

JUDGE DREAD

Two unexpected deaths in Victoria highlight the stresses faced by overworked judges and magistrates – many of whom sift through horrendous evidence day in, day out.

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ON THE afternoon of Tuesday March 14, former Victorian politician Joanne Duncan walked into a furniture shop in Geelong, an hour from Melbourne, and noticed some dining chairs which would be perfect for the beach house at nearby Ocean Grove that she and her magistrate husband Stephen Myall had just finished building. It had been a four-year project and Duncan was looking forward to Myall taking some of his accrued leave for a much-needed break there together. She reached for her phone to call him, then remembered that he would be at Sunshine Magistrates' Court in Melbourne's west, where he was presiding that day. She could tell him later.

At 8.30pm their 21-year-old son, Stevo, called from the family property at Gisborne in the Macedon Ranges to say that his dad wasn't home yet. "That's okay," Duncan told him, "he's gone swimming, the pool shuts at 8.30. If he's gone to the supermarket he'll be home at 10 to nine." At 10.30pm she rang Myall's phone. There was no answer, so she left a message. As the night went on she tried a few more times, increasingly worried. By now it was too late to call his mother to see if, by chance, he'd stopped in there.

The next day Stevo remembered that his dad had installed a Find My Phone app. They activated it and the phone started beeping. It – and presumably he – was two kilometres from home. "I found him! I found him!" said Stevo.

Duncan could see on the map that the phone was located at a disused tip. "Right," she said, "we're going." Duncan, her sister and Stevo headed to the tip. On the way she called triple zero. She also texted her friend, Victorian Police Minister Lisa Neville, who she knew from her time as the Labor state member for Macedon. (Duncan retired from politics in 2014.) "I didn't want us to get there first and find whatever we may have found," she says.

They found Myall's body near his car, in which there was a short note. "He just told me he loved me," Duncan says. He was 59 years old.

STEPHEN MYALL'S death followed that last October of Jacinta Dwyer, who, after a career specialising in family violence matters, had been appointed to the Victorian Magistrates' Court in March that year. She was no longer a sitting magistrate when she died. Their deaths deeply shocked Victoria's legal community, those on the judicial bench in particular, prompting the fast-tracking of both an Australia-first study into the wellbeing of judicial officers, and changes in key elements of their working day.

The stresses for those on the bench are myriad, ranging from massive – and growing – caseloads to disturbing subject matter in the lower courts, often involving children. As if that wasn't enough, there are regular and very public challenges from parts of the media aware that their "soft on crime" attacks are good clickbait. Appeals courts, meanwhile, can

use some pretty tough language about judicial colleagues who've made errors.

In 1995 Michael Kirby, the then president of the NSW Court of Appeal, delivered a paper noting that stress among judicial officers was regarded as an "unmentionable" topic. The mindset back then was that the judiciary was a privileged group who shouldn't complain; their task was an intellectual exercise with no place for feelings. Nearly two decades later, the former High Court judge addressed the subject again: "They are supposed to be paragons of virtue, industry, judgment, courtesy and efficiency," Kirby wrote in 2014. "So can we put judicial officers on such a high pedestal as to be completely out of account in a discussion about wellness?"

Not any more. The days of judges and magistrates being regarded as immune to normal human emotions, somehow existing on a higher plane, unaffected by day after day of adjudicating on conflict and trauma, being exposed to verbal and photographic evidence of the most vile crimes imaginable, are ending. Judicial wellness programs have been introduced in recent years and, following the deaths of Dwyer and Myall, there's a growing sense of urgency about the need to ensure judges and magistrates, like the rest of us, have safe workplaces.

CONSIDER THE caseload. According to the most recent figures, Victoria's 120 magistrates and registrars sat through more than

Victorian magistrate Pauline Spencer: limited Legal Aid services place extra pressure on judicial officers to protect defendants' rights and not "wreck" their life. "That makes me feel very worried when I'm doing my job."





Above, left: Joanne Duncan, widow of the late magistrate Stephen Myall. “Over the last year, he’d get home and say, I got smashed today,” she recalls.

