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Introduction

The central obligation of the judicial role is to 'make reasoned decisions based on the facts and the law' (Wistrich, Rachlinski and Guthrie 2015: 856-7; also see Barak 2006; French 2010). While this statement appears to exclude emotion, the contexts in which judicial officers work necessarily generate emotion experience and display, and expectations of judicial emotion work. These contexts encompass different court levels and legal institutional structures, myriad tasks and activities in and out of court, various cases, and the many interactions cases and tasks entail, constituting what can be called an emotion environment for judicial officers and other court participants. This environment generates opportunities for emotion experience and expression, affects judicial emotion and emotion engagement, and determines the ways judicial norms of dispassion and impartiality are realised in practice. Understanding different court contexts is integral to understanding the capacities for and constraints on emotion and the ways judging and emotion are experienced, performed and displayed.

This chapter describes key structural and organisational features of judicial work at different court levels, involving varied participants, tasks and case types. All these features shape the emotions experienced and displayed by the judicial officer and others, and the emotion work which may be undertaken.

Court organisation

The primary empirical research on which this book is based has been undertaken in Australia which has a common law, adversarial legal system. In this system, opposing parties control proceedings with little input from the passive, detached judicial officer (Australian Law Reform Commission 2000). These parties comprise prosecution versus defence in criminal

cases, plaintiff versus defendant in civil cases or, in some case types or jurisdictions or on appeal, applicant versus respondent.

A three-tier court structure is typical of many common law countries, and of state or province subdivisions within a country (Abadinsky 2014; Darbyshire 2011; Jacobson, Hunter and Kirby 2015; McCormack and Buekckert 2013; Roach Anleu and Mack 2017; Ward 2017). First is a lower court, hearing less serious criminal and civil matters, usually without juries, and the early stages of more serious criminal cases. Specialist jurisdictions such as family or childrens/youth or domestic/family violence can be located at any court level but are frequently at the first level. The next level comprises primarily trial courts, hearing more serious criminal and civil cases often with juries, especially in criminal cases. Non-criminal matters may be the subject of special lists or even separate or specialist courts, such as commercial or administrative or constitutional law. The final level is a court with a largely and sometimes exclusively appellate jurisdiction.

Australia's court system largely follows the three-tier model within a federal political and legal structure. Judicial officers[1] at all court levels are required to have specific legal qualifications, are appointed by the executive government, and serve until they reach a fixed retirement age, unless removed for cause (Appleby and Le Mire 2016; Lee and Campbell 2013).

[1] In this book, the terms 'judicial officer' and 'judiciary' are used generically, to refer to any member of the judiciary, regardless of court level or type. Within Australia, the term 'magistrate' refers to members of the judiciary who preside in the lower state and territory courts, except in the Northern Territory where magistrates were given the title 'judge' in 2016. Australian magistrates are paid judicial officers, with legal qualifications, and are appointed until a fixed retirement age. The term 'judge' indicates those who preside in the intermediate and higher state and territory courts and all national courts. Jurisdictions outside Australia may use other labels for their judiciary or may use these terms, but the words may not have the same meanings as in Australia.

Each state[2] and two territories[3] has a magistrates court[4] and a supreme court. Five states have an intermediate trial court.[5] Magistrates courts are courts of first instance, exercising general criminal and civil jurisdiction, limited in length of sentence (usually up to two years), amount of fine, offence types, and value of claim in civil matters (Australian Government Productivity Commission [AGPC] 2020c). Magistrates sit alone, without juries, in civil and criminal matters, dominated by criminal cases. About two-thirds of all lodgements in these courts from 2013-2019 were criminal and one-third was civil (excluding childrens/youth courts) (AGPC 2020b). About 90 percent of adult criminal matters across all Australian courts are initiated and finalised in magistrates courts, an average of about 540,000 finalised cases per year (Australian Bureau to Statistics [ABS] 2020). The most common types of offences are driving related, including driving under the influence of drugs or alcohol or more than an allowable amount of alcohol; varieties of assault; possession or use of illegal drugs; theft and minor property crimes; and breaches of various court orders, including protection orders (ABS 2020). The most frequent principal penalty is a fine imposed on about two-thirds of defendants proven guilty in these lower courts. The fine may be accompanied by some other order or conditions such as community supervision or work orders. Just over one in ten (12 percent) of convicted defendants received a custodial sentence, usually served in a correctional institution, though some sentences are suspended. In civil cases, the upper limit for case value in magistrates courts ranges between $75,000 and $125,000 (Bamford and Rankin 2017). There is no national information for outcomes in civil cases in magistrates courts, as there is for criminal cases, but most resolve without a trial (AGPC 2014; Cashman

[2] New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania.
[3] The Northern Territory and the Australian Capital Territory.
[4] Called the Local Court in New South Wales and the Northern Territory.
[5] The intermediate court is known as the District Court in New South Wales, Queensland, South Australia and Western Australia, and the County Court in Victoria.

2015). Debt collection and default judgments are common (Bamford and Rankin 2017) as are applications for protection orders (AGPS 2020a).

The great bulk of intermediate trial court work is serious criminal cases, similar to the Crown Courts in England and Wales (Jacobson, Hunter and Kirby 2015), as well as some civil cases. Criminal cases in these courts are usually heard by a judge and jury. The jury, traditionally composed of 12 jurors chosen from members of the public, hears the evidence at trial, is instructed in the applicable law by the judge, and collectively renders a verdict of guilty or not guilty in a criminal trial (Hans 2008; Marder and Hans 2016). In Australia, the most common crimes heard at this court level are serious assaults, sexual assault, armed robbery, property crimes and drug trafficking. For example, the County Court of Victoria indicates that in the financial year 2018-19, 77 percent of matters go into the 'general list', while the remaining 23 percent go into the 'sexual offences list' (County Court of Victoria 2019). Among the 'general list', 19 percent are drug offences, 21 percent are offences against the person, 42 percent are property and dishonesty, 3 percent are driving and the remaining 15 percent were 'other offences' (p. 17).

The most serious criminal charges and higher value civil cases are tried in the supreme courts, which also hear appeals, generally constituted as a separate division of the court (Bamford and Rankin 2017). Criminal cases are mainly murder, manslaughter or other charges which may carry a life sentence. Supreme courts may also hear serious drug offences and sexual assault, especially in those jurisdictions with no intermediate trial court (ABS 2020). Appeals may come from magistrates courts, intermediate trial courts, in those states where they exist, and from a decision of a single judge in the supreme court itself (AGPC 2020c). Civil jurisdiction is generally unlimited in amount, although typically there are cost

deterrents from bringing smaller claims to a supreme court (see, for example, *Uniform Civil Procedure Rules 2005* (NSW) r 42.34).

