

MANAGING WORK AND FAMILY IN THE JUDICIARY: METAPHORS AND STRATEGIES

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Like many Australians, women and men in the judiciary experience work-based and domestic demands, requiring everyday practical strategies to transition in and out of their judicial role. Data from face-to-face interviews and nation-wide mail surveys of Australian judges and magistrates reveals the ways judicial officers experience, describe, and manage the interface between these spheres. Three main themes emerge. First, for all judicial officers, work is dominant. It is perceived as inflexible, and this inflexibility is normalised. Second, judicial officers use a wide variety of metaphors to describe their experience of managing work and non-work time, including blurring, balance, seepage, juggling, tension, collision and conflict. Third, the strategies women and men use to demarcate work/family boundaries are different. Despite women's apparently greater commitment to maintaining a strong boundary

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between their work and family life, more women judicial officers than men report that their job often or always interferes with family life. In contrast, men in the judiciary seem less concerned about the transition from one sphere to another.

I INTRODUCTION

Until recently, judiciaries world-wide were overwhelmingly constituted by men, and the judge traditionally sex-typed male,¹ undermining claims of depersonalised neutrality.² Gender diversity on the bench is now widely accepted as essential for legitimacy and public confidence.³ Larger numbers of women

¹ Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford University Press, 1996); Margaret Thornton, ‘“Otherness” on the bench: how merit is gendered’ (2007) 29 *Sydney Law Review* 391.

² Lilia M Cortina et al, ‘What’s Gender Got to Do with It? Incivility in the Federal Courts’ (2002) 7(2) *Law & Social Inquiry* 235; Kimberly A Lonsway et al, ‘Understanding the judicial role in addressing gender bias: A view from the Eighth Circuit Federal Court system’ (2002) 27 *Law and Social Inquiry* 205; Cheryl Thomas, ‘Judicial Diversity in the United Kingdom and Other Jurisdictions: A Review of Research, Policies and Practices’ (Her Majesty’s Commissioners for Judicial Appointments, 2005); Sally J Kenney, *Gender and Justice: Why Women in the Judiciary Really Matter* (Routledge, 2013); Ulrike Schultz and Gisela Shaw (eds), *Gender and Judging* (Hart Publishing, 2013); Hilary Sommerlad, ‘Let History Judge? Gender Race, Class and Performative Identity: A Study of Women Judges in England and Wales’ in Ulrike Schultz and Gisela Shaw (eds), *Gender and Judging* (Hart Publishing, 2013) 355.

³ Thomas, above n 2; Kate Malleson, ‘Rethinking the merit principle in merit selection’ (2006) 33(1) *Journal of Law and Society* 126; Erika Rackley, ‘Difference in the House of Lords’ (2006) 15(2) *Social and Legal Studies* 163; Hazel Genn, ‘The Attractiveness of Senior Judicial Appointment to Highly Qualified Practitioners: Report to the Judicial Executive Board’ (Directorate of Judicial Offices for England and Wales, 2008); Sally J Kenney, ‘Gender on the Agenda: How the Paucity of Women Judges Became an Issue’ (2008) 70(3) *The Journal of Politics* 717; Erika Rackley, *Women, Judging and the Judiciary: From Difference to Diversity* (Routledge, 2013); Hilary Sommerlad, ‘Book Review: Gender & Justice: Why Women in the Judiciary Really Matter by Sally J Kenney and Women, Judging and the Judiciary: From Difference to

are entering the judiciary and much attention is on the question of what differences increasing numbers of women will make to judicial work and judging.⁴ In Australia, a third of judicial officers are women, though this proportion varies across courts.⁵

Considerable empirical research and policy attention is given to the intersection between work and family life,⁶ including in

Diversity by Erika Rackley' (2013) 40(4) *Journal of Law and Society* 699; Sommerlad, above n 2.

⁴ Bertha Wilson, 'Will Women Judges Really Make a Difference?' (1990) 28 *Osgoode Hall Law Journal* 507; Patricia Yancey Martin, John R Reynolds and Shelley Keith, 'Gender bias and feminist consciousness among judges and attorneys: A standpoint theory analysis' (2002) 27(3) *Signs* 665; Rackley, 'Difference in the House of Lords', above n 3; Sharyn Roach Anleu and Kathy Mack, 'Gender, Judging and Job Satisfaction' (2009) 17(1) *Feminist Legal Studies* 79; Stephen J Choi et al, 'Judging Women' (2011) 8(3) *Journal of Empirical Legal Studies* 504; Schultz and Shaw, above n 2; Rackley, *Women, Judging and the Judiciary*, above n 3.

⁵ Australasian Institute of Judicial Administration, *Judicial Gender Statistics* (3 March 2016) <<http://www.aija.org.au/index.php/judicial-gender-statistics>>.

⁶ Janeen Baxter and Michael Bittman, 'Measuring Time Spent on Housework: A Comparison of Two Approaches' (1995) 1(1) *Australian Journal of Social Research* 21; Cynthia Epstein et al, *The Part-Time Paradox: Time Norms, Professional Lives, Family, and Gender* (Routledge, 1999); Jerry A Jacobs and Kathleen Gerson, 'Overworked individuals or overworked families? Explaining trends in work, leisure and family time' (2001) 28(1) *Work and Occupations* 40; Michael Bittman et al, 'When does gender trump money? Bargaining and time in household work' (2003) 109(1) *American Journal of Sociology* 186; Jerry A Jacobs and Kathleen Gerson, *The Time Divide: Work, Family and Gender Inequality* (Harvard University Press, 2004); Suzanne M Bianchi, John P Robinson and Melissa A Milkie, *Changing Rhythms of American Family Life* (Russell Sage Foundation, 2007); Jenny Chesters, Janeen Baxter and Mark Western, 'Paid and unpaid work in Australian households: Trends in the gender division of labour, 1986-2005' (2009) 12(1) *Australian Journal of Labour Economics* 89; Scott Schieman, Melissa A Milkie and Paul Glavin, 'When Work Interferes with Life: Work-Nonwork Interference and the Influence of Work-Related Demands and Resources' (2009) 74 *American Sociological Review* 966; Paula England, 'The Gender Revolution: Uneven and Stalled' (2010) 24(2) *Gender & Society* 149; Sarah Winslow, 'Gender Inequality and Time Allocations Among Academic Faculty' (2010) 24(6) *Gender & Society*

relation to the legal profession generally.⁷ However, the interface between demands of work and family life in the judiciary is rarely empirically investigated.