“A lot of research on lawyer stress both in Australia and America had revealed this consistent finding of alarmingly high rates of depression and mental illness within the legal profession,” she says. “The logical question was, ‘Well, no one’s looked at the judiciary, to what extent might that extend to them?’ With Jacinta Dwyer’s death in October last year, I would say the issue was really catapulted to top priority within the Magistrates Court. This idea of judicial wellbeing is an idea whose time had come.” The week after Dwyer died, Victoria’s chief magistrate Peter Lauritsen convened a committee to advise him on judicial wellbeing, and asked the Judicial College to organise a day-long program on it. Held in March, *Magistrates’ Wellbeing: A Conversation about Change* was designed to enable all 120 Victorian magistrates to engage in a facilitated conversation about the issues affecting their health. “There was a very strong level of engagement with the topic,” says Schrever.

IT’S a Friday morning in July in the County Court of Victoria, and in her chambers Judge Susan Pullen is preparing to hear a sexual assault plea. This is nothing new – half the matters in the County Court are sex offences, and half of those involve child complainants. As sex offences are required to be dealt with quickly, they take priority. Pullen expects more of these cases following the Royal Commission into Institutional Responses to Child Sexual Abuse, which handed down its final report last December.

“Sex-offence matters are really stressful not only for the complainants but for the judges who hear them,” Pullen says. “The complainants are naturally very distressed, children are very distressed. It’s an extremely delicate

environment. It’s very easy to take this stuff home, very difficult to just tune off at the end of the day.”

A sense of isolation contributes to the stress. “Who do you discuss it with?” she says. “It’s very hard to go home and talk to my partner about these matters, and I question whether it’s appropriate to, anyway. So I mainly rely upon a couple of judges here who I’ll go and have a chat to if necessary...But I tend not to. It can be extremely lonely.”

Pullen is one of six judges and magistrates who agreed to talk to *Good Weekend* in the hope that the issue of judicial health becomes better understood. Fellow County Court Judge Felicity Hampel is another. After a career as a prominent barrister, president of Liberty Victoria and a commissioner of the Victorian Law Reform Commission, Hampel was appointed to the County Court bench in 2005.

“It’s been hidden, unspoken, unacknowledged and surrounded by taboo and shame for a long time,” she says. “There’s this sort of almost irreconcilable conflict between being an impartial decision-maker and being a human being who responds in a human way to what we’re doing.

“Because we’ve got to be tough [and] impartial, there’s been a concern about ‘Are you not intellectually rational enough to do the job, or are you too weak as a person if you’re responding on a personal level to other people’s trauma?’ So [there’s] the shame of saying, ‘I’m struggling, I’m finding this hard...I’m finding it hard to reconcile the human part of me with my impassive, impartial demeanour.’”

As with police, journalists and emergency service workers, a grim humour can be an effective coping mechanism. Hampel talks of “the black humour of judges saying, ‘It’s so nice to be doing a good old-fashioned armed robbery.’”

“Which doesn’t mean we’re being insensitive to the plight of the people who were held up. It’s because you’re not dealing with having to listen to yet another child talk about sexual abuse that they suffered at the hands of an adult known to them,” she says. “One judge said to me one day that it really saddened him that every time he saw an elderly man with a child, instead of thinking ‘loving grandfather’, he thought ‘paedophile’. Judges will say things like that in asides over coffee, but we wouldn’t say, ‘Let’s have a therapy session, how does it affect you?’ It’s often as an aside, rather than saying, ‘I’m struggling, I want to come and talk to you about it.’”

Hampel says most judges she knows who hear crime can’t watch violent movies. “Violence as entertainment is just something that jars so much and physically reawakens the senses of what we’re dealing with in a court context.”

Different judges deal with the pressure in different ways: a drink after work, going to the gym, that important transition between work and home. “I heard one magistrate talk about sitting in the car about to drive into his driveway and taking a few deep breaths before he got out, so that he went home having almost physically ‘parked’ the pressure.”