Another way to describe the relative size and workload of the different levels of the state/territory courts is to note that magistrates courts have 93 percent of the caseload, compared with district courts which have 4.5 percent and supreme courts which have 3.5 percent (AGPC 2020b). Of the approximately 950 judicial officers in the state/territory courts, magistrates make up about 54 percent while supreme court judges account for about 20 percent, and judges in the intermediate courts around 26 percent (Australasian Institute of Judicial Administration 2019; also see Opeskin 2013).

National courts include the Federal Court of Australia (approximately 55 judges), the Family Court of Australia (approximately 33 judges), the Federal Circuit Court of Australia (approximately 70 judges) and the High Court of Australia (seven justices). The Federal Court has original and appellate jurisdiction under Australian federal law, mainly administrative law, corporations and trade practices, industrial law, native title and migration, with about 5,000-6,000 cases initiated and finalised per year (Federal Court of Australia 2018). The Family Court[6] has original and appellate jurisdiction over 'matrimonial causes' including marriage, divorce and related issues such as children and property (*Family Law Act 1975* (Cth) s 31). About 20,000 applications are filed and finalised per year, nearly three-quarters resolved by agreement between the parties, entered as consent orders, and about 375 appeals (Family Court of Australia 2018). The Federal Circuit Court shares the jurisdictions of the Federal Court and the Family Court but about 90 percent of its nearly 100,000 matters

[6] Western Australia has a separate family court with five judges, administering the national *Family Law Act 1975* (Cth) (also see the *Family Court Act 1997* (WA)). These judges are not included in these figures.

annually are family law. More serious matters, and appeals, are heard in the Family or Federal Court (Federal Circuit Court of Australia 2018).[7]

The High Court of Australia is the final court of appeal from all state and national courts, with original jurisdiction in some constitutional matters. About 50-70 appeals are heard and determined annually, drawn from about 500 special leave applications per year (High Court of Australia 2018).

Everyday work

A range of structural factors drives many of the emotional aspects of the work for the judicial officer and for other participants. These include: the dominance of criminal cases, high volume, time pressure and unpredictability, and court architecture.

Criminal proceedings make up nearly 70 percent of the caseload in the lower courts and over half in the intermediate courts (AGPC 2020b; Opeskin 2013). Though the most serious criminal cases are heard at the higher court levels, they are a smaller proportion of the overall caseload − about 15 percent (AGPC 2020b; Opeskin 2013). In a national survey, over half of Australian magistrates (52 percent) report always sitting in the criminal jurisdiction in the previous year, compared with 15 percent of intermediate court judges and only three percent of supreme court judges (Mack, Wallace and Roach Anleu 2012).

Considering all Australian courts, nearly all criminal charges (about 88 percent) are resolved by a guilty plea, and civil claims without trial (AGPC 2020b; Bamford and Rankin 2017;

[7] In 2018, the federal government proposed a structural merger of the Family Court and Federal Circuit Court, but the legislation to implement this has not yet been enacted and is unlikely to be considered until 2021.

New South Wales Law Reform Commission 2014). However, there is still considerable judicial processing apart from a trial. In criminal cases, non-trial matters include issues such as bail, hearing guilty pleas and imposing sentence; non-criminal cases may involve directions hearings, and interlocutory applications for various orders such as for discovery, or costs orders after resolution.

Case volume, time pressure and unpredictability

A key feature of everyday work in the lower courts is the sheer volume of cases processed (in Australia, see AGPC 2020b; Opeskin 2013; Roach Anleu and Mack 2017; compare, for example, Kohler-Hausmann 2018; McConville and Marsh 2016; Smith and Maddan 2011, 2019). This volume, whether of inputs (lodgements) or outputs (finalisations), generates the demand for the rapid pace of decision making characteristic of lower courts. The *National Court Observation Study* of the non-trial criminal list days in Australian magistrates/local courts found that the median time for each matter was two minutes and 20 seconds, with an average of four minutes and 20 seconds (Roach Anleu and Mack 2017; also see Carlen 1976; Hunter 2005; Mack and Roach Anleu 2007; Mileski 1971; Smith and Maddan 2011).

A related feature of judicial work is unpredictability. It is not possible for the judicial officer to know whether or when a guilty plea or settlement will occur, or in which cases, and the judicial officer has no or little influence on this. This unpredictability reflects the social, interactive, and interdependent nature of judicial work. Much everyday judicial work in all courts depends on the actions of others, such as parties, police or legal representatives. In the courtroom, several participants must 'coordinate and shape their behavior in relation to others' (Ridgeway 2006: 5). Sometimes the expected and essential actions may not occur.

This unpredictability can continue until the date set for trial and even throughout it. In New South Wales, 29 percent of matters committed for trial result in a guilty plea on the day of trial (New South Wales Law Reform Commission 2014). Darbyshire, in her UK research, describes the trial as 'fragile', with factors such as late settlements, guilty pleas, or failure of a necessary participant to appear causing delay or cancellation of scheduled trial proceedings (2011: 191). This can be frustrating for the judicial officer, who wants to move cases along, and especially emotionally demanding for the non-judicial participants in the legal process, who face delays and uncertainty in having their cases heard, as well as the emotions generated by the experience giving rise to the case and their anticipation of the trial itself (Jacobson, Hunter and Kirby 2015; Toy-Cronin 2019).

One consequence of this unpredictability, and a source of the pressure experienced by judicial officers, is overlisting – scheduling more cases than can be heard in the time allowed. This practice is based on the expectation that many matters will require little or no judicial attention, as they will be adjourned or resolved. Overlisting is needed to ensure that as many cases as possible are heard on the day set and that scarce judicial resources are not wasted. The result is that many judicial officers are faced, every day, with more cases than are possible to be heard in the time available, with no way to know in advance who will appear (or not) or be prepared (or not) and whether any particular case will need considerable judicial effort.