This article examines the intersections or tensions between work and family as experienced or perceived by women and men judicial officers.⁸ It identifies the language they use to describe this experience, especially the metaphors, and analyses the strategies they use which might reinforce (or resist) the gendered work family divide. Two sources of data underpin this investigation. First, national mail back surveys of all Australian judicial officers directly asked questions about work and family responsibilities.⁹ Findings from this data set are discussed in Parts II and III of this article. Second, face-to-face interviews with 38 judicial officers¹⁰ asked similar questions. Using a different research method provides more in-depth understanding of patterns which emerge from the quantitative data.¹¹

The work/family interface is sometimes described metaphorically as entailing the ‘balancing [of] paid work and

769; Joya Misra, Jennifer Hickeys Lundquist and Abby Templer, ‘Gender, Work Time, and Care Responsibilities Among Faculty’ (2012) 27(2) *Sociological Forum* 300.

⁷ See, eg, Richard Collier, ‘Naming Men as Men in Corporate Legal Practice: Gender and the Idea of “Virtually 24/7 Commitment” in Law’ (2015) 83 *Fordham Law Review* 2387; Margaret Thornton, ‘The Flexible Cyborg: Work-Life Balance in Legal Practice’ (2016) 38(1) *Sydney Law Review* 1.

⁸ In this article, the terms ‘judiciary’ or ‘judicial officer’ refer to all members of the Australian judiciary. The terms ‘magistrate’ and ‘judge’ distinguish members of the judiciary who preside in the first instance or lower state and territory courts (magistrates) from those who preside in the higher state and territory courts or Commonwealth courts (judges).

⁹ National Survey of Australian Judges 2007 and National Survey of Australian Magistrates 2007. For detail about the national surveys, see the Appendix.

¹⁰ For details of the interviews and the research method, see the Appendix.

¹¹ Robert K Merton and Patricia L Kendall, ‘The Focused Interview’ (1946) 51(6) *American Journal of Sociology* 541.

family life'¹² or characterised as the collision between home and work.¹³ Investigating the metaphors judicial officers use to describe this intersection, and the practical strategies they adopt to manage the competing demands, shows that while gender is not a key organising principle in judicial work, it endures in the domestic sphere, which in turn genders judicial work.¹⁴

II JUDICIAL AND DOMESTIC WORK

Compared with other professions, fewer opportunities exist within the judiciary for gender stratification.¹⁵ Men and women at the same court level undertake the same kinds of work, exercise the same formal legal authority and receive the same salary and benefits. This is not to deny that women (and some men) may have experienced discrimination and inequality during their career pathways into the judiciary, or that more subtle, gendered experiences of judicial office occur.¹⁶ The point

¹² Jacobs and Gerson, above n 6, 41.

¹³ Barbara Pocock, Natalie Skinner and Reina Ichii, 'Work, Life and Workplace Flexibility: The Australian Work and Life Index 2009' (Centre for Work and Life, University of South Australia, 2009).

¹⁴ Lamont, Michèle and Virág Molnár, 'The Study of Boundaries in the Social Sciences' (2002) 28 *Annual Review of Sociology* 167; Candace West and Don H Zimmerman, 'Doing Gender' (1987) 1(2) *Gender & Society* 125; Candace West and Sarah Fenstermaker, 'Doing Difference' (1995) 9 *Gender & Society* 8; Nancy C Jurik and Cynthia Siemsen, "'Doing Gender" as Canon or Agenda: A Symposium on West and Zimmerman' (2009) 23 *Gender & Society* 72; Cecilia L Ridgeway and Shelley J Correll, 'Unpacking the Gender System: A Theoretical Perspective on Gender Beliefs and Social Relations' (2004) 18(4) *Gender & Society* 510. See also Laura A Rhoton, 'Distancing as a Gendered Barrier: Understanding Women Scientists' Gender Practices' (2011) 25 *Gender & Society* 696; Daniel Schneider, 'Gender Deviance and Household Work: The Role of Occupation' (2012) 117(4) *American Journal of Sociology* 1029.

¹⁵ Cecilia L Ridgeway, 'Framed Before We Know It: How Gender Shapes Social Relations' (2009) 23(2) *Gender & Society* 145.

¹⁶ Rosemary Hunter, 'Talking up Equality: Women Barristers and the Denial of Discrimination' (2002) 10 *Feminist Legal Studies* 113; Dermot

is that once appointed, few differences in the usual markers of workplace gender disparity exist.

As revealed by the survey findings, there is little gender difference between amounts of time spent on work-related tasks among Australian judicial officers. Half of all judicial officers, men and women, report working outside regular work hours every day (defined in the surveys as before 9 am and after 5 pm Monday to Friday). Court hierarchy, but not gender, makes a difference to the frequency of out of court work: Almost two-thirds of judges, male and female, report after hours work every day, compared with about one-third of magistrates, male and female. Women report the same frequency of out of hours work as their male colleagues, but slightly longer work days.

