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BARRY, Colette, WESTABY, Chalen <<http://orcid.org/0000-0002-6459-4675>>, COEN, Mark and HOWLIN, Niamh

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The emotional labour of judges in jury trials

COLETTE BARRY¹ | CHALEN WESTABY² | MARK COEN¹ | NIAMH HOWLIN¹

¹Sutherland School of Law, University College Dublin, Dublin 4, Ireland

²Department of Law and Criminology, Sheffield Hallam University, Sheffield, England

Correspondence

Colette Barry, Sutherland School of Law, University College Dublin, Dublin 4, Ireland.

Email: colette.barry1@ucd.ie

Abstract

Judges are required to suppress and manage their own emotions as well as those of other court users and staff in their everyday work. Previous studies have examined the complex emotional labour undertaken by judges, but there is limited research on the emotion management performed by judges in their interactions with jurors. Drawing on a qualitative study of judge–jury relations in criminal trials in Ireland, we illustrate how judges learn and habituate emotional labour practices through informal and indirect processes. Judges described managing their emotions to demonstrate impartiality and objectivity. Their accounts also underline the importance of balancing presentations of neutrality with empathy, as well as being mindful of the potential emotional toll of jury service on jurors.

1 | INTRODUCTION

Emotions have been ‘formally excised’ from the application of judicial authority.¹ This is because the law itself has been regarded as rational in nature, which in turn has produced a dichotomized view of reason and emotion.² Thus, legal rationality is perceived to be impervious to emotional

¹ S. Roach Anleu et al., ‘The Emotional Dimension of Judging: Issues, Evidence, and Insights’ (2016) 52 *Court Rev.: The J. of the American Judges Association* 60, at 60.

² T. A. Maroney, ‘Judges and Their Emotions’ (2013) 64 *Northern Ireland Legal Q.* 11.

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influences, which reinforces its link to rationality, reason,³ and impartiality.⁴ Such interpretations of the law have been central to judicial reasoning, thus making ‘an emotional judge ... by definition a bad judge.’⁵ This is further supported by the notion that positive public perceptions of judges are based on the understanding that they are ‘impartial/non-biased and therefore emotionless’.⁶ Judges are expected to achieve this by shutting off all of their feelings.⁷ This, it has been argued, has led to a situation where it has been considered unnecessary to talk about the emotional skills needed by judges in the management of their own emotions and those of others.⁸

However, as Terry Maroney suggests, quoting Jackson J, a United States (US) judge, ‘emotionless judges are “mythical beings”, like “Santa Claus or Uncle Sam or Easter bunnies”’.⁹ Maroney further explains that the ‘[l]iteral elimination of judicial emotion is not just unrealistic as a goal; it is destructive as a value’.¹⁰ Expecting judges to eliminate all emotion effectively means the suppression of emotion. This can lead to “maladaptive behaviour” rather than encouraging judges to develop adaptive forms of emotion regulation’.¹¹ The results can mean that judges are ‘less able to recognize and respond to their work-related emotions’, allowing undesirable emotions to surface, which may have negative physical and mental health repercussions.¹²

Researchers have recognized that judges ‘experience emotion, expend energy to cope with it and find that effort difficult’.¹³ Furthermore, recent scholarship sheds light on the emotional labour of judicial officers, and particularly how judges in the courtroom must manage both their own and others’ emotions in accordance with professional occupational norms.¹⁴ This work analyses how judges manage emotions in the courtroom in such a way as to demonstrate neutrality, impartiality, and objectivity,¹⁵ often focusing on their interactions with certain court actors – namely, lawyers, jurors, witnesses, victims, and defendants.

³ J. A. Scarduzio, ‘Maintaining Order through Deviance? The Emotional Deviance, Power, and Professional Work of Municipal Court Judges’ (2011) 25 *Management Communication* Q. 283.

⁴ S. S. Daicoff, ‘Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism’ (1997) 46 *The American University Law Rev.* 1337.

⁵ T. A. Maroney and J. J. Gross, ‘The Ideal of the Dispassionate Judge: An Emotion Regulation Perspective’ (2014) 6 *Emotion Rev.* 142, at 142.

⁶ *Id.*

⁷ Maroney, *op. cit.*, n. 2.

⁸ Maroney and Gross, *op. cit.*, n. 5.

⁹ Maroney, *op. cit.*, n. 2, p. 13, quoting *United States v. Ballard* [1944] 322 US 78, 93 94 (Jackson J dissenting).

¹⁰ *Id.*, p. 15.

¹¹ Maroney and Gross, *op. cit.*, n. 5, p. 143.

¹² *Id.*, p. 149.

¹³ *Id.*, p. 144.

¹⁴ S. Bergman Blix and Å. Wettergren, ‘Humour in the Swedish Courts: Managing Emotions, Status and Power’ in *Judges, Judging and Humour*, eds J. M. Davies and S. Roach Anleu (2018) 179; S. Bergman Blix and Å. Wettergren, *Professional Emotions in Court: A Sociological Perspective* (2019); Maroney, *op. cit.*, n. 2; T. A. Maroney, ‘Empirically Investigating Judicial Emotion’ (2019) 9 *Oñati Socio-Legal Series* 799; Maroney and Gross, *op. cit.*, n. 5; S. Roach Anleu and K. Mack, ‘Magistrates’ Everyday Work and Emotional Labour’ (2005) 32 *J. of Law and Society* 590; Roach Anleu et al., *op. cit.*, n. 1; S. Roach Anleu and K. Mack, ‘Judicial Humour and Inter-Professional Relations in the Courtroom’ in *Judges, Judging and Humour*, eds J. M. Davies and S. Roach Anleu (2018) 141; S. Roach Anleu et al., ‘Researching Judicial Emotion and Emotion Management’ in *Research Handbook on Law and Emotion*, eds S. A. Bandes et al. (2021) 180; Scarduzio, *op. cit.*, n. 3.