This unpredictability results in 'moments of bewildering activity, in which cases are dealt with as a matter of routine … interspersed with passive periods when the [judge] … waits' (Cowan and Hitchings 2007: 364). As in lower courts, 'delays and periods of tedium giving way to bursts of tense and even frantic action' are a feature of the pre-trial procedures in trial

courts, such as the English Crown Court (Jacobson, Hunter and Kirby 2015: 111). The judicial officer's capacity to manage such unpredictability, resulting delays and consequential emotion is a central component of judgecraft (Carlen 1976; Darbyshire 2011; Kritzer 2007; Mack and Roach Anleu 2007; Metcalfe 2016; Roach Anleu and Mack 2018; Tata 2007).

Court design and (in)formality

A significant factor for all participants is the courtroom and courthouse design, and related formality or lack thereof (Henderson and Duncanson 2018; Mulcahy and Rowden 2020; Tait 2018). Conventional courtrooms have the judicial officer on a raised bench at one end of the room, with court staff below. Legal representatives sit or stand at tables facing the judicial bench, with their backs to the public gallery. In Australia and some other Commonwealth countries, judicial officers are usually robed, sometimes quite elaborately, though robes are not always worn in lower courts. Wigs are not worn by Australian magistrates or in the federal courts, and only occasionally in the higher state courts, perhaps for delivery of judgment or sentencing. Legal practitioners are robed in higher courts though not in lower courts, and wigs are rare in all Australian courts (Moran 2009; Supreme Court of New South Wales 2007; Yazdani 2019). A criminal defendant is often in the dock, a confined space within the courtroom (Mulcahy 2010; Rossner, Tait, McKimmie et al. 2017; Tait 2011). In the US, judges are robed but not wigged, legal practitioners do not robe and there is no dock (Resnik and Curtis 2011). Video link appearances, especially by defendants in custody, are increasingly common (Rowden, Wallace and Goodman-Delahunty 2010; Wallace, Roach Anleu and Mack 2017). These factors will affect perceptions of the formality of the process and opportunities for communication, emotion and engagement (McKay 2018; Rowden and Wallace 2019; Wallace, Roach Anleu and Mack 2019). Some features emphasise the detachment of the judicial officer and the power of judicial authority, while others may

facilitate engagement, emotion and emotion work (Jacobson, Hunter and Kirby 2015; Mulcahy 2007; Roach Anleu and Mack 2017; Tait 2018).

These structural factors – the dominance of criminal cases, high volume, time pressure, unpredictability and formal courtroom design – drive many of the emotions in the courtroom. Criminal cases inevitably contain distressing facts of loss, injury, and often deliberate violence, as well as offenders who are themselves deeply disadvantaged. Such cases can entail considerable felt emotion and emotion work for the presiding judicial officer, as well as for other participants. This constant exposure to 'the very worst that humanity does to itself' can lead to what has been called secondary or vicarious trauma for judicial officers (Schrever, Hulbert and Sourdin 2019: 151; also see Miller, Edwards, Reichert et al. 2018; Rossouw and Rothmann 2020). Judicial officers may experience frustration, perhaps leading to anger, at the extreme time pressures and inevitable delays. Court users, who have waited for hours, with little understanding of the processes, will find the pattern of haste and delay bewildering, frustrating or even frightening, also contributing to the emotion environment of judicial work (Jacobson, Hunter and Kirby 2015; Ward 2017).

Court and trial participants

Although relatively few cases proceed to trial at any court level (AGPC 2020b; Bamford and Rankin 2017), presiding at trial takes up a considerable amount of judicial time at all court levels, more so for the intermediate and higher courts (Mack, Wallace and Roach Anleu 2012). The emotional experiences and display generated by court participants, whether parties, witnesses, jurors or legal representatives, all contribute to an emotion environment, which the judicial officer will experience and must manage. In the lower courts, interacting directly with defendants and litigants, even when they have legal representation, can

engender emotion and the need for emotion work. In the higher courts, the emotion environment may be intensified by the more serious nature of the criminal charges or the complexity and length of civil matters, or it may become less immediate as distressing facts are translated into legal categories and formal presentations. Because of the highly interactive nature of court proceedings, the circumstances, behaviour, characteristics and needs of many of the participants are significant in understanding judging and emotion.

Parties, litigants and criminal defendants

For parties, being involved in any kind of litigation, and particularly a criminal trial, can be a demanding experience:

> it may be the most traumatic occasion in the whole of their lives. The conclusion of the judge or the verdict of the jury … could be the prelude to ruin or disgrace (Gilbert 1986: xii).

Every case, even the most apparently trivial small claim, debt or traffic matter, involves one or more individuals, organisations, or public officials, for whom the judicial decision can matter a great deal. Emotions of parties may be apparent in the facts of the case, conveyed by documentary material or by evidence during a trial or in other proceedings such as bail or sentencing.

UK research, drawing on interviews with court participants, identifies many emotions experienced by criminal defendants. These include being 'acquiescent observers', demonstrating 'disengagement and alienation', experiencing 'anger and cynicism', 'apathy, resignation, or detachment' and feeling 'belittled by aspects of the process, certainly excluded and often confused … and sometimes frustrated' (Kirby, Jacobson and Hunter 2014: 6, 10, 11).

In civil matters, it is rare for plaintiffs to express positive feelings toward their court experience, in part because their expectations about respect, dignity and vindication are not met (Relis 2009; Stewart and Wood 2013). Unfamiliar language, loss of control of their story, and relegation to a passive role can all result in plaintiffs feeling 'uncomfortable or alienated' (Stewart and Wood 2013: 136). Similarly, a defendant's involvement in civil litigation – ordinarily slow, expensive and public – will often be stressful, distressing or generally unpleasant, especially where proceedings allege some personal or professional failing. Active participation in the trial process by any party, as a witness undergoing direct and cross-examination, can be experienced as 'degrading and deeply humiliating' leading to feeling hurt, angry and victimised (Stewart and Wood 2013: 137-8).

The circumstances of court users, especially in lower courts, may reflect deep social inequalities. Those who are present in lower courts may be there, in part, as a consequence of social, political and economic circumstances beyond their control and beyond the control of the courts (Gray 2002; King, Freiberg, Batagol et al. 2014; Roach Anleu and Mack 2007; Pleasence, Balmer, Buck et al. 2004; Roach Anleu and Mack 2005). Magistrates, district judges and their courts in England and Wales also deal with court users who experience considerable disadvantage (Darbyshire 2011; Genn 2019; Jacobson, Hunter and Kirby 2015). 'Many are disadvantaged by poverty, low intelligence, homelessness, ill health, mental illness, learning difficulties, immigrant or asylum status, lack of English, or a combination' (Darbyshire 2011: 142).