However, gender disparities are clearly present in the domestic sphere for men and women in the judiciary. In the surveys, women judicial officers report spending more time on domestic work than their male counterparts, especially on tasks which must be done daily or cannot be delayed, for example preparing meals, grocery shopping and laundry, whereas men report that these tasks are typically undertaken by their (usually female) spouses or partners. The tasks men report that they typically undertake — for example, home and car maintenance — may not be part of inflexible regular daily requirements and can sometimes be postponed. Like many other women in paid work,¹⁷ women judicial officers report feeling rushed far more often than their male colleagues.¹⁸

Feenan, 'Women Judges: Gendering Judging, Justifying Diversity' (2008) 35(4) *Journal of Law and Society* 490.

¹⁷ Bianchi, Robinson and Milkie, above n 6; Australian Bureau of Statistics, 4125.0 - *Gender Indicators, Australia* (Jan 2012).

¹⁸ Sharyn Roach Anleu and Kathy Mack, 'Judicial Performance and Experiences of Judicial Work: Findings from Socio-Legal Research' (2014) 4(5) *Oñati Socio-Legal Series* 1015, 1032.

III WORK DOMINANCE

A strong theme from the surveys and the interviews is that work is perceived as dominant, potentially and actually overwhelming other aspects of life: non-work, family, friends, leisure or other free or discretionary time. This perception holds for men and women, judges and magistrates.

As shown by the surveys, almost half of women judicial officers (45 per cent) report that their job interferes¹⁹ with family life always or often, compared with only one-third of their male colleagues (32 per cent). For 62 per cent of women, family life interferes with work at least sometimes, compared with 48 per cent of their male counterparts. These findings are sharper for magistrates than judges. Similarly, in the interviews, 13 women and 13 men interviewees (that is, two-thirds) agree their job interferes with family. Eight women but only four men agree that family interferes with their job. While these numbers are small, it is most striking that six women magistrates compared with only one male magistrate agree that family interferes with job. These interview and survey findings suggest that variations in the nature and organisation of magistrates' and judges' work have systematically different impacts on work/family interference. It is also important to recognise that magistrates on average are younger than judges and thus are at different stages of the life cycle, especially with younger children at home.

The following quote from an interview with a male Supreme Court judge, who acknowledges both work/family and family/work interferences, describes the dominance of work. A

¹⁹ The surveys asked how often the demands of their job interfere with family life, and the converse: how often family life interferes with the job: Jacobs and Gerson, above n 6; Leah Ruppanner and Matt L Huffman, 'Blurred boundaries: Gender and work-family interference in cross-national context' (2014) 41(2) *Work and Occupations* 210. Response categories were: always/often/sometimes/hardly ever/never/can't choose.

key aspect of this domination is the experienced inflexibility of judicial work demands and obligations. This judge is also quick to normalise the dominance of work by adding that his work pattern is not unusual. It is shared by other judges, and perhaps expected as widespread, even natural:²⁰

In the first few years I was prepared to work very hard. I mean the first year I had something like 10 working days off in the whole year and what that meant is there was no judgment writing time and I became really behind in my judgments and so now I work, you know, one or two nights a week plus at least, you know, five or six hours on Sunday and often sometime on Saturday as well so it becomes, I mean, and when I go home I'm so tired that, you know, we have dinner and I fall asleep and so, yes, it interferes with home life enormously ... it's not just me but some of my colleagues, all of my colleagues would work at weekends or at night and I think, I think the workload is huge and I know other judges, I mean ... [name of colleague, court and state deleted] used to say that he got into chambers about five am and I thought, you know, by three o'clock in the afternoon I'd be dozing on the bench. (I 11)²¹

IV INFLEXIBILITY OF WORK DEMANDS

As explained in the interviews, the perceived and experienced inflexibility of work demands has two aspects: 1) the requirement to be in court on fixed days between certain times, and 2) getting the work done, for example writing judgments, when required. The manifestation of this inflexibility in part

²⁰ Gresham M Sykes and David Matza, 'Techniques of neutralization: A theory of delinquency' (1957) 22(6) *American Sociological Review* 664.

²¹ This quote is from a judicial officer interviewed as part of the Courts, the Judiciary and Social Change interviews in 2012-13. This data source is indicated by the code 'I ##' in which I identifies these interviews and ## refers to an individual interviewee. Quotes taken from the interviews are used verbatim, only deleting identifying and potentially identifying material, and retaining qualities of natural, 'everyday speech' such as unfinished sentences, repeated phrases and filler words like 'um', to maintain the narrative quality of the interviews: David Silverman, *Doing Qualitative Research* (Sage, 2013).

tracks differences in the nature and demands of work for different court levels.

The following quote highlights the inflexibility in the obligation to be in court daily, which may be more paramount for magistrates than judges, because time in court dominates lower court work, as this magistrate explains:²²

Yes, the inflexibility, yep, I can't do anything about 9:30 to 4:00, umm, that's, there's just nothing I, like tomorrow, if there was something special on at the school I couldn't just get two hours off.

Interviewer: Right.

... We have no rostered days off to make doctor's appointments, umm so, if you want a doctor's appointment it's got to be before 9:30 or after 4:00 and then you've got to be stressed if the doctor's running late and you're watching and court's starting at 9:30 and you still haven't been in at quarter past nine. (I 19)

Such inflexibility during the day may mean less intrusion in non-work time. Another female magistrate recognises the lack of flexibility during the day to manage personal or family issues but suggests this is offset by the limited demands for after-hours work:

I love my job — umm, the good part of it is, it is basically nine to five so in terms of after-hours work whereas before in other jobs I would have come home, you know, had dinner with my partner and then actually gone back and started doing some work, that's very rare and you know, it's usually if I've got a decision which, might, to write, which might be, you know once every you know couple of months or so, so you know, it's very rare that I'd have to do any weekend work or whatever so if it's after-hours stuff it might be a meeting or a community meeting or something but it's something that I'm choosing to do, it's not, it's not relentless like that, so the nine to five nature of it of course is excellent but it's

