on all professionals and on lawyers in particular. Dr Gates, it was promised, would 'lead the audience in general discussion about their own experiences of living or working with lawyers under pressure, how they have coped and perhaps some strategies for coping better'.¹⁶

So it will be seen that stress in the law, and even on the bench, is out of the shadows. Save for cultural norms or *macho* inhibitions, there is no reason why stress should be hidden, being a reality of professional life. The role of stress in human behaviour generally is increasingly the subject of scientific scrutiny. It is conventionally explained in terms of the body's response to danger when it makes its choice between fight or flight. In part, the phenomenon has a positive role in heightening the performance of the judge and the lawyer to deal with what is often an issue of the greatest importance for the life, liberty, pocket or reputation of the client or litigant. A so-called 'stress hormone', corticotropin, has been isolated as having glucocorticoids. As the mind signals the body to mobilise its resources in a situation of stress, glucose, simple proteins and fats pour out of storage to stroke the muscles. To increase this delivery of nutrients and oxygen the heart beats faster, blood pressure goes up and breathing rate increases. The stress hormone has been found in the placenta of the human neonate. It is said to be associated with the human sleep cycle.¹⁷ It seems reasonable to infer that lawyers and judges normally have a lot of this hormone rushing around their systems.

At the time of my first appointment in 1974, a jest was told, which I remember, ascribed to Justice Bernard Riley. It suggested that the judicial life had advantages. Those anointed would find, however, that 'the tension went out the window with half their income'. The part about the income was certainly true but the part about the drop in tension has not been true for all judicial officers.

At the outset it is necessary to put stress in the Australian judiciary in proper context and perspective. In many countries, judicial officers are subjected to daily perils and risks to their lives and safety, and to that of their families. In contrast, the stress faced by Australian judges is less intense. Yet it is serious enough. I will analyse the typical causes of judicial stress before turning to some of its features and a few suggested solutions.

Causes of judicial stress

Nature of the work

The transition from practising lawyer to judicial officer involves a journey to loneliness, at least to some degree. Many new appointees tell of their dread of

¹⁶ International Bar Association *Programme* (1994) 23.

¹⁷ Noted in *The Australian*, 13 August 1990, p 9. See also R M Sapolsky, *A Guide to Stress, Stress-Related Diseases and Coping*, Freeman, New York, 1994.

the official welcomes and professional inaugurations where the critical spotlight is unswervingly placed on them as individuals, not as advocates or representatives of parties.

Loneliness of office is also, to some degree, inescapable. An element of distance and remove are a usual part of the judicial life after our tradition. There is a definite role expectation for judicial officers in Australia. It governs even the most gregarious initiates. Justice Thomas paints a vivid picture of the ceremonial arrival of Mr Justice Cooper at the Normanton Courthouse in the nineteenth century. In rustic surroundings, but in full judicial robes, the judge had to portray the assurance and confidence of the judicial office which he paraded before the people down the main street of the town.¹⁸ Whether Cooper J ever felt any doubts is not disclosed; although it appeared unlikely.

Until now, there has been little in the way of formal preparation for the judicial life. Because most judicial officers came to the higher courts from the bar, their lives as advocates was hitherto seen as preparation enough for their lives as judges. It is a truism that expertise as an advocate may not necessarily fashion a good judge. Studying judges for decades may simply lead the observer to replicate common errors. Many newly-appointed judicial officers have complained that there are few people whom they can ask about rudimentary problems of judging. This can be a cause of uncertainty, self-doubt and stress.

When a solicitor was appointed from practice to judicial office in the Supreme Court of New South Wales, and took the highly sensible precaution of sitting for a time to observe a judge of his Division, there was much ill-considered criticism at the bar. Yet at least two newly-appointed judges of the Court of Appeal (Cripps and Powell JJA) took the sensible course of sitting with the judge administering the motion list before embarking on that duty themselves. Rationality and efficiency should overcome tradition where tradition enlarges stress, involves pretence and has no professional necessity. On the very day that I was sworn to my office as President of the New South Wales Court of Appeal, I was required to preside in motions necessitating countless rapid decisions with the provision of accurate reasons. Sitting on each side of me was a vigilant colleague. It was highly stressful but in those days, that was what was expected.