In Australia, the overrepresentation of Indigenous Australians as victims and defendants is stark (Australian Law Reform Commission 2018; Cunneen 2014). The obstacles Indigenous Australians experience when confronting the court system is the culmination of centuries of

colonisation, dispossession, cultural destruction and resulting disadvantage (ALRC 2018; Marchetti 2019). The capacity of a judicial officer, at any court level, to address the causes and consequences of Indigenous disadvantage is necessarily very limited (Bennett 2016; also see Australian Law Reform Commission 2018; Marchetti 2019). One initiative is specialist sentencing courts for Indigenous Australians operating in some jurisdictions. By engaging the 'participation of … Elders and other Aboriginal community members in a sentencing dialogue' (Bennett 2016: 98), these courts aim to an offender's long-term 'psychological and emotional wellbeing' (Marchetti and Ransley 2014: 21).

Unrepresented litigants

A distinctive aspect of judicial work, especially but not only in the lower courts, is the prevalence of unrepresented parties. Nearly six in ten magistrates in the *National Survey of Australian Magistrates* report that their time is taken up always or often explaining things to unrepresented litigants (Roach Anleu and Mack 2017). In contrast, judges in other courts do so much less frequently; only five percent of judges in the intermediate courts find that their time is always or often taken up explaining things to unrepresented litigants, and just ten percent of supreme court judges report this. Other data confirms that a larger proportion of participants in lower courts are unrepresented compared with higher courts, and that there may be some increase, in some settings such as in migration appeals (Richardson, Grant and Boughey 2018).

The perception that unrepresented participants require more time can generate frustration for the judicial officer and for other court users, when it is not possible to deal with the allotted cases in a reasonable time on the date set. In the higher courts, the lack of representation may present particular problems in a complex case or trial, especially when only one side is

represented (Toy-Cronin 2015; see, for example, *Barmettler v Greer & Timms* [2007] QCA 170).

While any court user may experience anxiety and frustration resulting from delay or apparent unfairness of legal proceedings, unrepresented participants can feel special distress from their own lack of understanding of court processes (see, for example, Toy-Cronin 2015). New Zealand research shows that unrepresented litigants struggle to understand legal rules, legal terminology, and courtroom practices (Toy-Cronin 2019). They report feeling nervous about when to speak and how to address the judge, anxiety about how to pronounce legal words and embarrassment about their cases. This lack of understanding, and the feelings generated and expressed, will all need to be managed by the judicial officer.

Witnesses

Witnesses may be parties to the case, have an interest in the parties, the case or its outcome, may be professional witnesses such as police or experts, or may be unrelated to and disinterested in the parties or the case outcome. Regardless, most witnesses will approach the courtroom with a range of emotions, such as anxiety, nervousness, fear, determination or other feelings, creating part of the emotional context for the judicial officer (Fielding 2013; Jacobson, Hunter and Kirby 2015; Vaisman and Barrera 2020). Witnesses, including those who are giving evidence as victims of a crime or wrong, can feel frustrated and angry by cross-examination. They will resent any imputation they are not telling the truth and feel 'a sense of unfairness' (Fielding 2013: 292) at counsel's attempts to (intentionally) manipulate their emotions and make them appear not credible. They may also experience intense emotions arising from having to give an account of traumatic events in front of strangers and in a public space.

Many of the emotions experienced by adult witnesses are intensified for children, whose understanding and agency are likely to be less (Rush, Quas and McAuliff 2013). A visibly distressed child witness will also generate emotional impact on the judge and jury, if there is one. Jurors may feel sympathy, so the judge must undertake difficult emotion management to meet their duty to ensure that the trial proceeds fairly. Particular issues relating to witnesses testifying about sexual assault are discussed in the section below headed 'Case types'.

Another category of potentially emotionally vulnerable witnesses are eyewitnesses who are asked to identify the perpetrator in a criminal case (Bornstein, Hullman and Miller 2013). The events observed may themselves have been traumatic, and the responsibility for making the identification in court will generate emotion as well. The visibility of this emotion will impact, perhaps positively or negatively, on credibility. Anger and fear are each emotions which could affect judge or juror evaluation. Research suggests that, while anger may generate confidence, confidence does not necessarily equate to accuracy (Wells, Memon and Penrod 2006; also see Bornstein, Hullman and Miller 2013; Brewer and Wells 2011).

The special vulnerabilities and needs of witnesses, victims, adults and children, present significant occasions for emotion work. The judicial officer's emotion capacities and conduct may alleviate some of the trauma experienced by the court participants, or can increase their pain and distress (Davies 2017; Smith 2018; Smith and Skinner 2017).

Jurors

Another key group of courtroom participants is jurors, who are members of the public (Hans 2008). In research drawing on surveys and interviews conducted in the Australian states of Tasmania and Victoria, Davis (2015) finds that:

> Across the process of a trial … jurors experience a range of positive and negative emotions. … [A]s they go through the process of reporting for jury duty, being selected and sworn in, listening to the lawyers and witnesses, taking in the judge's directions, deliberating on the verdict and then delivering the verdict (also see Warner and Davis 2011; Warner, et al. 2016).

Research in New South Wales, South Australia and Victoria finds that '[m]ore empanelled than non-empanelled jurors were satisfied with their overall experience of jury service (67% vs 48%)' (O'Brien, Goodman-Delahunty, Clough et al. 2008: 3).

Jurors may experience a wide variety of feelings as part of their service. 'Jurors are often surprised when they realise that a real trial is nothing like the version that is presented on television' (Davis 2015; also see Rossner 2019). They may be upset about the practical aspects of jury duty such as the inconvenience and disruption to their daily life and work and the inability to discuss the case with others, or be concerned about media interest in the trial or even their own safety (National Center for State Courts 1998; also see Miller and Bornstein 2004, 2013).

A range of juror emotions, whether related to the trial itself or from extrinsic sources, may affect outcomes (Feigenson 2016; Simon 2019). While it is often asserted in the media that the public, from whom juries are drawn, are angry about crime and criminals, Australian research into the attitude of jurors finds that anger toward the defendant is rare, with sorrow and compassion more frequent (Davis 2015).