²² See also Sharyn Roach Anleu and Kathy Mack (2017) *Performing Judicial Authority in the Lower Courts* (Palgrave Macmillan) ch 3.

then, you know, within that nine to five you've really got to be there. (I 16)

Nonetheless, one female judge takes a wider view of flexibility, comparing the judicial role with other kinds of occupations and work typically undertaken by women:

You know I've quite often thought when I think about these questions and umm, you know this notion of, particularly women in the law, and you know, how, you know how can you work there and have a family ... that we all not lose sight of the fact that our lives are in fact so much more flexible than if I had a job on the check out at Woolworths, nine to five, where I couldn't walk out the door and I couldn't answer the phone and you know I could only take my lunch at this time, you know. (I 35)

A second dimension of inflexibility is the obligation to complete work when it has to be done. The following female judge points to the continuous pressure of judgment writing:

I don't think you can, umm, if you're not prepared to do that you don't take the job on and the, I suppose the most stressful thing I end up finding is this reserve decisions and you speak to any higher court judge and I think they will all always say that you've got this sword of Damocles up there which is your list of reserve decisions and it sometimes can be very hard to feel you can go and do something privately or entertaining wise when you know I really should be doing this decision, umm, but that's just a balance you've got to strike. (I 18)

The overall point made by judges and magistrates is that there is often insufficient time available for judgment writing during the working day, so this task must be done after hours and often at home. For some magistrates, the lack of specifically allocated time for judgment writing seems to be paramount. For some judges, the demands of judgment writing appear to be

experienced as an ongoing obligation which is never fully discharged.²³

V NORMALISATION OF WORK DOMINATION

A second striking finding from the interviews is that the dominance of judicial work is normalised and seen, or experienced, as inevitable, expected, even natural, by judges and magistrates. Each individual judicial officer must manage institutional or structural factors which are difficult to change and are not individually generated. As one female magistrate comments: 'I think all, all high profile jobs are going to interfere with your family life. I think this interference is manageable' (I 31). A male judicial officer accepts that such interference is 'just part of the job':

I spent two weeks in ... [name of town deleted] before Christmas, the last two weeks of term, well that was an enormous disruption to family life because I couldn't go to Christmas functions, you know. My wife had commitments, I couldn't join her for that and I couldn't do Christmas shopping when I was expected to, in that sense it was quite disruptive but it's just part of the job. (I 22)

For some judicial officers, the notion of choice is part of the normalisation process: characterising work situations as intrinsically without choice or their situations as resulting from their own career choices. It is striking that in the interviews more women (6) use the language of choice than men (1), and tend not to conceptualise these 'choices' in structural terms, but in terms of their own personal decisions.²⁴ One female intermediate court judge explains that her family obligations do not interfere with her job:

²³ John Doyle, 'Reflections on judgment writing' (2012) 1 *Journal of Civil Litigation and Practice* 63; Kathy Mack, Anne Wallace and Sharyn Roach Anleu, *Judicial Workload: Time, Tasks and Work Organisation* (Australasian Institute of Judicial Administration, 2012).

²⁴ Hunter, above n 16.

I think that's really a product of the choice, choices I've made along the way about that, so, or choices or the way that things have happened and evolved, umm, you know, so, umm, domestically life is somewhat chaotic but I get used to finding somewhere where I can shop at eight o'clock at night ... court work is really hard because there are so many other people who are depending on your being there that, umm, it's really hard to say, it's got to be, you know, life and death, umm, to say I'm sorry I can't come to court today if you're in the middle of a trial. (I 15)

Note that for the male judge, the interference is in terms of a special occasion — Christmas functions — while for the female judge, it is a daily challenge, managed in part by 'finding somewhere ... [to] shop at eight o'clock at night'.

VI METAPHORS

Many metaphors have been used in previous research and academic literature to characterise the intersection and relationship between work and family responsibilities. These are often used interchangeably: work-family boundaries, border theory, boundary flexibility and permeability,²⁵ 'boundary work',²⁶ 'work-family border theory',²⁷ 'work-non-work interference',²⁸ work-family role blurring,²⁹ collision,³⁰ balance,³¹ spillover,³² conflict,³³ and work-home interface.³⁴

²⁵ Sue Campbell Clark, 'Work/family border theory: A new theory of work/family balance' (2000) 53(6) *Human Relations* 747.

²⁶ Christena Nippert-Eng, 'Calendars and Keys: The Classification of "Home" and "Work"' (1996) 11(3) *Sociological Forum* 563.

²⁷ Clark, above n 25, 748.

²⁸ Schieman, Milkie and Glavin, above n 6.

²⁹ Paul Glavin and Scott Schieman, 'Work-family role blurring and work-family conflict: The moderating influence of job resources and job demands' (2012) 39(1) *Work and Occupations* 71.

³⁰ Pocock, Skinner and Ichii, above n 13.

³¹ Janeen Baxter and Jenny Chesters, 'Perceptions of work-family balance: How effective are family-friendly policies?' (2011) 14(2) *Australian Journal of Labour Economics* 139.

Metaphors are valuable. They can reveal assumptions and meanings about the relations between home and work, as well as illustrate subtle ‘gender beliefs’ not explicitly articulated.³⁵ Metaphors reflect the construction of self in the context of all-encompassing work demands. Metaphors are an aspect of boundary work, or a way of characterising boundary work:

Each time we engage in the process, the actual practice of sorting out, assigning, and defending the inclusion/exclusion of categorical contents into specific mental and physical spaces and times, we show the collective, mental frameworks that guide our lives.³⁶

One metaphor frequently used in relation to the work/family interface is that of boundary. Strong boundaries are impermeable and inflexible while weak boundaries allow encroachment. Much research finds that time is consumed by work, making it difficult to satisfy domestic responsibilities.³⁷ The stronger work domain is cast as intruding into the more vulnerable family domain. While the boundary metaphor implies a single line equally (im)permeable in both directions, that may not be the case. The boundary or barrier protecting the home may be weaker, rendering family time more vulnerable to work intrusions, but the boundaries demarcating work are strong, in the sense of being almost completely impermeable to home demands. The combination of inflexible work demands with a weak boundary or barrier protecting the home means that

³² Joseph G Grzywacz, David M Almeida and Daniel A McDonald, ‘Work-family spillover and daily reports of work and family stress in the adult labor force’ (2002) 51(1) *Family Relations* 28.