A source of stress for many judicial officers derives from role expectation and role playing. Judicial officers are expected, as Sir Robert Megarry once put it, to be as wise as they are paid to look. A psychologist, Dr Walter Menninger, told United States judges of the judge who asked: 'What can I do on the Bench that will reduce the urge to scream?'.¹⁹ More often, the problem is yawning, not screaming but the frustration can certainly build up. The judge is expected always to react in a way that is 'unobtrusive and acceptable'. The response must not interfere in the manifestly lawful and just solution to the problem before the court.

Some judicial officers, on appointment, complain about the immediate drop in their income. Several fine judges in Australia have been lost both to Federal and State courts because of this complaint. Although judicial salaries and

¹⁸ Thomas, above note 2, at 208.

¹⁹ W Menninger quoted in above note 4.

benefits doubtless seem very high to most people in the community, it is usually said that they can only be compared with the judicial officer's alternative sources of income, namely, in the practising legal profession. A family accustomed to the income of a senior barrister or solicitor, may complain about the drop. The pressures of unfulfillable demands, and even recrimination, may flow over to the judicial officer. Whether objectively warranted or not, this is certainly a source of subjective anxiety for some. Complaints are often made about the severe discrepancies between the social status usually accorded to judicial officers and the salaries and other benefits which they receive. A return to the profession, as an easy release from this source of stress, is likely to occur much more frequently in the future. Until the recent past, it was unthinkable.

Many judicial officers also complain about the lack of feedback concerning their performance. As a practising lawyer, there are many who will speak with candour and with constructive suggestions to their colleagues. However, practitioners and litigants are inhibited in what they can, and will, say to a judicial officer, except through the formal process of appeal and judicial review. The lack of feedback accentuates the feeling of loneliness which many newly appointed judicial officers experience. Unless they are members of an appellate court, it is the nature of their occupation to sit alone. I recall how Sir Nigel Bowen, as Chief Justice of the Federal Court, would sometimes come and sit in the back of my courtroom, as of other new appointees, to observe the 'new judge'. This is rare, if not unique. For the most part, the judge receives little by way of day-to-day assessment. He or she is thrown back upon personal staff who tend to have a feeling of loyalty or, at least, discretion, which suppresses criticism. If criticism must be voiced, it is usually through professional gossip or the measured opinions of appellate courts.

Another stressful feature of the work of judicial officers today is the increasing workload which they must bear. This is not a phenomenon confined to Australia. It has forced a kind of bureaucratisation upon the judiciary in the over-worked courts of the United States. Throughout the common law world, judges are burdened and over-burdened.²⁰ For example, the workload of the New South Wales Court of Appeal has increased three-fold since the establishment of the court in 1966, yet, until a little more than a year ago, the judicial strength of the Court was unchanged since its creation. The sight of the never-ending tide of cases, the increasing backlog and the perceived incapacity to do much to reduce it, is a stress which many judicial officers feel. A great source of that stress is the conviction that however hard they may work, they do not have the means to provide simple solutions because they are locked into legal and professional requirements which produce delay inherent in the careful handling of individual cases.

Another feature of the very nature of judicial work which adds to stress is the limited capacity of judicial officers to delegate their judicial functions. True, some functions may be given to judicial registrars. Other administrative functions may be given to list clerks. Still other functions may be assigned to personal staff. However, at least in the tradition of the Australian judiciary, the

²⁰ See, for example, S N Silva, 'Interview' (1994) 19 *Dana*, #1, 5 at 7 (Sri Lanka Court of Appeal).

personal obligation of consideration and decision-making rests upon the shoulders of the sworn judicial officer alone. It cannot be shifted. Most judicial officers have a strong sense of that responsibility. It comes with their personal, undelegable, duty. Be that as is may, it adds to the stress. Whereas other occupations can shed intolerable workloads, judicial officers have a strictly limited power to do so.

On top of these problems, comes the social isolation. The judicial officer, after appointment, may typically find it harder to make firm friends. Some become anxious that signs of friendship, for example from the practising profession, are self-interested and not genuine. Friendships of the past are often diluted, both by the judicial officer's obligation to preserve manifest independence and by the profession's obligation to keep ever open the right of vigorous criticism and appeal which the defence of clients' interests may require.