An aspect of trials that can generate strong emotion for judicial officers as well as jurors is grisly or gruesome evidence (Flores, et al. 2009; Miller, et al. 2018). 'A common theme … is the concern that some types of evidence can prejudicially impact juror decision-making, especially when that evidence induces emotional responses in jurors' (Bright and Goodman-Delahunty 2006: 184; also see Bandes and Salerno 2014). There is legislation and case law in Australia and in other jurisdictions designed to manage juror emotion in relation to such evidence, by excluding or limiting material where there is 'a risk that the evidence will damage the defence case in some unacceptable way, such as provoking some irrational, emotional or illogical response' (see, for example, *R v Dirani (No 6)* [2018] NSWSC 891 at [31], citing *Evidence Act 1995* (NSW) s 137 and *BJS v R* [2013] NSWCCA 123). However, it may be necessary for the judicial officer to review such material, either in order to implement the evidentiary rules at trial, or in relation to sentencing, such as where a judicial officer must classify child exploitation material to determine an appropriate sentence (*R v Oliver* [2002] EWCA Crim 2766; Queensland Sentencing Advisory Council 2017).

Legal representatives

Barristers accept that 'emotional detachment' (Harris 2002: 571) is an aspect of the rationality required by law and necessary to maintain the emotional regime of the courtroom (Richard 1993; also see Flower 2016). Such emotion compliance is a significant marker distinguishing professional participants from witnesses and defendants (Rock 1993). While commitment to detachment on the part of legal professionals may make the judicial task of emotion management easier in some ways, it could also result in insensitivity to emotion, limiting the capacity of lawyers to understand and manage their own and others emotions and so affect the emotional environment of the courtroom (Reed and Bornstein 2013).

On the other hand, in the courtroom, especially during trials, and in particular before a jury, legal representatives use emotions and emotion management as resources or strategies to further professional or institutional legal objectives. For example, they may use 'feigned and exhorted emotional display during witness examinations and cross-examinations' (Harris 2002: 570; also see Vaisman and Barrera 2020). US research finds that lawyer behaviour during trial is among the most stressful situations for judges (Flores, et al. 2009). Darbyshire recounts some of the provocative conduct observed in her research: 'grossly inept advocacy and lack of preparation; impolite advocates who routinely did not take responsibility for their failure[s] … bombastic, aggressive or argumentative advocates who had to be warned repeatedly about their inappropriate behaviour' (2011: 127-8). In contrast, 'jovial camaraderie between the prosecution and defence lawyers' may be helpful in improving the emotion environment for the judge and legal representatives (Kirby, Jacobson and Hunter 2014: 11), though this 'can feel alienating and exclusionary for defendants (and, indeed, victims and witnesses)' (p. 11; also see Roach Anleu, Mack and Tutton 2014; Roach Anleu and Milner Davis 2018).

While unrepresented parties may be thought to be especially emotionally and practically demanding, the behaviour of legal representatives can generate considerable emotion for the judicial officer as well as for other courtroom participants, and require judicial emotion work, as discussed more fully in Chapters 4 and 5. Unprepared or inexperienced lawyers can present particular challenges. Fewer than four in ten magistrates report that legal representatives are always or often well prepared. In contrast, nearly half of intermediate court judges report that legal representatives are well prepared always/often. Even more striking, 70 percent of supreme court judges report legal representatives are always/often well prepared, demonstrating a substantial difference in the context of judicial work at each court

level (Roach Anleu and Mack 2017). However, this still means that half of intermediate court judges and nearly one-third of supreme court judges must regularly deal with poorly prepared or inexperienced lawyers. Engaging with unprepared lawyers in any circumstance can affect a judicial officer's feelings and how emotion is managed and displayed.

Highest courts and appeals

In appeals, especially at the very highest final court level, it might be expected that occasions for emotion display and management would be reduced, as the justices deal primarily with lawyers, and because much of the 'human complexity', including feelings, have been removed, leaving 'a purely legal context with purely legal concerns' (Abbott 1981: 823-4). One consequence of this purification is abstraction and depersonalisation and therefore reduced opportunity and demand for emotion (Heimer 2001; Solove 1997).

A study of oral argument in the High Court of Australia finds that judicial performance contains very little perceptible emotional display from any of the justices, and their demeanour adheres strongly to formal, conventional norms of unemotional detachment, though achieving this appearance may require considerable emotion work (Tutton, Mack and Roach Anleu 2018). This judicial demeanour is maintained throughout a variety of appeal cases, even those involving distressing facts such as child sexual abuse.

In spite of the emphasis on detachment on the part of lawyers and the judiciary in the highest appeal courts, emotion language may be used in submissions to the court. However, research suggests this may not be a successful advocacy strategy, and that 'measured, objective language' may be more effective (Black, Hall, Owens et al. 2016: 377).

In the United States Supreme Court, the final court of appeal in the USA, judges engage directly with each other during oral argument, sometimes involving fairly heated exchanges (Black, Sorenson and Johnson 2013; Johnson, Black and Wedeking 2009; Paterson 2013). Harsh or unpleasant language is sometimes used towards advocates appearing before the Court, perhaps signalling negative judicial views of the substance of the argument (Black, Treul, Johnson et al. 2011).

A substantial part of judicial work in the higher courts is judgment writing, a relatively open-ended task, sometimes involving many decisions. Those judges who spend more time on judgment writing may find decision making slightly more difficult or stressful, though those who report the most time judgment writing also report higher rates of satisfaction with the intellectual challenge of their work (Mack, Wallace and Roach Anleu 2012). While judgment writing is a less frequent part of lower court work, it can be experienced as stressful in part because of the lack of time allowed for this work (Roach Anleu and Mack 2017).

There are other emotional positives in judgment writing. Such work could engage background emotions such as pride (Bergman Blix and Wettergren 2018). The written judgment itself, through content and presentation, can engage the feelings of other court participants and can be an occasion to reduce the depersonalisation and abstraction which can strip out valuable emotion.

Judgment writing is an exercise in advocacy, to persuade the parties and other readers of the correctness of the decision, especially for those who have not succeeded (Barak 2006; Baum 2017; Gibson and Nelson 2014). Emotional rhetoric and imagery can be important in this persuasion. Lord Denning MR was known for his vivid prose, designed to evoke feelings

and create a particular emotional atmosphere: 'In summertime, village cricket is the delight of everyone' (*Miller v Jackson* [1977] QB 966 at 976). 'It happened on April 19, 1964. It was bluebell time in Kent' (*Hinz v Berry* [1970] 2 QB 40 at 42).