Most of the judicial officers I speak to mention the isolation of the job. Peter Kidd was 49 in 2015, when he was appointed Chief Judge of Victoria’s County Court, the youngest appointee to that role. In his career as a barrister, he’d prosecuted international war crimes in Sarajevo and appeared in high-profile trials such as those involving the murder in 1997 of Bega schoolgirls Lauren Barry and Nichole Collins; and the prosecution of the murderers of police officers Gary Silk and Rodney Miller in 2002. Speaking over

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coffee in his Melbourne chambers, he says that as collegiate as judges and magistrates try to be, the job is a solitary one.

“They come out onto that bench every day, alone. They are making the decision alone...It’s their name which is going to be printed in the paper and appear on the judgment. It can be a very lonely profession...this can lead to isolation and we need to break that down.”

Kidd also mentions the toll that media coverage can take, while emphasising that he understands reporting is always limited by space and that the judiciary is open to criticism. In May, media reports took aim at County Court judge Barbara Cotterell after two women who bashed a paramedic had their jail sentences overturned, with Judge Cotterell saying it “would achieve little” by sending the two women to jail. “One cartoon suggested that Her Honour was responsible for the physical injury,” Kidd told ABC Radio’s Jon Faine. “Criticise the outcome, but some of the denigrating press is really unfortunate.” Under pressure after this decision, the Victorian government announced it would introduce tough new laws upgrading the classification of any attack on emergency workers to the same level as murder or rape.

Kidd points out that mitigating circumstances such as mental illness are often omitted in the reporting of sentences: “You see sometimes calls in the [letters] pages for the judge to be sacked. Now that judge has done nothing less and nothing more than apply the law diligently and conscientiously. Yet this article is portraying the judge as out of control, off on a frolic, and that’s incredibly stressful.”

You can hear the anger and frustration in the voices of a lot of those talking about the issue. Fiona Patten is leader of Victoria’s Reason Party, formerly the Australian Sex Party. Elected to Victoria’s upper house in 2014, Patten is one of the crossbenchers who hold the balance of power. Well known for her socially progressive policies, her successes include the introduction of laws ensuring exclusion zones around abortion clinics and a trial for Victoria’s first medically supervised injection centre.

Of the political response that evolves from media commentary on “soft sentencing”, she says, “I call a lot of these laws *‘Herald Sun laws’* because the *‘Herald Sun’* says...Judges are letting these people out’. Then we in this parliament are faced with making laws to say, ‘Okay, judges can’t let these people out.’ We don’t know the circumstances. When there’s an outcry in the newspapers about a particular case we then have a blanket response: ‘Okay, judges can’t make that decision anymore.’ We in parliament say, ‘We don’t care about the facts. We are just going to make this rule for all because of the pressure from the media.’ I’m quite often appalled because I think the judiciary does an incredible job, and we are sending more and more people to them with more and more laws.”

An article in the *Herald Sun* in the days after Stephen Myall’s death provided valuable context, however, and referenced a potential source of stress. “Just over two weeks ago, a magistrate postponed court hearings for the teenager who, controversially, had earlier kicked a policeman in the head,” it said. “His reason was to let the student complete his secondary school exams before facing court on

fresh charges. He also refused to release the details of the new charges after media outlets applied for the charge sheet. His decision might have been fair but it was highly unpopular in some quarters. Next day the magistrate was criticised by the police union, politicians and others. That magistrate was Stephen Myall. Exactly a week later he ended his life.”

THE ASSESSMENT and Referral Court is a specialist program for accused people who have mental illness, cognitive impairment or both. Established in 2010, it sits for eight days each month, referring participants to appropriate health, welfare and disability services. This July morning it’s at Moorabbin Justice Centre in Melbourne’s south-east. Under magistrate Anne Goldsbrough, it is friendly and welcoming. The family of those charged are free to join them at their table. Rather than elevated on the bench, the magistrate sits at the same table as those charged. It’s a remarkably supportive environment and today I get the feeling those appearing are extremely grateful for it.

“You are doing wonderfully well,” magistrate Goldsbrough tells the man opposite. “Now you are in a place where you are safe and well and taking your medication. You look the best I’ve ever seen you.” She asks a woman whether a certain date suits for her next appearance. “That’s your birthday? Do you want to make it a different day? Either that or we’ll have to have a cake.” Everyone laughs. The woman thanks her. The magistrate smiles. “Take care of yourself.” But who’s taking care of Her Honour and her colleagues?