For all of these reasons, the judicial office carries the potential of presenting the incumbent, particularly a new incumbent, with obligations and duties that are unusually stressful. Of course, no-one is obliged to accept judicial appointment. Nowadays, more than in the past, lawyers realising the disadvantages of judicial service, frequently decline appointment. They preserve their professional independence and the higher income that goes with it. To this extent, the judiciary tends to be a self-selecting group of lawyers who have a general idea of what the work entails. It is the discovery of the detailed requirements of office that awaits them. The isolation, the high role expectations, the financial disadvantages, the lack of feedback, the ever increasing workload and the limited power of delegation, add up to special sources of stress which it is important to acknowledge if the judicial life is to become tolerable, and even enjoyable.

Lack of appreciation

The sense of a lack of appreciation for the enormous efforts which the judicial officer typically makes in order to be worthy of the high calling and of the ancient tradition is an aspect of the social isolation and lack of feedback, referred to above. It is an important source of judicial stress. For some, a feeling that he or she has been passed over for a higher office, when others seemingly less worthy have been preferred, is a source of pain and disappointment that adds to stress. We have all known judicial officers who allowed their exaggerated estimate of the importance of promotion to get the better of their temperament. Now that promotion within the Australian judiciary is more common than it was formerly, it is important that incumbents should preserve their own integrity and that of the judicial office. To be anxious about something over which the judicial officer can, and should, have no control or influence, is pointless. A healthy scepticism about political decision-making will help cope with this source of anxiety.

Some judicial officers become anxious about what they see as a decline in the niceties of respect for the bench in general and themselves in particular. Justice Thomas' tale of the somewhat pompous Cooper J arriving on a country circuit in Queensland is well targeted to deflate the pomposity of judicial officers of high expectation. As Justice Thomas observes:

Sadly, a circuit visit these days is something of a non event in the town. It is no longer safe for a judge to assume that he will be met by anyone upon his arrival. Some may feel a nostalgia for the golden era when the arrival of the judge was an important event.²¹

Once the newly appointed judicial officer appreciates the true limits of his or her own importance, the lessons of humility will not seem so painful.

One of the chief sources of anxiety about the lack of appreciation can arise because of the judicial duty to sit in court and dispense justice with a never-ending flood of cases approaching the court door and a strictly limited capacity to deflect or reduce it. Medical practitioners and dentists in emergency wards have similar obligations to cope with highly important and stressful moments in people's lives. However, in our society such individualised high responsibility is comparatively rare. Most vocations enjoy a much greater opportunity to share the load and thereby to cope. Many judicial officers, anchored in their courtrooms, face a sense of dread that the work keeps coming in ever-increasing quantity, that they strive to do battle against the tide, and that few appreciate, or even notice, the efforts they put into their work on the public's behalf.

Whereas in the past, judicial officers, in Australia at least, could comfort themselves with the almost universal admiration in which they were held by the public and the media (and in which they held themselves), nowadays this can scarcely be said. Judicial officers, from the High Court to the Local Court, are subject to the badgering attacks of the media, politicians and others. There is an incongruity about the public's misconception of judicial work and the actuality which is known only too well to the judicial officers. There are few with whom the judicial officer can share these feelings of frustration and even resentment. The result is that judicial officers are typically obliged by convention to bottle up the frustrations and to continue the struggle against the growing tide of litigation. They must do so in the face of a highly critical media, indifferent politicians and an uncomprehending public. The combination of these realities can result in intolerable stress in some individuals. Or it can produce cynicism as the incapacity of the individual judicial officer to overcome the rising workload, or to meet unwarranted calumny, ultimately tames him or her to do the best that can be done and to surrender the fruitless quest for perfection and proper appreciation.

Personal factors

In addition to the foregoing features of the judicial task, and its characteristics in Australia today, some mention should also be made of the features of the personal lives of judicial officers which make them vulnerable to stress, often precisely at the moment when they are first ushered into their judicial chambers.