Research tracking the sources, use and impact of 'affective language' in US court decisions is becoming more frequent (Bryan and Ringsmuth 2016; Budziak, Hitt and Lempert 2019). As with advocacy, emotive language in judgments is perhaps not always successful (see Blackshield 2007) and may be perceived as inconsistent with judicial norms (Ray 2002).

Sentencing

One especially visible and publicly contentious aspect of judicial decision making is determining sentence in criminal cases. Sentencing is a central part of the work of all courts hearing criminal cases, at all levels, though the practical context and emotional circumstances vary. Australian research finds that a majority (57 percent) of magistrates regard sentencing as one of their most important judicial functions. In contrast, sentencing is identified as a most important function by only 28 percent of judges in the higher courts. These differing views may reflect the lesser emphasis on criminal law in the higher courts (Mack, Wallace and Roach Anleu 2012).

Sentencing can be an important site for emotional experience and expression for all participants, including the judicial officer (Hall 2016; Tata 2007, 2020).[8] Tata characterises sentencing as a 'social process' and as work that is 'culturally reflective and instructive: it

[8] There is a substantial literature on emotion and other factors possibly affecting the outcomes or content of judicial decisions generally and sentencing in particular, which is beyond the scope of this book. See for example, Epstein and Lindquist 2017; Howard and Randazzo 2017; Wandall 2010; Weimann-Saks, Peleg-Koriat and Halperin 2019 and research cited therein.

signals ideas about harm, authority, and community. It may offer emotional resolution and catharsis, or, it may be degrading' (2020: 2; also see Durkheim 1938, 1984).

While sentencing nearly always takes place in the presence of the defendant, there are important contextual differences. In the lower courts, sentencing is usually imposed immediately upon conviction (whether by trial or guilty plea), after hearing primarily oral submissions from prosecution and defence. The sentence is nearly always delivered orally and extemporaneously. A magistrate may sometimes delay until later in the day or another day to give time for reflection, or, less frequently, to seek further information, such as a pre-sentence report. In higher courts, sentencing will usually take place sometime after conviction, in a separate proceeding, after consideration of pre-sentence reports and other documentation or representations, including victim impact statements (discussed below). The judge may prepare written sentencing remarks which are read aloud.

Two aspects of sentencing have received substantial attention in the research literature on emotion and judging: the assessment of the convicted offender's remorse and the role of victim impact statements.

Remorse, an emotion, is a mitigating factor in sentencing (Bandes 2016; Mackenzie 2005; Proeve and Tudor 2010; Roberts 2011; Weisman 2014). Judicial officers are legally required to assess remorse and take it into account when making sentence determinations. Therefore, a 'performance of remorse' (Rossmanith, Tudor and Proeve 2018: 380), or explicit 'expressions of remorse' (Weisman 2009: 48) can be appropriate, expected or even required.

In this legal context, remorse is framed as an internal, individual emotion, but one which the judicial officer can discern and distinguish from an insincere or strategic display (Johansen 2019). In the lower courts a defendant's direct performance of remorse may be limited. An analysis of transcripts of sentencing proceedings in Australian lower courts finds that most references to remorse are from the defence representative to the magistrate, sometimes relaying information about the defendant's apology or other post-offence actions (Roach Anleu and Mack forthcoming).

The use of victim impact statements (VIS) is now a settled part of sentencing in Australia and elsewhere for example, Canada, USA and UK (Davies 2017). These may be presented orally by the victim personally, or in writing, or may be given through the prosecutor (Davies 2017). There was considerable public and legal debate about whether to allow VIS at all and what their legitimate use(s) are, largely driven by concerns about emotion and emotionality in a legal space where emotion is conventionally inappropriate (Bandes 1996; Booth 2016; Davies 2017). In spite of these concerns, in most jurisdictions, the judicial officer is legally required to permit, observe, assess and take into consideration victim emotion and emotion display (Bandes 1996; Booth, Bosma and Lens 2018). Several Australian jurisdictions publish guidelines for preparation of VIS suggesting that victims detail the emotional impacts of, or emotional harm caused by, the offending (Davies 2017). As a result, judicial officers must manage emotions of victims and their expression without undermining the legitimate role of the VIS in the legal process.

Case types

Emotions may be intensely animated in any area of judicial work, though some may appear to be more emotionally demanding or satisfying than others. This chapter has concentrated on

describing judicial work and tasks in criminal cases that form the bulk of the work of general jurisdiction courts in Australia and in similar courts in other common law countries. There are several areas of law which generate particularly or potentially emotionally laden contexts: sexual assault, domestic/family violence (DFV), childrens/youth, small claims, coroners, family law and migration and refugee cases.

Sexual assault charges may be heard at any court level and may also arise in non-criminal cases such as family or migration. DFV, childrens/youth, small claims, and coronial work are often located in lower courts, either as part of everyday judicial work or as specialist lists or separate courts and may have specialist judicial officers (AGPC 2020c). Family law and migration appeals are other specialised areas with particular emotional features. In Australia, these are heard in the Federal Circuit Court, the Family Court and the Federal Court.

Locating these case types separately enables specialist judicial expertise in managing these cases, including managing their emotional aspects, but the demands of a specialist jurisdiction can be difficult for the judicial officer, possibly leading to secondary or vicarious trauma or compassion fatigue (Jaffe, Crooks, Dunford-Jackson et al. 2003). Judicial officers presiding in these kinds of matters also face high case volume and time pressure, evidence of violent and traumatic events, and limited legal representation, exacerbated by an intimate, personal or familial setting, the special vulnerabilities of some participants, and/or the repeated nature of the conduct or events.

Sexual assault

Trials involving charges of sexual assault against adults or children are particularly emotionally demanding for all participants because of the facts, the vulnerability and special

needs of witnesses, and the complex and contested evidentiary issues of cross-examination (Davies 2017; Herlihy and Turner 2016; Smith 2018; Smith and Skinner 2017). Witnesses' court experiences have been described as 'terrifying', 'painful', and 'ritualised degradation' (van de Zandt 1998: 125-26; also see Victorian Law Reform Commission 2016). In one study of 150 sexual assault trials in New South Wales, two-thirds were stopped at least once during the complainant's evidence because of distress. At least one witness vomited in the witness box. Questioning about sexual matters ordinarily regarded as intensely intimate and private can be extensive. Even with considerable changes to legislation and court practice to alleviate such traumatic experiences, abusive cross-examination and re-traumatising sexual assault victims still occurs (Booth, Miranda and Wangmann 2019; Easteal 1998; Herlihy and Turner 2016; Smith and Skinner 2017; Smith 2018). In 2018 in Queensland, a woman testifying about having been raped by her then husband was cross-examined for 12 hours over three days (Robertson 2018). These testimonial emotional difficulties can be further magnified by delay, repeated telling of the story, and anxiety about the outcome. Whatever fear and confusion witnesses experience can make their testimony seem less consistent and credible (Denne, Sullivan, Ernest et al. 2020; Epstein and Goodman 2013). The obligations on judges to manage the legal process as well as their own and others' emotions in this context is extraordinary. Research identifies sexual assault and crimes against children as the most stressful aspects of trial work for judges (Flores, Miller, Chamberlain et al. 2009).