The deaths of Dwyer and Myall have brought about change. In June, the Victorian Magistrates’ Court instigated confidential debriefing sessions for magistrates, to be held with a senior psychologist four times a year, following which there is no requirement to sit in court that day. There are also more structured court sitting times: Chief Magistrate Peter Lauritsen directed that from June 4,

with some exceptions, courts were to sit between 10am and 4pm. Previously, sittings could drag on until 6pm. There are also now “chambers days” during which magistrates can write their decisions, rather than writing them at home in the evenings. The number of matters they’re presented with is being closely monitored by regional coordinating magistrates.

The changes have helped, Goldsbrough says. They’ll need to, because hearing what she and her colleagues have to absorb can be shocking. “In the everyday mention list you might suddenly have significant matters of extreme family violence, street violence, sex offences or possession of child pornography,” she says. “It is classified...how many are penetrative, how many videos were there, how many were bestiality. This is in the Magistrates’ Court – all matters start in our court, so we see it all. Some quite similar work to that floods the County Court. They’ve got an unrelenting diet of much of that.”

JOANNE DUNCAN is visiting old friends at Parliament House, including Victorian Premier Daniel Andrews. We meet afterwards at The European, a famous haunt for Melbourne’s political and business crowd, literally at the top end of town. It’s a flurry of lanyards, laptops and



Joanne Duncan and Stephen Myall in earlier years.



agendas, so we decide to move to a quieter, more private cafe down the road.

Sitting down to talk, Duncan at times presents as the confident politician she once was. But as she speaks about Stephen Myall and the sense of loss and confusion she's felt since his death in March, the sadness spills into tears. She carries on, though, because while it's too late for her husband, she wants to ensure it's not too late for others.

Duncan remembers how Jacinta Dwyer's death last October affected her husband. "He was shocked and saddened," she says. "I look back and think, 'Was I listening with half an ear?' As I said at Steve's service, Steve banded on about a lot, he was passionate about a lot. Maybe as you do in a long-term relationship... you sort of half-listen, maybe. And that's part of my guilt, I felt I was half-listening.

"I remember him [talking] about Jacinta and the ripple effect it had and how many people are affected when someone kills themselves. When someone says something like that to you, you kind of imagine that they're suicide-proof."

Stephen Myall was known as one of the good guys. After many years as a criminal defence lawyer, in 2005 he was made a magistrate, the same year he and Duncan married. He had a strong sense of social justice, and agonised when he had to send people to jail.

Sometimes, he found the job devastating. On April 16, 2014, 33-year-old Fiona Warzywoda went to Sunshine Magistrates' Court, where Myall finalised an intervention order banning Craig McDermott, the father of their four children, from approaching her. Just hours later, McDermott stabbed Warzywoda to death. He was found guilty of murder and is serving a 25-year jail term.

Myall was shattered by the killing. "Steve said she had every single protection the court had offered her," Duncan recalls. "The only time she was vulnerable was when she rocked up to court." Together with the registrars involved, Myall was offered counselling. Duncan doesn't know whether he accepted it. She believes judicial officers need to be prodded into taking

counselling and their full annual leave – her husband had 140 days owing – each year. "It's bad people-management not to... [But] I can't be too angry with the system, because if his own wife can't encourage him to take leave, how can I expect his employer to?"

Duncan knew the job was wearing her husband down. "Over the last year he'd get home and say, 'I got smashed today.' It wasn't a phrase I'd heard him use previously." He'd tell her of working through 90 listings on a given day, or sitting until 5.45pm, when often it was too late for those appearing before him to access services. "On the last day I saw him, on the Monday of the long weekend, I said, 'You seem a bit flat,' and he said, 'I think I'm coming down with the flu.'" She didn't believe him, but neither did she ask him what was going on. "The guilt and the regret of a suicide is the worst part. Not seeing enough, not listening enough. I thought he was tired and needed a bigger break."