Mid-life passage, or 'crisis', is a well-established psychological phenomenon. As described, it is usually associated with the death of parents, the departure of children from the home, a deterioration in health, in physical self-image and in sexual activity. It frequently coincides with similar

²¹ Thomas, above note 2, at 208.

developments in the life of a spouse or partner. The much higher levels of marriage and relationship breakdowns in contemporary Australian society will probably mean that more judicial officers in the future will suffer the stresses of break-up and personal loneliness. Such features may reinforce the vulnerability of people appointed to judicial office.

Some elements of this passage can be positive. It may encourage an appreciation of the fragility of life and the importance of the small number of persons who greatly matter. Yet it can also be negative, resulting in questioning of long-term relationships and a retreat to work as a means of escape from the stressful business of personal emotional challenges. A newly-appointed judicial officer may have enough stress in the courtroom, so that the addition of personal stress will present risks of burnout and even breakdown. These outcomes can manifest themselves in numerous ways: repeated loss of temper in the courtroom; gross delay in the delivery of reserved judgments; incapacity in decision-making; and hostility to the world at large. At least one Australian judge, faced with some of these stresses, found escape in suicide. Fortunately, this is an extreme solution, which is rare. For most, the answer is redoubled effort, despite the fact that the judicial officer well knows that it will have a strictly limited impact on the sources of pressure which may seem at times completely insoluble.

Future stress

As if the foregoing were not sufficient, a number of phenomena add to the stresses faced by Australian judges today. They include the masses of legislation which pour from our Parliaments and frequently change the law, just when we thought we were beginning to understand it. New legal procedures demand new techniques of judicial control of the courtroom. New rules for the conduct of trials and new principles of sentencing produce an urgent obligation to keep pace with legislative and common law changes in a way that judicial officers of earlier generations would have found intolerable. Completely novel notions, such as the introduction of the jurisprudence of fundamental human rights, begin to intrude into the life of the Australian judge to an extent that would have been unimaginable in law school days.²²

To the pressures of new law, must also be added the pressure of new technology. Judicial officers today, in middle age, must learn to use computers and word processors. Increasingly, they are exposed to telecommunications hearings and the use of video recordings in trials. Now we are on the brink of voice recognition software programmes. By the turn of the century, most of us will dictate our opinions to a machine which will recognise our voices and reproduce, with near perfect accuracy, a written text. Training and adaptation to the new technology has added to the stresses of judicial life today.

There is now more change-over in the personal staff of judicial officers. The old convention of an elderly retainer, chosen usually from the defence services, has been replaced by the appointment of young law graduates. They can certainly add stimulus and new perspectives in the personal office of the

²² See, for example, *Mabo v Queensland (No 2)* (1992) 175 CLR 1 at 42; 107 ALR 1; compare *Young v Registrar, Court of Appeal (No 3)* (1993) 32 NSWLR 262 at 272; *R v Sandford* (1994) 33 NSWLR 172 at 177.

judicial officer but their service tends to be temporary. By the time they have been rendered most useful by their training, it is time for them to move on. They are then replaced by new staff, requiring new personal relationships with eager young people who need to be trained from scratch.²³

Another peril and stress has been added to the judicial life. Judicial officers today are much more accountable to the public than they were in earlier times. This is not, of course, necessarily a bad thing but it certainly adds to pressure when judicial officers are singled out and pilloried in the media for perceived mistakes or departures from popular or media wisdom. The harassment of Victorian and South Australian judges by television interviewers, who confronted them in public streets, added a pressure that would not have been imagined by the judiciary at the time of my first appointment in 1974. Better communication, through the media to the community they serve, will be enhanced by media liaison officers appointed to the courts. Sadly, the media is often interested only in an 'angle' or in combative entertainment. Few judges will escape entirely the wrath or derision of the media during their judicial career. Whilst they must remain alert in case the criticism is justified, and lest they have truly lost touch with community values, they must equally preserve their fidelity to the law and to their own consciences. Our judiciary does not march to the drum of editorialists.