Domestic/family violence (DFV)

The most common form of gendered crime – domestic/family violence (DFV) − appears regularly in lower courts (Douglas and Chapple 2019). It may present as criminal charges, usually a form of assault, applications for protection orders, proceedings related to breach of protection orders or sentencing after conviction. The Victorian Royal Commission into

Family Violence (RCFV) (2016) notes that civil matters such as debt, residential tenancy or inheritance may involve family violence (see also Hunter 2008). Applications for protection orders, categorised as civil matters in Australian court statistics, amount to 35 percent of finalised civil cases in magistrates courts, about 120,000 matters nationally (AGPC 2020a). Three-quarters of magistrates report sitting in the DFV jurisdiction always or often (Mack, Wallace and Roach Anleu 2012).

The RCFV (Victoria) (2016) gives a picture of emotions involved in DFV processes in lower court. For an applicant, seeking a protection order can be a time of extreme danger and escalating violence. The formalities of application can be bewildering; delay can intensify the uncertainty, fear, anxiety, and danger. The courthouse may lack security features such as separate waiting rooms.

The court appearance itself can be terrorising and humiliating. One particularly difficult circumstance for an applicant is facing cross-examination in court conducted by the person against whom the order is sought, if he lacks legal representation. While most Australian jurisdictions have some legislative restrictions on this practice, there is a 'marked unevenness' in the actual protection available (Booth, Miranda and Wangmann 2019: 1106). Emotion is not confined to the applicants seeking protection. Those against whom an order is sought, most often men, may also experience and express strong emotion.

US and Australian research shows the considerable emotional value of meaningful communication between the judicial officer and the parties in court (Hunter 2005; Ptacek 1999). Submissions to the RCFV emphasised the 'importance of a magistrate's language, manner and behaviour in court to ensuring that parties feel respected and heard [and] that

they understand the court process' (2016: vol III, ch 16, 132). They described how compassionate responses from judicial officers can help alleviate anxiety, as well as validate the applicant for engaging with the court. However, research shows considerable variability in judicial response (RCFV 2016; also see Hunter 2005; Ptacek 1999), even to the point of emotionally abusive conduct (Gray 2010). 'The conflict and intense emotions inherent in court proceedings involving allegations of domestic violence can challenge a judge's ability to demonstrate judicial temperament and convey impartiality' (Gray 2010: 1). Judicial officers may, for example, become frustrated when a woman refuses to leave an abusive relationship, failing to recognise the practical and even life-threatening obstacles her partner has created should she try to leave, and the reasons she may have for not leaving (Epstein and Goodman 2013). Parents, especially mothers, can feel harshly judged and demeaned by judicial conduct and experience shame, embarrassment and anxiety (Lens 2016, 2017; Weisz, Beal and Wingrove 2013).

Childrens/youth

Courts with a special focus on young people, which may include youth offending and/or child protection, are often located in overburdened lower courts (AGPC 2020c; Borowski 2013; Sheehan 2013). Almost half (47 percent) of magistrates report that they preside in childrens/youth matters always or often. In contrast, only six percent of judges of the intermediate or higher courts report this kind of work (Mack, Wallace and Roach Anleu 2012).

Cases involving young people accused of crime entail all the emotional elements of criminal law plus distinctive concerns about the vulnerability and welfare of the children, as well as their immediate or extended families. Parents of the children who are the direct subject of the

proceedings may also experience or describe the court processes in negative terms (Pennington 2015). These courts often also have the care and protection jurisdiction, dealing with children who are at risk in their homes, and who may be subject to removal. These cases are 'heart-rending' (Darbyshire 2011: 288). Australian research on childrens/youth courts indicates that:

> [a]lthough dealing with youth offenders was seen [by interviewees] as being more time-consuming than dealing with similar adult cases, it was nevertheless 'more manageable' – much less emotionally taxing – than child protection matters (Borowski 2013: 275).

These features can result in 'an intimidating and complex environment' for all involved (Lens 2017: 132). Constant exposure to allegations of harm done by and to children, and concerns for their welfare, impose emotional burdens on the judicial officer. The intense emotions experienced and displayed by those appearing in these courts generates considerable need for emotion management. Hope for the potential of an intervention to alleviate harm or even significantly improve the course of a young person's life is also an important emotional feature of these courts. Australian research finds that:

> Magistrates considered Family Division work more demanding than work in other courts – time-consuming, emotionally 'intense', 'onerous', complex and often 'traumatic', with magistrates having to make 'difficult decisions' [under considerable time pressures] (Borowski and Sheehan 2013: 131).

Civil and small claims

Lower courts process a large number of general civil and small claims matters, about five times as many as the higher courts (AGPC 2020b; Bamford and Rankin 2017). However, these cases form a smaller part of everyday work of magistrates: about four in ten magistrates indicate always or often sitting in the civil jurisdiction, compared with over five in ten judges in the intermediate and higher courts (Mack, Wallace and Roach Anleu 2012).

Some civil matters can be lengthy or difficult. Flores et al's (2009) US research identified long boring trials as a particular feature which judges found stressful. Civil litigation can also be an area of considerable emotion for the parties. These feelings can occur at any stage of the legal process and may reflect the strong emotions that motivate some civil plaintiffs to bring their actions (Lind, Greenberg, Scott et al. 2000; Vincent, Young and Phillips 1994). US research finds that the decision to sue is influenced by factors including the plaintiff feeling poorly treated by the defendant (Lind et al 2000); also see Vincent and Phillips 1994; Stewart and Wood 2013), and wanting to feel 'heard and acknowledged' by the defendant (Relis 2009: 58).