³³ Jeffrey H Greenhaus and Nicholas J Beutell, ‘Sources of Conflict between Work and Family Roles’ (1985) 10(1) *The Academy of Management Review* 76.

³⁴ Glavin and Schieman, above n 29.

³⁵ Ridgeway, above n 15, 149.

³⁶ Nippert-Eng, above n 26, 564.

³⁷ Arlie Russell Hochschild, *The time bind: when work becomes home and home becomes work* (Metropolitan Books, 1997); Sarah Rutherford, ‘“Are You Going Home Already?”: The long hours culture, women managers and patriarchal closure’ (2001) 10(2-3) *Time & Society* 259.

family/domestic or other non-work/leisure time can be reduced by work pressure.

This pattern is also true for the judiciary, in the sense that work time and tasks are perceived as relatively inflexible and so resistant to family/domestic competition, but family time is somewhat vulnerable or flexible. Even so, domestic tasks or obligations, especially for women, may also be inflexible. The work/family boundaries are both asymmetrical and gendered, as the following comment illustrates:

My husband and I are chalk and cheese. He walks in the door and immediately starts talking about the cases he had today. He said, they said, he said, they said, whereas I, I have not really myself had a problem in leaving work at work because I don't bring work home. It stays at work. I try and get over it, umm, I've tried never to say to the children, 'mummy's tired' because I don't want them growing up when all they've heard is Mum walks in the door and says, 'I'm so tired'. So I've tried to avoid that and in my case knowing that ... [first name of husband deleted]'s different and he does work at home a lot and he is or was absent a lot in the children's earlier years, I've just said, 'Daddy's got homework just like you have and he's got to do his homework and I did my homework at work today that's why I haven't brought any home with me' ... and again I don't take much work home. If we were both like my husband, it would be a disaster. The children would have brought themselves up, umm, we just couldn't both have worked the way he does at home or we'd have delinquents who are out on the street, one of the two — umm, so that's another adjustment, I think, you've got to make to your family life and again be a little bit selfless in that regard. (I 19)

This comment starkly demonstrates the reproduction of gender differences and inequality. The interviewee is concerned to be alert (not tired) and available for domestic and family activities (bringing up the children). She is committed to maintaining a strong boundary protecting family time and tasks, which also has the effect, apparently, of allowing and normalising her husband's work boundaries to expand into the domestic sphere: 'Daddy's got homework just like you have and he's got to do his homework'.

It is most often the women interviewees who rely on metaphors to describe their experiences of work/family interference. This suggests that it is primarily women who are doing the ‘boundary work’: the juggling, the balancing, and the conscious resistance to the domination of their judicial obligations. Metaphors of juggling and carving out time are used only by women; balancing and switching off are used equally by men and women. Several men, but no women, tend to describe the need to make up work time, in response to a circumstance when time that could have been used for work was taken by another activity.

A few women judicial officers, but no men, refer to taking time away from work, otherwise work will keep it. These comments suggest some agency or capacity on the part of the judicial officer to manage time in a proactive way. The following female judge describes the difficulty of limiting mental thoughts and mulling over work even when physically at home or away from the courthouse:

Even if I physically leave the desk and leave the work there’s often stuff that’s happening in the back of my mind so I know it’s there. My husband ... [had a legal career], he’s still actively engaged in the law, we talk legal issues quite a bit, umm, because it’s still, it’s a passion for him as well as for me, umm, and in a sense it’s great to be able to have someone who understands and empathises, umm, but we’ve got to be very careful to make sure we carve time out from that, so that again the time we have together isn’t sort of really professional time spilt over, umm, so you know, trying to set the boundaries of making sure that we’re not doing it. (I 15)

A total of six women, but no men, refer to juggling as a way of framing work/family interferences. The following interviewee reports that her family obligations sometimes interfere with her job, highlighting the need to juggle:

It’s really more of a time thing. I mean I don’t have children, umm, but I do have a husband and I’ve got parents who are getting older and, umm, you know there are times when you have to do things

for them and it's really, you think well I'd really quite like to get this work done but I need to take, you know, my husband to a medical appointment or my parents have to do, so yes it can. I think it's always a juggling act isn't it? (I 36)

The metaphor of balance is used by men and women equally. A female magistrate links the requirement to balance with her career choices and the normalised, inflexible nature of judicial work:

I think you've just got to make that balance, you know, if you take a, if you take any umm, that's just, if you can't do that we shouldn't be doing a job like this, you know. Umm, umm, but then again I've had good kids who haven't caused me much drama and I know not everybody has had as good a run as I've had and umm, you know, a very good marriage and those sort of things so, but they're all very supportive and committed and you know, they're great like that so, yeh. (I 32)

A small number of judicial officers refer to the transition between home and work, and their capacity to 'switch off', especially regarding thoughts and the mental aspects of the job. The two following quotes are both from judicial officers who agree that their job interferes with family:

... there are always those matters that get to you and no matter how much you'd like to think you can switch off, you do worry about them. There wouldn't be a judge on this court I don't think that's not had a sleepless night over a case or a matter that they've had to deal with. I think we've all had that.³⁸ Umm, and that inevitably impacts on your home life. Umm, plus you know there are times when you have to work very hard and long hours and that impacts on your home life. Umm, but I think it's just a question of minimising it as much as you can, consistent with doing the right thing by your work, but also by your family and friends, and it's just important to make time for family and friends as it is important to make time for your work. (I 36)

³⁸ The survey data shows that over one-third of judicial officers (37 per cent) report that 'difficult decisions keep me awake at night' at least sometimes (11 per cent report always/often), but over half (52 per cent) report this occurs rarely or never.