Myall was previously a partner in the firm of Melbourne criminal defence lawyer Rob Stary, who has represented, among others, gangland killer Carl Williams and terror suspects. Stary sees the pressure on the bench daily.

He knew his friend was burdened by the need to incarcerate young people on occasions when all other options had been exhausted. "I know that Stephen thought, tragically, that in ways he'd failed," Stary says. "He was troubled about the constant pressure to incarcerate particularly young offenders... It remains with you for life and your prospects of employability, of reintegration into the community to live a useful productive life are completely scuttled once you've been imprisoned."

Growing demand for already stretched Legal Aid services means more people are fronting up to court unrepresented, which adds to the pressure on those charged with deciding their fate, he says. "The judicial officer has a duty to advocate on behalf of the unrepresented person. So they've got a dual role – they've got to adjudicate, but they've also got to assist the unrepresented."

That pressure can be seen at the Dandenong Magistrates' Court in Melbourne's south-east,

Magistrate Carolyn Burnside and her husband, Rob Hulls of RMIT's Centre for Innovative Justice. "Judicial officers take home the anguish of their decisions," Hulls says.

"We ought to stop talking of judicial stress and start calling it for what it is – anxiety, panic attack, insomnia, traumatic response, depression, PTSD, substance-use disorder and the like."

where justice is served swiftly. I'm here on a "mention list" day, during which magistrate Pauline Spencer will hear, adjourn or stand down 122 matters. It is a cavalcade of offences of varying degrees of seriousness – drink-driving, shoplifting, assault, family violence – and also different levels of dignified behaviour. A disruptive man is asked to leave the court. "F... off," he says as he walks out, a curse certainly audible to me but luckily not to the bench. It sounds so jarring after the effort the magistrate has been making to accommodate everyone.

This morning, magistrate Spencer will hear matters involving accused people in jail via video-link and young kids on charges of selling drugs, sitting here with their worried-looking families. She has dispensed jail terms, community orders and, in the case of one teary drink-driver, encouragement. "You'll get through this," she says. Some matters last 60 seconds, others five minutes. The skill displayed in instantly changing gears is extraordinary. The role seems to be part-adjudicator, part-administrator and part-traffic-cop to drug, alcohol and mental health programs.

Today, one case exemplifies the pressure the reduction of Legal Aid services can put on the judiciary. An unrepresented woman here on a drink-driving charge is facing a conviction, before she mentions that she's a registered nurse and that it will damage her job prospects.

"That poor woman," Spencer tells me later. "If she had a lawyer [they] would have come in with the express purpose of no conviction being recorded. I'm lucky that she raised that, because I could have wrecked her life and I wouldn't even have known about it. That makes me feel very worried when I'm doing my job. You need to make sure their rights are being protected. You worry about things you don't know."

AT STEPHEN Myall's funeral, his wife spoke of a deeply modest man with a love of dogs, spaghetti westerns, motor sport and football (he often wrote in to the ABC's AFL radio show, *Coodabeen Champions*). "He wore shirts that were so old," she told the gathering. "He bought his suits at op shops, he wore a coat I think he bought from an op shop when he was 20 and only stopped wearing it about 15 years ago.

"We would go to the supermarket, Steve wearing tracksuit pants, or old work pants, that were either too long, or too short, a torn and moth-eaten beanie, which he had had for years... All of a sudden, Steve would walk head down and say, 'Shit, that guy appeared before me last week.' I'd look at Steve – 'Seriously, do you really think anyone would recognise you looking like that?!' I loved that about him, he really did not care how he looked. He was completely without pretence. He never really tried to impress. That was what I found so attractive about Steve."

Duncan says it hurts her that Steve thought that she was a strong woman and would get over it. "Even now people say, 'You're a strong woman,' but what the f... does a strong woman look like? Does this look strong to you? And when I think about the pain he was in, I'm thinking, is it worse than the pain I feel now, is it worse than the loss that I feel?"

At Steve's eulogy, she summarised the swirling emotions with a final line. "We will never understand Steve's pain or why he did what he did. All I know is that I loved him and he was loved by many. I just hope he knew that, and is resting in peace." ■

Lifeline 131 114; BeyondBlue 1300 224 636.