Finally, the Australian judge of today must operate in a rapidly changing society where few of the values of youth remain unquestioned or unchallenged. Judges must learn to adapt, even to speedy change. They must become alert to the community's new sensitivity to the rights of women, the rights of Aboriginals, the rights of ethnic communities, the rights of homosexuals, the rights of the handicapped and so on. Most judicial officers, being themselves members of the community, respond sympathetically and positively to these changing perceptions of justice. For some, however, there will be a generational, individual or cultural disinclination. Changes in long-settled ways of the law and the courts may be beneficial but it may also be stressful, particularly to some older judges, bearing the attitudes and values of their generation and training. They should, and must, adapt to changing times. For the judicial office is not theirs to pursue their own humours, but to serve the law and the community.²⁴ This said, the process of change in directions which may be personally uncongenial, will undoubtedly be stressful. If the judicial officer is unwilling or unable to accept the changes, especially in the law itself, integrity will point in the direction of resignation or retirement, rather than a futile last-ditch stand.

Special categories of judicial stress

Rural

One category of judicial service which has been acknowledged as specially prone to high levels of stress in the United States is that in isolated rural

²³ Thomas, above note 2, at 209.

²⁴ See, for example, in *Sharp v Wakefield* [1891] AC 173 at 179 per Lord Halsbury; applied *Dwyer v Kaljo* (1992) 27 NSWLR 728 at 744.

communities.²⁵ For some, service in a country town might be congenial, particularly for a judicial officer with a young family, provided there are good educational facilities and, nowadays, occupational opportunities for the spouse or partner. However, for many judicial officers, assignment to a remote rural district can offer only acute isolation. He or she is unable to mix socially with a wide group of people in case doing so causes continuous embarrassment and necessitates disqualification from judicial decision-making for apprehended bias. The judicial officer must avoid the appearance of favouritism for friends and acquaintances but must also avoid penalising them, or their clients, in order to be scrupulous and to appear as such. In rural districts, there is usually a loss of personal anonymity. These are reasons for adhering to the centralised organisation of the higher courts in Australia and to the provision of country circuits which many judicial officers actually find congenial. Circuits do not present the same sources of stress, at least in Australia, where the judge can usually stay in a modern motel rather than the gloomy 'judges' lodgings' which sometimes cast a lonely blight on judicial service in England.²⁶

Changing times in circuit life in Australia are noted by Justice Thomas. Whereas in the past, home hospitality with members of the profession was a common feature, now it has declined. Challenges of judicial bias have occurred arising out of social contact between the judge and local practitioners perceived to favour one side of the record. Justice Thomas laments:

. . . provincial towns large enough to attract a circuit are no longer isolated and there is little novelty in visitors. It is hard enough these days for the working spouse to persuade the home spouse to put on a dinner for any guest, let alone for a judge who is hardly likely to be a ball of fun. Whatever the reasons, home hospitality is a fairly rare benefit.²⁷

Urban

The urban judicial officer is the most likely to experience the stress of judicial burnout and overwork. He or she will work during court hours under the unrelenting pressure of court lists. The coincidence of judicial working hours makes contact with peers difficult unless special efforts are made in the lunch hour. According to the literature, this is the group of judicial officers which most needs attention to health and regular medical checkups.

Appellate

The appellate courts, at least, have the advantage of professional collegiality but they have their own sources of stress, including high competition amongst their members, clashes of personalities and even, occasionally, irrational

25 See B R White, 'The special role of State judges' 30 *Judges J* #2, 6 at 10. See also Fahnestock, above note 3.

26 Thomas, above note 2, at 209.

27 In England, the Lord Chancellor has recently changed arrangements regarding 'judges lodgings'. This has led to complaints, even letters to *The Times*, by judges claiming that their assignment to discounted hotels presented security problems and has reduced Her Majesty's Judges to little more than 'travelling salesmen'. Opinions about judicial accommodation on circuit are not uniform: see *The Times*, 28 September 1994, p 7; 3 October 1994, p 10.

behaviour. The record of the conduct of Mr Justice Starke in his dealings with Mr Justice Evatt in the High Court of Australia in the 1930s reveals the *nadir* to which the personal relationships of that court had sunk at that time.²⁸ There are similar tales in the House of Lords following the judgment in *Liversidge v Anderson*²⁹ Lord Atkin was isolated and ignored by his noble colleagues for suggesting that they had taken their principles from Humpty-Dumpty, not the law books.³⁰