¹⁵ M. Wojciechowski et al., ‘Emotional Labour of Judges’ (2015) 10 *Archiwum Filozofii Prawa i Filozofii Społecznej* 97.

While recent years have seen the development of a rich international literature on jury procedure and judge–jury interactions,¹⁶ the concept of emotional labour has not yet been used to examine the nature of the judge–jury relationship. In some jurisdictions, such as Sweden – where much judicial emotional labour research has been conducted – there are no juries.¹⁷ In jurisdictions where juries play a role in the criminal legal process, the judge and jury engage in an ‘ongoing partnership’¹⁸ in which the judge plays a central role in the jury’s work,¹⁹ opening up the possibility of analysis of the emotional labour performed by judges in the direction and management of juries.²⁰ Moreover, while academic interest in emotional labour in judicial practice has grown internationally, with existing studies focused on the experiences and views of judges in Australia,²¹ Sweden,²² Poland,²³ and the US,²⁴ there remains a dearth of scholarship on the emotional labour expected of judges in Ireland, a jurisdiction that differs from other common-law countries in judicial education and the development of judgecraft.²⁵

This article therefore contributes to the existing scholarship by developing the literature on the emotional labour of judges in two areas. First, it expands understanding of the emotional labour of judges by considering how they manage emotions in their interactions with juries, which has remained an unexplored topic in previous research. Second, it represents the first Irish research on emotional labour in judicial practice, thereby adding to extant knowledge on the views and experiences of judges of managing both their own emotions and those of other court users and actors.

The article draws on data from a research project on judge–jury interactions in Ireland. We sought to explore judicial and practitioner perspectives on how judges interact with jurors in criminal trials. As part of this study, we conducted interviews with 22 judges. While this research was not originally designed to explore judges’ perspectives on emotions and emotional labour, the saliency of emotions and emotional labour was identified during the fieldwork and analysis stages.

Following a review of the relevant literature, the article focuses on four themes drawn from our interviews with judges: how judges learn the ‘feeling rules’ of their roles, how they manage their own emotions when interacting with jurors, how they manage the emotions of jurors, and how

¹⁶ On responses to the challenge of online jury misconduct, see D. Harvey, ‘The Googling Juror: The Fate of the Jury Trial in the Digital Paradigm’ (2014) 2 *New Zealand Law Rev.* 203; K. Hogg, ‘Runaway Jurors: Independent Juror Research in the Internet Age’ (2019) 9 *Western J. of Legal Studies* 1. On the provision of aids to deliberations, see R. G. Boatright and B. Murphy, ‘Behind Closed Doors: Assisting Jurors with Their Deliberations’ (1999) 83 *Judicature* 52; J. R. P. Ogloff et al., *The Jury Project: Stage 1 – A Survey of Australian and New Zealand Judges* (2006). On the increasing emphasis on the responsibility of trial judges to ensure efficiency in the management of trials, see P. Darbyshire, ‘Judicial Case Management in Ten Crown Courts’ (2014) *Criminal Law Rev.* 30. On judicial perspectives on the judge–jury relationship, see M. Coen et al., *Judges and Juries in Ireland: An Empirical Study* (2020).

¹⁷ This is except when the case relates to the freedom of the press: C. Diesen, ‘Lay Judges in Sweden: A Short Introduction’ (2001) (1–2) *Revue Internationale de Droit Pénal* 313.

¹⁸ N. S. Marder, ‘Juror Bias, Voir Dire, and the Judge–Jury Relationship’ (2015) 90 *Chicago-Kent Law Rev.* 927, at 929.

¹⁹ N. S. Marder, ‘Jury Nullification: Don’t Ask Don’t Tell?’ (2021) 17 *Law, Culture and the Humanities* 404.

²⁰ Diesen, op. cit., n. 17.

²¹ Roach Anleu et al., op. cit., n. 1; Roach Anleu and Mack, op. cit. (2005), n. 14; S. Roach Anleu and K. Mack, *Judging and Emotion: A Socio-Legal Analysis* (2021).

²² Bergman Blix and Wettergren, op. cit. (2019), n. 14.

²³ Wojciechowski et al., op. cit., n. 15.

²⁴ Maroney, op. cit., n. 2; Scarduzio, op. cit., n. 3.

²⁵ N. Howlin et al., ‘“Robinson Crusoe on a Desert Island”? Judicial Education in Ireland, 1995–2019’ (2022) 42 *Legal Studies* 525.

they use emotion management strategies to mitigate the emotional impact of jury service. We conclude by considering the consequences for judges of performing emotional labour and how they cope with these. We then discuss possible ways of supporting judges who are expected to perform emotional labour.