The next judicial officer normalises the job demands to such an extent that he seems to blame himself by personalising the inability to cope:

Well I find it difficult. I haven't — I find it difficult to do that, to, basically I think it would be — the right way to do it is to have other interests and to switch off and to move on naturally, and personally I'm not very good at that so I try to direct myself to do that — to switch off from time to time but I'm not very good at it frankly. I just — everyone does it differently but I don't — I find it difficult for this job not to be a 24 hour a day job. It's just my weakness that I'm aware of. (I 04)

In contrast, one female magistrate, who reports that family interferes with her job, describes how the nature of work in court can block out thoughts about family issues. The work boundary can be impermeable to the domestic/family realm:

Well, yes, I, like, but the one thing that's good about this job is that you actually, when you are on the bench especially, you have to give your undivided attention so that actually works very well because you can actually push aside whatever the family issues are to concentrate on what you're doing and actually that's where work's very good for that. (I 12)

Many of the interviewees imply or suggest that work demands are more difficult to switch off than family obligations, though a male judge who experiences family interference with work, comments 'yes I guess sometimes if you can walk out the door and turn off from work, it's perhaps more difficult to walk out the door and turn off from family issues'. (I 11)

As the quotes above suggest, several men talk about special events, family activities, and the need to make up the work later, rather than the daily grind, the need to shop, or attend medical and dental appointments. The pay-back metaphor is an implicit, monetary image of debt and credit. If time is taken from work, then it must be paid back. If non-work time that work wants is not used for work, then it has to be paid back, as it should have

been available for work. The converse is not true; time taken from family for work does not seem to need the same recompense. The next two interviewees, both male judges, indicate work/family interference in both directions, and describe the way special family events impact on work demands:

For instance last weekend, this weekend just passed, my wife and I flew to [another state] for [a family event] and we spent a lovely time ... I didn't do a stroke of work and I should have done a stroke of work and I'm now going to cop it, you know, I'll probably have to come back tonight and do a big chunk of work tonight, I was back last night doing some stuff and I might have to come back, you know, so yes it can. It can be problematic. (I 11)

And there are times, and there are times when we'll go out for a meal and I'll say, 'yeh look it is, yes we've committed to going out tonight, really I should be working on such and such tomorrow so look' — and I think ahead, I think now we're going out and that night, that means I've got to get up particularly early that morning and ... tonight we've got that and then tomorrow night we've got that and I've got to deliver that decision that day'. So I have to on that day get up early, so personal activity does intrude a bit but I think that's okay. (I 27)

These metaphors highlight ways judicial officers conceptualise the relationship between home and work and how they experience it, and the meanings they attach to work/family intersections. Many of the metaphors suggest some agency on the part of the judge or magistrate, ie some capacity as individuals to manage the intersection between work and family. Metaphors illuminate the perception of whose problem it is to manage, and may suggest a sense of how much capacity a judicial officer has for effective management. These metaphors link to their descriptions of strategies for managing any tension between home and work and perceptions of the domination of work. The use of metaphors in the interviews usually led directly and immediately into an account of the strategies adopted for managing or resisting the dominance of work and demarcating work/family boundaries.

VII MANAGING THE WORK/FAMILY INTERFACE

Women undertake more concrete, consciously developed approaches or practices aimed towards maintaining a (strong) boundary between their work and family life, while men seem less concerned about the transition from one sphere to another. Differences in the strategies women and men adopt to maintain (or not) their work/family boundaries reflect in part the different extent and nature of their domestic roles. These interviews highlight three strategies:

- Not bringing work home — including physical tasks as well as mental attention, thoughts or feelings about work;
- When work is brought home, making work time and tasks less visible in the domestic sphere;
- Reliance on family members for support.

Each strategy demonstrates that gender is a key background organising principle of the social relations and tasks involved in maintaining work boundaries.³⁹

One female judge draws attention to not taking home the emotional dimensions of work, especially details of particular (criminal) cases, in order to shield other family members from such details:

I'm married and we've got two girls ... [both teenagers] so I've never taken my work home in a literal sense — if I want to work I work in my office and you know since the girls were old enough to have had a look through my bag ... I have known I can't take home, you know, material of the work I do with the photos ... they

³⁹ Cecilia L Ridgeway, 'Interaction and the Conservation of Gender Inequality: Considering Employment' (1997) 62(2) *American Sociological Review* 219; Ridgeway, above n 15.

find them — and it happened to me once which was really interesting. In my office when they came in after school or whatever and they were looking at photos upside down basically, on my desk. Umm, and it was at that moment that I really made a decision that things weren't coming home but I haven't taken home work to do at home and I haven't taken home the experiences of the day. The emotional experiences of the day. So if you went into my house and said to my husband and to the girls, 'oh what's mum doing in court this week', they'd probably have to say, 'oh I don't know, she just goes to work'. (I 35)

Some judicial officers quarantine part of their time at home for family/domestic activities, but use less visible times for work:

I suppose you end up with fairly long hours although I try to, whereas I go to work early in the morning, I try and make sure I'm home by not much, between five and half past, and if I'm going to work beyond that then I'll take work home and do it later after dinner and do it at that time or do it on a weekend or do something like that so it does to that extent interfere with your personal life but it's part of the job. (I 18)

Attempts to quarantine time at home for work is not always successful, implying the impossible invisibility of judicial work:

I think it would be interesting to get the perception of family. You know you speak to judges and they'll think that they've got it right but then go and speak to their kids. I, umm, I was speaking to one of my sons the other day about umm, what he might do when he leaves school and he said umm, 'you know I'm not going to do law' and I said 'no, well that's fine, umm, I wouldn't ever push you to do law but can I ask you why doesn't — you know you're very good at analysing things, you're very interested in the law so why wouldn't you be a lawyer?' and he said, 'well because I've grown up getting up at 11 o'clock at night to go to the toilet to find you working at the kitchen table' and so that's an impact on family life that umm, I thought, 'oh okay', cos I, I'm quite careful about trying not to work at home when they're around but clearly I'm not as successful as I thought. (I 37)

The experiences of work/family intersection and the (gendered) strategies adopted, even required, to manage the perceptions of

interference will be shaped by family circumstances. Some judicial officers interpret questions about work/family intersection as questions about children, for example:

My job does not interfere with family — I have no children, and no other demands, my husband cooks dinner every night, he accepts it, he does the dishes, sometimes I might help him — then I go back to the study ... Those with family responsibilities, responsibility for children — this job is extremely difficult. I am lucky ... Being a judge is a hard slog — very difficult with young children or children getting a bit difficult in their teen years. Being a judge — all consuming—the demands of the job are not nine to five or even eight to six. It is a lifestyle, a calling. (I 14)

According to survey responses, 33 per cent of women in the judiciary report no children, compared with 12 per cent of men. While the number of interviewees is small, this pattern also emerges in the interviews where one-third of the women interviewed (6) do not have children compared with only one man.

Another aspect of family circumstances is support or lack thereof. Several women point to their particular domestic circumstances, praising male partners for their contributions to household tasks, including looking after children, characterised as evidence of being supportive. One magistrate explains: ‘I am extremely fortunate. I have an incredibly supportive husband. He’s not just supportive, he’s very very domesticated’. (I 32)

A different interviewee emphasises:

My family life hasn’t stopped me doing anything in my work. My husband’s incredibly supportive, my parents are fantastic. My children are very resilient and very supportive and I’ve got three girls, umm, and they’re really interested in a mother that works and they think, as a role model is sort of. But there’s no doubt for children, it has to impact. I’m constantly, you know, keeping my phone outside court and checking but I’ve got good support. (I 31)

Male judicial officers do not comment on their wives or families as being supportive in the same way. Such support seems less noteworthy, more ordinary, more expected as it is in line with gendered beliefs and expectations. Indeed, their activities are not characterised as support. For the following male judge, family intrusion into work is cast as stemming from troublesome children:

No, I don't let that happen either [family intrusion into work]. Perhaps I'm blessed with a family, touch wood, up to date, hasn't given me a lot of trouble. I mean I've got, umm, I've got three children, one is living permanently [overseas], another one is overseas at the moment travelling and the third is living at home, so they don't, the job doesn't interfere with — I'm not, I'm not one of those persons who, and I suppose you might get them in the Supreme Court who come home perhaps at seven o'clock, have dinner then secrete themselves away in a study and work til 10, go to bed, or 11, go to bed, no I'm not in that category, never have been, so no I don't, I don't think it interferes. I think if it interfered, my wife would tell me — my wife's not a shrinking violet. (I 17)

The comment above assumes that at least some judges can 'come home ... have dinner' without having to shop for, prepare or clean up after the meal. For women, domestic support, often described as exceptional, allows a judicial career. For men, every day family support, often at a very high level, is assumed, even when the wife is a lawyer or judicial officer herself. This enables men to interpret family/work interference as emanating only from special events and unusual circumstances:

No, not at all seeing as it's only my wife and I at home and ... [name] is a lawyer and she's always understood the exigencies of the practice at the Bar and certainly of this job and no I'm well accommodated there. (I 10)

VIII DISCUSSION AND CONCLUSION

Both men and women in the judiciary agree they experience work/family interference, and perceive their work as judicial

officers to be dominant, assessing the inflexibility as normal, given the institutional structure of the legal system and the courts. The perception of the nature of such interference seems to differ for women and men. Many women rely on metaphors to describe meeting work obligations and the regular, household tasks that they undertake, such as shopping, dental and medical appointments, and dealing with children's needs. The mutual interference between work and domestic life is ordinary and usual. In contrast, men tend to interpret family interference with work as occurring in relation to special events such as family celebrations, important occasions, travel or entailing care of children who require special attention due to medical or other problems. The interference with work is extra-ordinary and unusual, so that daily family life is rarely interpreted as interfering with work. Any such potential interference is managed either by men being unavailable for family duties, by expected domestic support, or by paying back time, by converting non-work or personal time to work time.

Women express greater commitment, or make a more conscious effort, to protect family relations and domestic time from work spillage, in the form of actual tasks and the emotional and mental dimensions. For men, the family sphere shrinks, changes or disappears to accommodate the expansion of the work zone, while women articulate deliberate strategies to maintain the shape and volume of the family zone as work free. These strategies and associated practices demonstrate an underlying gender framework that allows men to undertake judicial work in non-judicial time, without too much concern about visibility. This gender framing requires women judicial officers not to undertake judicial work at home unless they get support from others, for example paid assistants, or other family members. For women, domestic support allows them to have a judicial career. Men's role in the domestic sphere is exceptionalised and noteworthy. For men, regular family support is assumed, even when the wife or partner is a lawyer or judicial officer herself. Women's domestic activities are not commented on, as the tasks women perform align with gendered expectations.

The normalised role for women is domestic at home, leading to a set of distinctly gendered management strategies: do not bring work home, if so only rarely, and minimise its visibility to and impact on others in the household, especially children (with varying degrees of success). Women judicial officers must meet male gendered inflexible normalised work expectations as well as female gendered, inflexible normalised demands and tasks in the domestic sphere. At work women are especially keen to protect the work sphere from family, to look like men at work, perhaps to counter anticipated criticism that women do not belong in the judiciary. Women judicial officers also seek to comply with family expectations and obligations.