In any group of talented professional colleagues of high ability, working closely and continuously together in contentious business, tensions will occasionally surface. It then becomes the duty of the judges to sort out the stresses and pressures and to restore, so far as can be done, working arrangements which ensure the discharge of their duties in a proper manner. In the New South Wales Court of Appeal, good collegial relationships have been cemented by fortnightly meetings of all the judges to review the business of the court. These meetings are supplemented by regular luncheons and occasional dinners. Group psychology presents paradoxes and pressures. The judiciary is not immune from these. Working so closely together can sometimes be stressful; but it can also be creative and enjoyable.

Chief judges

A special class of judicial officers subjected to particular stresses nowadays are Chief Justices, Chief Judges and Chief Magistrates. They are often on the receiving end of complaints by the public, by the media, by politicians, by professional bodies and by disaffected litigants. Their capacity to effect change in an institution of highly motivated and highly opinionated individuals is limited. Much depends upon these chief judicial officers. Before the community and the media they are increasingly perceived not only as working judges but as the representatives of their courts. This, in turn, adds to their burdens. The skills that were required of Chief Justices in earlier times have radically changed in the last two decades. At least to some extent, chief judges are expected now to keep abreast of court management, social change, legal trends, judicial philosophy, law reform, macroeconomics, the law reviews, world events, cultural occasions, legal conferences and suitable charities.

They must defend their judges' reputations and privileges, whilst seeking to ensure unreasonable increases in productivity and the informal handling of sources of complaint falling short of judicial misconduct. These duties add special pressures to the life of a Chief Justice, Chief Judge or Chief Magistrate in Australia today. The fact that many such officeholders are themselves appointed to those offices directly from the practising legal profession, without prior judicial service, adds to the pressure upon them, about which they can speak to relatively few. One way of easing that pressure is by adopting collegiate decision-making and sharing the responsibility of court

28 See C C Lloyd, 'Not peace but a sword — the High Court under J G Latham' (1987) 11 *Adel L Rev* 175.

29 [1942] AC 206 at 209.

30 R Stevens, *The law and politics: the House of Lords as a judicial body 1800–1976*, 1979, 287 following.

governance; seeing it as a modern managerial exercise instead of an imperium of unyielding commands.

Characteristics of judicial stress

The characteristics of judicial stress are known to every judge and lawyer. They have been noted by a lifetime of watching courtroom performances but one's own reactions may not be so well appreciated. No-one may be so rude as to mention them.

Judicial stress may be cognitive, resulting in difficulty of concentration, constant glancing at the clock, as much as to ask 'When will I be released from this burden?'. Or it can result in a resigned lack of interest in the work and a fatalistic belief that every day will be the same, and that nothing that the judicial officer can do will much affect the unrelenting workflow and the crushing backlog. Alternatively, stress can take a physical toll. It might attack the judicial officer's digestion. It might cause nausea, diarrhoea, a sense of agitation, or, in some, an uncontrollable urge to fall asleep and thereby to blot out the pain of an uncongenial life. In relationships, both inside and outside of court, stress may produce an outburst of temper, an egocentric exhibition of self-confidence or the cynicism of a hardened pessimism which produces a lack of concern about the cases which are just permitted to wash over the judicial officer, leaving him or her relatively untouched by their pain.

Of course, these are exaggerated consequences of stress. Most judicial officers absorb it, directing it sometimes to creative activity, imagination and endless innovation, unerring politeness, accuracy and prompt decisions. Such people, and there are many, are paragons. They absorb what observers have described as 'appalling' personal stress. It is when the cognitive, physical or behavioural outcomes of stress begin to interfere with the judicial performance, that the judicial officer, the court and the community itself, have a legitimate interest and an obligation to look for the cure.³¹

Coping with judicial stress

The cure, if there is one, is a subject upon which expert psychologists and others have written with far more knowledge than I can impart. Typically, they make the point that the judicial reaction to the predicament of stress will depend largely upon the personality and characteristics of the particular judicial officer and his or her insight into the existence of stress and ways of coping with it.