2 | EMOTIONAL LABOUR: AN OVERVIEW

We use the concept of emotional labour as an analytical framework to explore how Irish judges manage their own emotions and those of jurors. Emotional labour was first defined by Arlie Russell Hochschild as ‘the management of a way of feeling to create a publicly observable facial and bodily display ... for a wage’.²⁶ Thus, emotional labour derives from the expectation that a worker manages their emotions – and those of others – as part of their job role. Jobs that involve face-to-face or voice-to-voice contact with the public entail emotional labour, with workers obliged to manage both their own emotions and those of others, and the emotional aspect should be controlled in some way by an organization.²⁷

Originally, the concept of emotional labour was used in the analysis of service workers whose emotions are controlled by an employer, often through scripted emotional labour expectations.²⁸ However, more recently, it has been recognized that there are job roles, such as that of a judge, that, while requiring direct contact with the public and therefore entailing the management of the emotions of others, do not involve working ‘with an emotional supervisor immediately on hand’.²⁹ Judges are certainly afforded more autonomy than service workers in the emotional labour that they perform; however, not being directly supervised can, as Cas Wouters suggests, result in more emotion management than is required of more closely monitored workers.³⁰ This is because judges ‘are still subject to feeling rules established by professional norms, ethical statements, the risk of an appeal and denunciatory judicial comment, and/or adverse media reporting’.³¹

‘Feeling rules’ are ‘rules or norms according to which feelings are judged appropriate to accompanying events’.³² Hochschild identifies three types of feeling rules: societal, organizational, and occupational. Societal feeling rules emanate from general cultural norms that filter into the organization.³³ Organizational feeling rules ensure that the aims and objectives of the organization are fulfilled.³⁴ Occupational feeling rules derive from an organization’s occupational cultures and are often based on codes of practice that dictate appropriate behaviours, develop task rituals, and apply work codes for routine practice.³⁵ In her examination and extension of Hochschild’s work on

²⁶ A. R. Hochschild, *The Managed Heart: Commercialization of Human Feeling* (1983) 7.

²⁷ *Id.*, p. 8.

²⁸ S. Fineman, ‘Emotional Arenas Revisited’ in *Emotion in Organizations*, ed. S. Fineman (2003) 1.

²⁹ Hochschild, *op. cit.*, n. 26, p. 153.

³⁰ C. Wouters, ‘The Sociology of Emotion and Flight Attendants: Hochschild’s *Managed Heart*’ (1989) 6 *Theory, Culture & Society* 95, at 100.

³¹ Anleu Roach and Mack, *op. cit.* (2005), n. 14, p. 592.

³² Hochschild, *op. cit.*, n. 26, p. 59.

³³ S. Mann, ‘Emotional Labour in Organizations’ (1997) 28 *Leadership & Organizational Development J.* 552.

³⁴ B. E. Ashforth and R. H. Humphrey, ‘Emotional Labor in Service Roles: The Influence of Identity’ (1993) 18 *Academy of Management Rev.* 88.

³⁵ J. Van Maanen and S. Barley, ‘Occupational Communities: Culture and Control in Organisations’ (1984) 6 *Research in Organizational Behavior* 287.

emotional labour, Sharon Bolton describes what she terms as ‘professional feeling rules’. These are relevant to occupations with high social status and a public service element, such as judicial officers, and are internalized through socialization with other members of the professional group.³⁶ Often described as a ‘mask’ that must not slip, the nature of professional feeling rules means that the mask shields the professional ‘from the emotional demands of the job’, as well as ensuring that the ‘extraordinary effort’ involved in this work ‘is hardly seen as work at all’.³⁷ This article explores how professional feeling rules influence Irish judges as they become acculturated to judicial feeling rules and collegial expectations related to appropriate emotional performances in court settings.

Hochschild describes two strategies that workers use to conform to feeling rules. ‘Surface acting’ is where workers’ emotional displays do not match their feelings; instead, workers feign them to conform to prescribed feeling rules³⁸ or display rules,³⁹ such as when a newly appointed judge displays confidence when in fact they may feel nervous. However, displaying a certain emotion might not be enough; rather, workers are expected to feel a certain way. They therefore engage in ‘deep acting’ in an attempt to harmonize emotional displays and feelings either directly through recalling a lived experience or indirectly through their imagination.⁴⁰ For example, a judge might use their imagination to ‘neutralise any feelings they have for the accused’.⁴¹ Genuine emotional response is also relevant in terms of how judges manage their emotions.⁴² As referenced above, Bolton describes how professional feeling rules are learned and internalized over time through occupational acculturation. This can result in genuine emotional responses that inevitably require less deliberate emotion management⁴³ but are the result of past emotional labour.⁴⁴

3 | EMOTIONAL LABOUR AND JUDICIAL OFFICERS

There is limited discussion in the current scholarship of the ways in which judges perform emotional labour in their relationships with jurors. Brief reference to judges being required to manage their emotions in the presence of a jury is found in Jennifer Elek’s study of US judges’ perspectives on professional development.⁴⁵ Elek highlights the importance of demonstrating judicial objectivity, and observes the importance of trial judges managing their emotions to ensure that they do not influence the jury.

However, previous research has accounted for how judges manage and perform their emotions in their interactions with court users and actors in a broader sense. The judicial role as an

³⁶ S. C. Bolton, *Emotion Management in the Workplace* (2005) 122.

³⁷ *Id.*, p. 123.

³⁸ Hochschild, *op. cit.*, n. 26.

³⁹ Ashforth and Humphrey, *op. cit.*, n. 34.

⁴⁰ A. A. Grandey et al., ‘Work-Family Supportiveness in Organizational Perceptions: Important for the Wellbeing of Male Blue-Collar Workers?’ (2007) 71 *J. of Vocational Behavior* 460; A. Rafaeli and R. I. Sutton, ‘Expression of Emotion as Part of the Work Role’ (1987) 12 *The Academy of Management Rev.* 23.

⁴¹ Bergman Blix and Wettergren, *op. cit.* (2019), n. 14, p. 143.

⁴² Ashforth and Humphrey, *op. cit.*, n. 34.

⁴³ *Id.*

⁴⁴ Bolton, *op. cit.*, n. 36.