Even in small claims, where the amount in issue is limited compared to other matters before the courts, the dispute itself can be very important to the parties, generating strong emotions similar to those for any civil action. Legal and factual issues can be complex, and individual litigants, whether plaintiff or defendant, are almost always unrepresented (Darbyshire 2011), either because of limited legal aid or because legal representation may not be allowed (see, for example, *Magistrates Court Act 1992* (SA) s 38(4)), perhaps adding to the emotion demands on the judicial officer.

A large proportion of these cases are debt collection proceedings, often brought by repeat player collection agencies against debtors with little or no capacity to pay, facing the social disadvantages confronting so many lower court users (Darbyshire 2011; Genn 2019), finalised by default judgments (Bamford and Rankin 2017). As with criminal cases, the limited capacity of the magistrate to address the underlying social and economic inequities can lead to frustration.

Coroners

About a quarter of magistrates in Australia sit at least sometimes in the coronial jurisdiction investigating causes and circumstances of deaths, especially those that are sudden or unexpected (Mack, Wallace and Roach Anleu 2012; also see Scott Bray 2010). This jurisdiction presents a distinctive emotional context for judicial work. Coronial matters are handled through an inquisitorial rather than adversarial process, either as a specialist jurisdiction or, in regional areas, as part of a general caseload. Emotional needs, especially of survivors, can be challenging. Tait, Carpenter, Quadrelli et al state that 'coroners are necessarily confronted with raw and pressing emotions' arising from the grief resulting from the unexpected death (2016: 572). The potential for emotional harm to families from the coronial process itself can be especially acute in cases of possible suicide (Biddle 2003; Chapple, Ziebland and Hawton 2012; Tait, et al. 2016).

Facts in these inquiries can be emotionally challenging for the coroner: '[d]eath investigations are understood by all coronial professions to be confronting emotional experiences which have the capacity to distress and disturb' (Tait, et al. 2016: 576). One study of coroners in Australia found that they are 'troubled by questions of emotion and how to therapeutically manage its expression in oneself and others' (Roper and Holmes 2016: 143). Tait et al indicate that coroners may draw on the 'cultural script of judicial dispassion' (Maroney 2011: 630) to manage the 'intensely emotional nature of a coroner's role' (2016: 581).

Family law

Family law addresses legal issues arising from marriage and divorce including property division, spousal and child support and arrangements for access to, custody of and parenting

of children. Even in jurisdictions with 'no-fault' divorce, family courts must hear and determine allegations of domestic/family violence, sexual abuse of children, or sexual assault, as these can become relevant to questions of safety of children or other family members or to court management issues such as ensuring safety during court proceedings (Darbyshire 2011). These cases can be emotionally wrenching for all the participants (Huntington 2016). Many litigants experience significant distress of various kinds, including violence (Harman 2017; Huntington 2016). The inherently and intensely human emotional experience central to divorce and related issues lead to stress and require judicial emotion work. In survey research conducted with US judges, 63 percent of the judges 'reported one or more symptoms that they identified as work-related vicarious trauma experiences' (Jaffe, et al. 2003: 1).

Family courts often face similar challenges as other lower courts, such as growing caseloads, time pressure and lack of legal representation (Australian Law Reform Commission 2019; Barlow, Hunter, Smithson et al. 2017; Biland and Steinmetz 2017; National Center for State Courts 2018). US research suggests that legal representation in and of itself may not improve the emotional landscape in family law. A survey of US divorce attorneys finds that they perceived 'opposing counsel's actions … as increasing the emotional level of the dispute in about half of the cases' studied (Braver, Cookston and Cohen 2002: 332; also see Mather, McEwen and Maiman 2001; Weisz, Beal and Wingrove 2013). In contrast, research in Australia suggests that family lawyers may help ameliorate an adversarial mindset in their clients by maintaining a focus on the children's interests (Batagol 2008).

Migration and refugee

In most common law countries, decisions on migration matters, including refugee and asylum applications, are made in the first instance by a government official, but can be challenged in

various ways, eventually ending up in court. In Australia, these cases make up about five percent of all filings in the Federal Circuit Court (Federal Circuit Court of Australia 2018) and about 80 percent of the Federal Court appeals and 92 percent of all appeals commenced by unrepresented litigants (Federal Court of Australia 2018). These are mostly determined by a single judge, while appeals in other matters are heard by a panel of three or sometimes five judges (Federal Court of Australia 2018: 31). In many jurisdictions, migration cases may be heard in specialist courts or tribunals, which are the functional equivalent of lower courts in many respects, and share similar qualities of high caseloads, pressure for rapid case processing, limited resources, unrepresented litigants and distressing facts (Lustig, Karnik, Delucchi et al. 2008).

These cases can generate a range of emotions. Lustig et al (2008) describe the facts in migration matters as 'horrifying stories' (p. 58), 'perhaps the most disturbing stories of human suffering' (p. 75). Migration decisions, especially in asylum cases, can mean life or death for some applicants. The intense emotions of those seeking asylum, language barriers requiring interpreters, and the difficulty of making assessments which often turn on credibility, are experienced as 'emotionally draining' by the judicial officer (Lustig, et al. 2008: 74; also see Herlihy and Turner 2016; Hunter, Pearson, San Roque et al. 2013; Johannesson 2018; Westaby 2010; Wettergren 2010). The emotional qualities intrinsic to the cases themselves may be intensified for the all participants, including the judicial officer, by the very public nature of particular cases and the wider public and political conflicts around immigration and asylum policy (Mack, Roach Anleu and Tutton 2018; Peterie and Neil 2020; Tomkinson 2018).

Conclusion

Although emotion is formally disavowed as a legitimate part of judicial practice and decision making, judicial officers are human and judicial work occurs in circumstances in which emotion is experienced and displayed and needs to be managed. Judicial officers at all court levels are constantly exposed to the traumatic experiences of others, whether in criminal matters, DFV, family law or any other area of human activity that ends up in court. The courtroom involves face-to-face interaction with many participants, each with their own feelings. Decision making entails exercising judgment which can demand empathy or compassion, or elicit anger, sadness or disgust. While some judicial emotional capacities can be valuable judicial resources, emotional openness can also lead to a kind of secondary or vicarious trauma resulting in a complex process of emotion experience and management (Chamberlain and Miller 2008).

The nature of interaction across different court contexts produces contrasting emotion environments and varied experiences of emotion and emotion display for the judicial officer and other participants. This chapter reveals the interconnectedness among formal court structures, context, judging and emotion. This overview provides the basis for understanding the interactions and emotion experiences investigated in the next three chapters.

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