The first step on the path to relieving stress in judicial, as in other, life, is to admit its existence to oneself and to close friends. Thereafter, it is necessary, if stress is creating a problem, to look to personal and professional responses which will attack the sources of stress, both in the work environment and in the personal life of the judicial officer.

A judicial officer under stress will do well to resist the ego-tempting invitation to join another committee or to serve in some new and worthy public cause which adds to time deprivation. Yet a deflection of the mind to

³¹ Showalter and Martell, above note 7, at 85.

outside interests, books outside the law, music and theatre, will often be beneficial to those who are stressed. Sometimes the judicial officer will need to reorganise his or her personal life. Some turn to transcendental meditation, yoga, others to relaxation techniques, others to religion, still others to physical exercise or tai chi; others to music-whilest-they-work, others to massage, flotation or other therapy. Some resort to overseas travel; others retreat to an intense home life. Almost always the relief is found in non-verbal activities.³² Some develop hobbies and take an interest in bodies and causes compatible with their office, although not strictly legal or judicial. Most just do it 'cold turkey'.

Physical responses to stress are urged by all the books: cutting down sugar and salt; vitamin B supplements may help some; reducing the intake of caffeine, nicotine and alcohol. Taking adjournments to break the day. Walking out of the court building during the lunch hour. Clearing the mind of law, advocates and litigants with their stressful disputes and endless arguments.

Perhaps out of a belated recognition of the pressures imposed on judicial officers, court buildings of the future will include facilities for physical exercise and relaxation. It is not without significance that the new Parliament House in Sydney included a gymnasium and a heated swimming pool. The lives of politicians are certainly stressful. The needs of the judiciary in this regard should not be overlooked, as they have been in the past.

Within the profession of the judiciary there are initiatives which can be taken to help to reduce stress arising from the workload. A careful diagnosis of the build-up of cases can lead to a programme for the efficient despatch of an accumulated backlog. The reorganisation of court business and change to time honoured procedures should be contemplated in the effort to attack one of the major causes of judicial stress; that is, the never-ending workload and the feeling of helplessness in reducing it. Judicial officers cannot be reduced to automatons, nor can they provide true justice to a fixed timetable set by computers, but their efficiency can be improved by the provision of better equipment, improved library and research facilities, increased professional staff and better computer-aided listing and case monitoring. Properly mobilized, these resources can increase the judicial through-put. Doing this may help to reduce judicial stress.

Even if it seems unlikely that judicial salaries in Australia will much improve, other benefits of judicial office may be enhanced, notably by the provision of improved study leave, participation in judicial conferences, better technology and regular communication amongst judicial colleagues at all levels of the hierarchy concerning the work, the shared problems and frustrations. Just speaking of such matters can provide relief.

A new beginning

The Judicial Orientation Course, the first of its kind in Australia, is a step in the right direction. I expect that it will establish bonds that will last for the

³² See J W Gardner *On Leadership*, Free Press, New York, 1990, p 134. Gardner, who knew and worked with several United States Presidents and Congressional leaders, cites Montaigne's injunction:

I endeavour to free this corner from the public storm, as I do another corner of my soul.

lifetimes of the judicial colleagues involved. Within the judiciary new friendships can be formed. The problems are common. The candid sharing of perceptions can enhance mutual respect and occasionally affection.

Once, not so long ago, it would have been unthinkable for judges of the superior courts to embark upon such a course, least of all, in company with judicial officers lower in the hierarchy. We all know this. A recognition of the common problems and necessities of judicial life today has broken down some features of the stratification of the judiciary. It has encouraged a more open-minded approach to sensitive issues which judicial officers must consider as they prepare to serve the people in changing times and into the new millennium.

It is in this spirit of open-mindedness and honesty that I have offered this essay on judicial stress.

With the stress, in equal measure, in the life of a judicial officer there is excitement, intellectual stimulation, personal satisfaction, still much public esteem, a general sense of social utility and worthwhileness, and a never-ending feeling of the privilege it is to be a judicial officer in a country ruled by the law. It is indisputably an exciting time to become a judicial officer in Australia today. I hope that the lives of the new colleagues whom we induct, the latest initiates to a tradition of eight hundred years, will be as rich in the judiciary as mine has been, stress and all.