⁴⁵ J. Elek, ‘Judicial Perspectives on Emotion, Emotion Management, and Judicial Excellence in the USA’ (2019) 9 *Oñati Socio-Legal Series* 865.

‘objective’ and ‘neutral’ decision maker⁴⁶ has resulted in overarching organizational, occupational, and perhaps even societal feeling rules of neutrality⁴⁷ or judicial objectivity.⁴⁸ Stina Bergman Blix and Åsa Wettergren recognize the pervasiveness of traditional perceptions of judicial officers and the courtroom in which they work, situating their findings within what they describe as an ‘emotive-cognitive judicial frame’.⁴⁹ This frame determines how judges are expected to manage their own emotions and those of others, with the main goal being judicial objectivity. However, it is important that this objectivity is not ‘static and universal’, but rather situated practice only achievable through ‘objectivity work’. Such work requires judges to engage in situated emotion management and empathy using skilled emotion management to ensure emotional detachment.

Of particular importance to the Swedish judges in Bergman Blix and Wettergren’s study is the demonstration of impartiality and objectivity. Bergman Blix and Wettergren describe how judges show impartiality through neutral or stone-faced expressions.⁵⁰ Clearly, this requires the suppression of emotion,⁵¹ such as when a judge feels disgust at what the accused may have done but suppresses those feelings and thus demonstrates impartiality.⁵² Maroney suggests that putting on a ‘poker face’ requires intense emotional effort and so this tactic should only be used sparingly, such as to maintain order in the courtroom.⁵³ However, judges are required not only to suppress emotion but also to show certain emotions in their everyday work. A neutral or stone-faced expression requires not only the suppression of emotion but also a conscious presentation of emotions conveying an impartial demeanour.⁵⁴ This demeanour must be displayed equally to all court users through the balancing of emotional expressions.⁵⁵

Judges also use empathy in their interactions with others.⁵⁶ Describing empathy as a ‘crucial tool’⁵⁷ in emotion management, Bergman Blix and Wettergren point to situations where judges use empathy, such as when they assess their ‘appearance of impartiality from the perspective of the defendant’.⁵⁸ However, judges ‘empathically attend’⁵⁹ to the emotions of court users differently in practical situations and case-related situations. In practical situations not directly related to a case, a judge might give a friendly smile while asking a victim to follow procedure, or, as Bergman Blix

⁴⁶ Roach Anleu and Mack, op. cit. (2005), n. 14, p. 601.

⁴⁷ Scarduzio, op. cit., n. 3; M. L. Schuster and A. Proppen, ‘Degrees of Emotion: Judicial Responses to Victim Impact Statements’ (2010) 6 *Law, Culture and the Humanities* 75.

⁴⁸ Bergman Blix and Wettergren, op. cit. (2019), n. 14, p. 140.

⁴⁹ Id., p. 141.

⁵⁰ Id.

⁵¹ Maroney, op. cit., n. 2; Scarduzio, op. cit., n. 3; K. M. Snider et al., ‘Judges’ Emotion: An Application of the Emotion Regulation Process’ (2022) 29 *Psychiatry, Psychology and Law* 256.

⁵² Bergman Blix and Wettergren, op. cit. (2019), n. 14, p. 143.

⁵³ Maroney, op. cit., n. 2, p. 19.

⁵⁴ Bergman Blix and Wettergren, op. cit. (2019), n. 14, p. 143.

⁵⁵ Id., p. 140. See also K. Mack and S. Roach Anleu, ‘Performing Impartiality: Judicial Demeanour and Legitimacy’ (2010) 35 *Law & Social Inquiry* 137, at 139.

⁵⁶ Bergman Blix and Wettergren, op. cit. (2019), n. 14; Roach Anleu and Mack, op. cit. (2005), n. 14.

⁵⁷ Bergman Blix and Wettergren, op. cit. (2019), n. 14, p. 11.

⁵⁸ S. Bergman Blix and Å. Wettergren, ‘A Sociological Perspective on Emotions in the Judiciary’ (2016) 8 *Emotional Rev.* 32, at 35.

⁵⁹ Bergman Blix and Wettergren, op. cit. (2019), n. 14, p. 12.

and Wettergren have observed in Swedish trials, when asking a defendant about their personal life towards the end of a trial.⁶⁰ Emotional expressions of empathy can be more varied in these situations as they do not impact on views about judicial impartiality. However, when an empathic approach is taken in relation to a case, this can impact on perceptions of judicial impartiality, and empathy must be presented in a more restricted way. This is achieved through ‘empathic perspective-taking’, when the judge ‘expresses empathy in an instrumental by-the-way manner’, thereby retaining impartiality.⁶¹ Examples of this type of empathic approach are also described by Australian magistrates in Sharon Roach Anleu and Kathy Mack’s study as engaging with the difficulties faced by court users and include the judge starting to record discussions in the courtroom or adjourning proceedings to allow people to ‘cool off’.⁶² This results in judges engaging with the social situations of court users and yet also ensuring some distance to avoid over-identification with them.⁶³

There are times when judges show anger in the courtroom. This is one example of what Jennifer Scarduzio describes as ‘emotional deviance’, whereby emotions are expressed in disregard of the feeling rules prescribed by an organization.⁶⁴ It is therefore the opposite of emotional dissonance. Rather than feeling internally conflicted at having to present emotions that they do not feel, the judge ‘expresses inner feelings and disregards feeling rules’⁶⁵ in opposition to expectations that they remain ‘emotionally well-regulated’.⁶⁶ Scarduzio describes the emotional deviance performed by some US municipal judges as ‘privileged deviance’ and suggests that it ‘highlights the intersections between power, status, and professionalism by pointing out which organisational members are able to violate norms with minimal sanctions and which are not’.⁶⁷ One way in which this occurs is through humour, which can be used negatively, such as belittling a defendant,⁶⁸ or positively, for example, as a tension reliever.⁶⁹ In Scarduzio’s study, some US municipal judges, as a result of their power and status, were able to deviate from the organizational norm of neutrality and a “dead-pan” demeanour’ to use humour to relieve tension during an arraignment. For example, one of Scarduzio’s participants commented:

I will come in [to arraignments] particularly when we have 70 people in there [the courtroom] and they say ‘All rise’ when you walk in and I will say ‘You may have a seat – that is for those of you that can find one’.⁷⁰

Another judge in the study maintained that ‘we need to make them feel that we’re respecting them and humour does that’.⁷¹ Here we see judges using their power and status to deviate from

⁶⁰ *Id.*, p. 108.

⁶¹ *Id.*

⁶² Roach Anleu and Mack, *op. cit.* (2005), n. 14, p. 608.

⁶³ *Id.*

⁶⁴ Scarduzio, *op. cit.*, n. 3, p. 283.

⁶⁵ Rafaeli and Sutton, *op. cit.*, n. 40, p. 33.

⁶⁶ Maroney and Gross, *op. cit.*, n. 5, p. 142.

⁶⁷ Scarduzio, *op. cit.*, n. 3, pp. 284–285.

⁶⁸ *Id.*, p. 299.

⁶⁹ Roach Anleu and Mack, *op. cit.* (2005), n. 14; Scarduzio, *op. cit.*, n. 3; Wojciechowski et al., *op. cit.*, n. 15.

⁷⁰ Scarduzio, *op. cit.*, n. 3, p. 298.

⁷¹ *Id.*

certain emotional labour expectations to display their humanness, which more closely connects them with others in the courtroom. This goes some way to perhaps dispelling ‘the myth about the non-human-ness of judges’.⁷² Furthermore, as an act of public disclosure, this performance of emotional labour might also be beneficial in normalizing judicial emotion.⁷³

While previous research considers the approaches used by judges in managing and performing emotions in the courtroom more broadly, their interactions with, and management of, the jury have yet to be explored in any detail. This article begins to fill this gap in the literature by using the experiences and perspectives of Irish criminal trial judges as a case study to illustrate how judges learn and habituate professional feeling rules and thus perform emotional labour in the direction and management of juries. In so doing, we highlight four themes that we identified in the data: how judges learn the professional feeling rules of their role, how they perform emotional labour by managing their own emotions in their interactions with jurors, how they manage the emotions of jurors, and how they perform emotional labour to mitigate the emotional impact of jury service.

4 | JUDICIAL AUTHORITY IN CRIMINAL JURY TRIALS IN IRELAND

While a large majority of criminal cases in Ireland are tried by a judge sitting alone in the District Court, the Constitution requires that serious offences be tried by a jury.⁷⁴ Criminal jury trials in Ireland are conducted in the Circuit Criminal Court and the Central Criminal Court. The Circuit Criminal Court is organized on a regional basis, with sittings held at venues at each of its eight circuits. It has jurisdiction to deal with all indictable offences, except those over which the Central Criminal Court has jurisdiction (including murder, rape, aggravated sexual assault, piracy, and treason). The Central Criminal Court sits in Dublin and sometimes in regional towns and cities.

There are some distinctive features of the Irish judicial system worth noting, particularly as points of divergence from other jurisdictions where judges’ emotional labour has been studied. First, unlike Sweden and other civil law jurisdictions, there are no lay judges in Ireland. Lay jurors are the sole substantive decision makers in criminal trials. The professional judge does not have an inquisitorial role, but rather acts as a manager or umpire. Second, Irish judges are appointed rather than elected, in contrast with many parts of the US, and thus do not have to consider issues such as public popularity or re-electability. Third, Irish judges have more autonomy over the running of criminal trials compared with judges in the United Kingdom (UK), where interactions with jurors generally conform to more tightly prescribed conventions. By contrast, the Irish jury trial is less structured. Thus, Irish criminal judges have a managerial role with limited substantive decision making, enjoy a degree of autonomy in how they interact with jurors and other court users, and are not constrained by the need to maintain public popularity. Furthermore, features of the jury trial existing in other jurisdictions have not been introduced in Ireland. For example, there is no statutory offence of juror misconduct in Ireland, and jurors do not receive the same kinds of support (such as financial assistance and access to counselling) that are common in jurisdictions such as Australia and New Zealand.

⁷² C. M. Oldfather, ‘Judges as Humans: Interdisciplinary Research and the Problems of Institutional Design’ (2007) 36 *Hofstra Law Rev.* 125, at 127.

⁷³ Maroney, *op. cit.*, n. 2.

⁷⁴ Constitution of Ireland, Art. 38.5.