This gendered framework is reinforced by the characterisation of judicial work as inflexible combined with the notion of choice. Several women judicial officers appear to regard work/family conflict (in both directions) as the inevitable consequence of their personal choices to undertake a legal/judicial career. It is as though women must pay a price for choosing a traditionally male judicial career which is relatively impermeable to the routine daily demands of family. Judicial work can cope with extraordinary family demands such as serious illness, or special occasions, which may require rescheduling work tasks into other non-work time. Women judicial officers have to cope personally with the daily, ordinary, and often inflexible, routine family demands, unless they have extra-ordinary support from family members, unlike most of their male counterparts whose family support is accepted as unremarkable.

It is through these daily practices and institutional expectations (from the judiciary and the family) that the judiciary is maintained as a gendered profession despite the formal disavowal of gender. The family is also maintained as a gendered institution, but this is not disavowed. While very few interviewees identify or acknowledge any direct impacts on their judging practices or decision-making as a result of living in this gendered regime, the inability to quarantine the judiciary from

such deeply entrenched gender norms and practices requires further investigation.

Appendix: Research Method

The two authors developed, pilot-tested and administered the National Survey of Australian Judges to all 566 judges throughout Australia in March 2007 with a response rate of 55 per cent. Similarly, the 2007 National Survey of Australian Magistrates was sent to all 457 state and territory magistrates throughout Australia, with a response rate of 53 per cent. The respondents are generally representative of the judiciary as a whole, in terms of gender, age and time on the bench. The two 2007 surveys are substantially the same, with some variation in questions to reflect the different work in the different levels of court. Surveys were sent out to every judge and magistrate rather than to a random sample. The surveys used a mix of closed and open-ended questions to cover a range of topics relating to current position, career background and education, everyday work, job satisfaction and demographic information.

The 38 interviewees include judicial officers from all levels of courts in every state and territory and CBD and regional locations (but not Commonwealth courts). Interviews ranged in length from 25 minutes to one hour 33 minutes; the average length of interview time was 53 minutes (median 51 minutes). Nineteen of the interviewees are men and nineteen are women. Seventeen of the interviewees are magistrates (ten women; seven men); the others are judges (nine women; twelve men). Interviews were audio-recorded, then transcribed within the Project to maximise accuracy and confidentiality. A second staff member checked the transcripts against the audio files. Two interviewees did not consent to the interview being recorded. Detailed notes were taken by the interviewer during these interviews and elaborated on and typed up by the interviewer immediately after the interview. All interviews have been anonymised and all identifying information removed. The data from the surveys and the interviews are not cross-linked.

Surveys were anonymous; there was no identification or tracking of survey booklets or respondents. It is impossible to know who did or did not respond, so the interviewees were not and could not be cross-referenced in any way with the survey participants, who remained anonymous. It is not possible for the researchers to know if any of the interviewees responded to either of the surveys, though it is clear that only some interviewees would have been in judicial office at the time of the surveys. Any interviewee first appointed to the judiciary after 2007 would not have received a survey.

As a form of data generation, research interviews are interactive and necessarily collaborative. Both the content and the form of questions posed by the interviewer can shape the content and form of responses.⁴⁰ In the present study, questions interviewees might view as intrusive about work/family usually occurred towards the end of the interview. The two questions asked were:

1. Would you say that the demands of your job interfere with your family life? In what ways — what aspects of the job, what aspects of family life? How often is this the case?
2. Would you say that the demands of your family life interfere with your job? In what ways — what aspects of the job, what aspects of family life? How often is this the case?

However, some interviewees talked about work/family issues earlier in the interview in response to more general questions, such as recent changes to the judiciary. The move from general questions about the judiciary and judicial work to more direct

⁴⁰ Lois Presser, 'Violent offenders, moral selves: Constructing identities and accounts in the research interview' (2004) 51(1) *Social Problems* 82; Silverman, above n 21; Kathryn Roulston 'Interactional problems in research interviews' (2014) 14(3) *Qualitative Research* 277.

personal, private, questions towards the close of the interview helped build rapport.⁴¹

Undertaking the interviews is just one phase; interpreting and analysing this material presents further challenges.⁴² In our case one researcher (Sharyn Roach Anleu) conducted all the interviews and thereby benefits from the ‘contextual experience — the being-there-ness of the researcher — for the process of data analysis’,⁴³ while the other (Kathy Mack) can question any taken-for-granted assumptions: ‘Such collaborative exchanges can help with the process of interpretation’.⁴⁴ In addition, NVivo 10 was used to code transcripts into nodes relating to the perception/expense of work/family and family/work intersections. This text was then carefully read to identify any further emergent subthemes and patterns. As the interviews were often a flow of consciousness, imposing too many categories may unnecessarily truncate them and depart from the natural conversational character of the interview. Demographic characteristics of the interviewees and their domestic/family situations (eg marital status, ages of any children) were also coded using NVivo.

⁴¹ Kathryn Roulston, ‘Considering quality in qualitative interviewing’ (2010) 10(2) *Qualitative Research* 199; William S Harvey, ‘Strategies for conducting elite interviews’ (2011) 11(4) *Qualitative Research* 431.

⁴² Jennifer Mason, *Qualitative Researching* (Sage, 2002); Allison James ‘Seeking the analytic imagination: Reflections on the process of interpreting qualitative data’ (2012) 13(5) *Qualitative Research* 562; Silverman, above n 21.

⁴³ James, above n 42, 565.

⁴⁴ Ibid. See also Sharyn Roach Anleu, Stina Bergman Blix and Kathy Mack, ‘Researching emotion in courts and the judiciary: A tale of two projects’ (2015) 7(2) *Emotion Review* 145.