In supervising the conduct of the proceedings, the judge is a figure of considerable importance in a criminal jury trial, maintaining a ‘unique authority over all other players’.⁷⁵ The Irish courts have underlined that it falls on the judge to ensure ‘that all the requirements for a fair and proper jury trial [will] be observed’.⁷⁶ A strong emphasis has been placed on the perception of judicial impartiality for the preservation of public confidence in the administration of justice.⁷⁷ More recently, the importance of judicial impartiality from the perspective of the jury was highlighted in *People (DPP) v. Rattigan*,⁷⁸ where O’Malley J emphasized the importance of even-handed treatment of both sides by the judge:

Juries look to judges for impartial guidance that they do not necessarily expect to obtain from counsel. They tend to assume (as should be the case) that the judge will be neutral where counsel are obliged to be partisan, and will not lead them astray.⁷⁹

A key aspect of the judicial role in a criminal jury trial is the provision of guidance to jurors, both regarding substantive law and procedure and also in relation to the jury’s role and responsibilities. The centrepiece of this guidance is the summing-up or charge to the jury, where the judge addresses the jurors immediately prior to their commencement of deliberations. The judge usually provides a summary of the evidence, explains core principles including the burden and standard of proof and the presumption of innocence, outlines the legal ingredients of the relevant offences and defences, and specifies the issues to be determined by the jury. The length of a judge’s charge varies in tandem with the length and complexity of the trial and the approach of the judge. In Ireland, the charge remains a completely oral endeavour; the written materials provided to jurors in most common-law jurisdictions have not been adopted.⁸⁰ As we have written elsewhere, when asked to describe their role in a criminal jury trial, Irish judges emphasized the interactive nature of their relationship with juries, with respectful and considerate treatment of jurors seen as foundational in this relationship.⁸¹ Empirical research on the judiciary in Ireland is limited, with brief insights on judicial culture and practices to be gleaned from studies of judicial appointments,⁸² judicial education,⁸³ and disciplinary processes.⁸⁴

⁷⁵ D. Brooke, “‘Entirely a Matter for You’: Summing Up in England and Wales – Part I’ (2009) 27 *Irish Law Times* 239, at 239.

⁷⁶ *People (DPP) v. O’Shea* [1982] IR 384, at 432 (Henchy J).

⁷⁷ *Dublin Well Woman Centre Ltd v. Ireland* [1995] 1 ILRM 408.

⁷⁸ *People (DPP) v. Rattigan* [2018] 1 ILRM 145.

⁷⁹ *Id.*, 167 (O’Malley J).

⁸⁰ Over the past decade, the provision of structured decision trees or flowcharts to jurors has become common across common-law jurisdictions. These written aids are tailored to individual cases and guide jurors through the sequential decisions that they should make when deciding on their verdict. Different terms are employed for such aids, such as ‘route-to-verdict documents’ in England and Wales, ‘question trails’ in New Zealand, and ‘decision trees’ in Canada.

⁸¹ Coen et al., *op. cit.*, n. 16.

⁸² D. Feenan, ‘Judicial Appointments in Ireland in Comparative Perspective’ (2008) 1 *Judicial Studies Institute J.* 37; J. Carroll MacNeill, *The Politics of Judicial Selection in Ireland* (2016); L. Cahillane, ‘Judicial Appointments in Ireland: The Potential for Reform’ in *Judges, Politics and the Irish Constitution*, eds L. Cahillane et al. (2017) 123.

⁸³ Howlin et al., *op. cit.*, n. 25.

⁸⁴ D. Gwynn Morgan, ‘Judicial Discipline: Where Do We Stand? A Consideration of the Curtin Case’ (2009) 27 *Irish Law Times* 26; L. Cahillane, ‘Disciplining Judges: The Special Position of District Court Judges’ (2009) 5 *Irish Law Rev.* 14; L. Cahillane, ‘Ireland’s System for Disciplining and Removing Judges’ (2015) 38 *Dublin University Law J.* 55.

5 | METHODS

This article draws on the findings of a qualitative study of judge-jury interactions in Ireland. Specifically, this research sought to examine judicial and legal practitioner perspectives on how judges conduct criminal jury trials and interact with jurors. The data was generated from semi-structured interviews with 33 participants: 22 judges and 11 barristers. Judges were drawn from the Central and Circuit Criminal Courts, and all barristers had criminal practices and experience of criminal jury trials. The discussion presented in this article is based on data from the judge cohort.

Recruitment of judge participants was based on purposive sampling, with experience of presiding over criminal jury trials being the single criterion for selection. Letters were sent to 47 serving and retired Central and Circuit Criminal Court judges throughout Ireland inviting them to participate in the research. Responses were received from 26 judges, and 22 participated in interviews. The sample consisted of 16 men and six women. Four participants were retired at the time of data collection. Length of service ranged from one year to 31 years. Experience of criminal jury trials varied across the sample; five participants reported fewer than 20 trials, while ten participants estimated that they had presided over more than 100 trials at the time of interviews. All participants had experience of working in courtrooms as legal practitioners prior to their appointment to the bench. While most had practitioner experience in criminal trials, many participants highlighted the difference between the judicial role and that of the advocate.

Institutional ethical approval was granted in early 2017. Interviews with participants took place between June 2017 and May 2018. All but one of the interviews were audio-recorded and subsequently transcribed. One participant requested not to be recorded, and detailed notes were taken by the interviewer and typed up immediately following the interview. All data was fully anonymized, and each participant was assigned a number.

While the sample and data collection method place limits on generalizability, the use of semi-structured interviews facilitates an in-depth exploration of participants' perspectives and practices relating to their interactions with juries and subjective descriptions of the emotions that they presented.⁸⁵ The qualitative nature of this study therefore enables the rich accounts collected to stand alone and, in the context of this article, contribute to understanding the under-explored topic of the emotional labour of judges in jury trials. However, as interviews were the sole data collection method, the performative element of judges' emotional labour could not be fully explored.

The interviews focused on judges' experiences of presiding over jury trials, their perceptions of their relationship with jurors, and their approaches to interacting with jurors. A semi-structured interview schedule was used, in which judicial perspectives on several discrete topics were sought, including approaches to charging juries, juror comprehension, deliberations, and misconduct. Most questions were open ended, allowing participants to fully discuss their experiences and views, and the flexibility of the semi-structured approach facilitated the exploration of unanticipated topics.⁸⁶ Examining judicial perspectives on emotion and experiences of emotional labour was not a primary aim of this research, and therefore the interview guide did not include any questions directly addressing emotions and emotional labour. Rather, judicial perspectives on emotions and emotional labour in criminal jury trials emerged as an unexpected topic in the

⁸⁵ S. Kvale, *Doing Interviews* (2007).

⁸⁶ A. Galletta, *Mastering the Semi-Structured Interview and Beyond: From Research Design to Analysis and Publications* (2013).

current study, as was the case in Roach Anleu and Mack's research with Australian magistrates.⁸⁷ During and after the fieldwork, it was noted that many participants identified emotions as important in their interactions with jurors, describing how they managed both their own and jurors' emotions during trials.

The salience of emotion and the performance of emotional labour in the data was investigated using thematic analysis, a theoretically flexible approach for identifying and analysing patterns and meaning within data, suitable for an under-explored topic.⁸⁸ A broad approach was adopted for initial coding of the transcripts using NVivo and Microsoft Word, which ensured that data extracts were contextualized.⁸⁹ Codes were then clustered together as possible themes, and these were reviewed for internal consistency and coherence by the research team. Emotional labour was identified as a theme within the data, with several sub-themes related to how judges learn the feeling rules implicit within their roles, how they manage their own emotions in their interactions with jurors, how they manage the emotions of jurors, and how they use emotion management strategies to mitigate the emotional impact of jury service. These sub-themes are explored in the next section.

6 | FINDINGS

6.1 | Learning on the job: professional feeling rules of criminal jury trial judging

Previous research indicates that judges perform and manage their emotions in accordance with explicit and implicit societal, organizational, and occupational or professional feeling rules, which function as cultural norms to shape the relationship between emotion and judicial practice.⁹⁰ While some of these norms may be explicitly communicated in written publications such as codes of practice and conduct guides, these have tended to focus on broad statements promoting the principles of integrity, independence, and impartiality.⁹¹ This means that the more granular conventions governing how judges manage their own emotions and those of other court actors are mainly unwritten, embedded in occupational culture and traditions. Recently, formal guidance in some jurisdictions has gone further to offer more direct guidance on appropriate judicial conduct. For example, the *Equal Treatment Bench Book* in England and Wales includes brief reference to the importance of empathy for court users' experiences alongside advice to avoid language and

⁸⁷ Roach Anleu and Mack, op. cit. (2005), n. 14.

⁸⁸ V. Braun and V. Clarke, 'Reflecting on Reflexive Thematic Analysis' (2019) 11 *Qualitative Research in Sport, Exercise and Health* 589.

⁸⁹ R. E. Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (1998).

⁹⁰ S. Roach Anleu and K. Mack, 'A Sociological Perspective on Emotion Work and Judging' (2019) 9 *Oñati Socio-Legal Series* 831.

⁹¹ Some examples include the Bangalore Principles, which promote the importance of avoiding the appearance of partiality, and the American Bar Association Model Code of Judicial Conduct, which instructs judges to uphold and promote the independence, integrity, and impartiality of the judiciary: Judicial Group on Strengthening Judicial Integrity, *The Bangalore Principles of Judicial Conduct* (2002), at <https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf>; American Bar Association, *Model Code of Judicial Conduct* (2020), at <https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/>.

facial expressions that may create an impression of partiality or unfairness.⁹² The second edition of the *Equal Treatment Benchbook* published by the Supreme Court of Queensland encourages judges to be cognisant when interacting with court users of differing cultural traditions that may impact court users' communicative and emotional needs.⁹³ In Ireland, appropriate judicial emotional practice has long been primarily implicit and unwritten, though formal conventions may yet emerge following the publication of the first formal guidelines concerning judicial conduct and ethics in 2022,⁹⁴ and the development of the first formal judicial training programme by the Judicial Studies Committee in 2020.⁹⁵ The absence of written conventions has meant that until very recently, including during data collection for the current study, Irish judges were expected to intuit unwritten conventions governing appropriate judicial conduct. This section therefore presents findings on how judges in our study learned and habituated implicit professional feeling rules.

Some participants pointed to their experience of courtroom settings as legal practitioners as helpful when learning professional feeling rules for interacting with juries. Those with experience of criminal practice particularly valued being able to observe judges in their interactions with jurors from the perspective of a practitioner prior to their own transition to the bench. These observations were a useful starting point, and from there judges could develop their own approaches to interacting with juries that conformed to expected professional feeling rules.

As noted above, data collection preceded the introduction of the first formal judicial education programme in 2020, meaning that formal training was not available for the judges in our study following their appointment.⁹⁶ While training is used to communicate feeling rules in several professions, the management of their own and other court actors' and users' emotions was frequently an area in which judges lacked formal training.⁹⁷ In a broader sense, newly appointed Irish judges were occupationally acculturated into their role through a largely informal process of peer and experiential learning.⁹⁸ One participant described how this operated:

I mean, occasionally you will see new Circuit judges ... go up to the gallery where they won't be seen and they'll just watch the main portions of a full trial and get an idea of just how people interact, the procedural rules, and how particular problems may be dealt with by the judge ... [T]hat works alright. (Judge 08)

⁹² Judicial College, *Equal Treatment Bench Book: February 2021 Edition (April 2023 Revision)* (2023), at <www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book>.

⁹³ Supreme Court of Queensland, *Equal Treatment Benchbook: Second Edition* (2016), at <https://www.courts.qld.gov.au/_data/assets/pdf_file/0004/94054/s-etbb.pdf>.

⁹⁴ Judicial Council, *Guidelines for the Judiciary on Conduct and Ethics* (2022), at <<https://judicialcouncil.ie/assets/uploads/documents/Guidelines%20for%20Judicial%20Conduct%20and%20Ethics.pdf>>. While these guidelines underline the importance of avoiding the appearance of partiality, they do not explicitly address feeling rules.

⁹⁵ See further Judicial Council, *Annual Report 2020* (2021) 16–18, at <<https://judicialcouncil.ie/assets/uploads/documents/AnnualReport2020English.pdf>>. Every judge appointed since July 2020 has undertaken induction training and attended workshops on judicial conduct and ethics.

⁹⁶ *Id.*

⁹⁷ Elek, *op. cit.*, n. 45; T. A. Maroney, 'The Emotionally Intelligent Judge: A New (and Realistic) Ideal' (2013) 49 *Court Rev.: The J. of the American Judges Association* 100.

⁹⁸ Howlin et al., *op. cit.*, n. 25.

Newly appointed judges are required to become accustomed to professional feeling rules through informal processes. This is achieved through observing or shadowing more experienced judges to learn about their approaches to trial management, jury charges, and other processes relevant to criminal jury trials. Such practices also offer an opportunity to observe how judges perform emotional labour to conform to professional feeling rules that govern interactions with juries and appropriate emotional presentation.

However, while shadowing and observation provide examples of the emotions that judges should present towards jurors, newly appointed judges often experienced nervousness and uncertainty when interacting with jurors – feelings that they would not wish to show to jurors, resulting in surface acting while they developed their practice:⁹⁹

I think that I would be a little bit more confident now in my interactions with juries ... In the beginning, when you are presiding over a trial and when 11/12 strangers come out to you, sometimes you can feel slightly shy and ill at ease in your dealings with juries and I think that that sense of unease dissipates over time and you feel more confident ... about what you're saying because you've said it on many previous occasions and it hasn't gotten you into trouble [laughs]. (Judge 11)

I've changed in the sense that I've probably gotten a bit more confident in delivering [the charge to the jury] ... I used to be very nervous ... [I]t's a very daunting prospect actually, the very first time you charge a jury. (Judge 15)

Here, we also see how initial feelings of nervousness and uneasiness are replaced with confidence and assuredness. The judges' reflections also indicate that the need to surface act to display appropriate emotions dissipates as they become more experienced. What once required deliberate emotional labour in the form of surface acting because feelings were not aligned with expectations and experience has resulted in genuine emotions that align with professional feeling rules relating to interactions with juries.¹⁰⁰

In relation to learning the professional feeling rules associated with being a judge, stories were recounted from the past of 'stern' (Judge 10) and 'cantankerous' (Judge 11) judges who were 'terrifying for jurors' (Judge 16), and contrasted with current presentations of judicial emotions:

I think that most of my colleagues would be conscious of the fact that we are living in a modern society and people are not going to tolerate rudeness and cantankerousness in any area of life – it's just not acceptable anymore and I think that most people realize that is the case, so we're trying to put the best foot forward, I think, most of the time. We all have our bad days, you know. (Judge 11)

Bolton recognizes that professional feeling rules are influential in 'moulding professionals into the manner expected'.¹⁰¹ However, she also notes that professional groups are not consistently homogeneous and can split into emergent groups or 'segments' that ensure that feeling rules are

⁹⁹ Hochschild, *op. cit.*, n. 26.

¹⁰⁰ Bolton, *op. cit.*, n. 36.

¹⁰¹ *Id.*, p. 123.

renewed and renegotiated. Indeed, ‘often feeling rules emerge in an altered form and new understandings and ways of being are formed’.¹⁰² Here, we see an example of how judges, influenced by wider societal expectations, have an altered understanding of which emotions are acceptable for a judge to show in their interactions with jurors and other court actors, and which are not.¹⁰³ In turn, feeling rules have emerged that encourage behaviour that emphasizes judges putting their ‘best foot forward’ – in other words, behaving well to gain approval from other court users, including jurors.

6.2 | Managing interactions with jurors

In the previous section, judges reflected on changing emotional expectations that underline the need for them to carefully manage their emotions when interacting with other court users. When it came to jurors in particular, participants were mindful of how jurors might perceive their performance as individual judges. For example:

I would be very conscious that the jury is judging the judge as well, subconsciously. And there have been stories where judges interfered too much, and perhaps the jury would have taken exception to that. I would be conscious that it is natural in us all to judge each other. (Judge 01)

This echoes E. P. Thompson’s statement that ‘[t]he jury box is where the people come into the court: [t]he judge watches them and they watch the judge’¹⁰⁴ and is comparable to previous studies in which judges ‘express a concern for the kind of experience and impression a person will take away from the magistrates’ court’.¹⁰⁵ In particular, Australian magistrates in Roach Anleu and Mack’s study were concerned with behaving in such a way as to ensure that court users feel that the process is fair and just.¹⁰⁶ Our participants were also mindful of this, and there are clear parallels with the way in which the Swedish judges in Bergman Blix and Wettergren’s study perform impartiality by adopting the same emotional register in relation to both prosecution and defence.¹⁰⁷ This was linked by some participants to how they perceived their role within the trial as that of a referee or umpire who ensures a ‘level playing pitch’ (Judge 17) between opposing parties. Judges therefore perform emotional labour to conform to what might be considered overarching professional feeling rules connected with their ‘hierarchically superior position compared with the other participants in the courtroom’¹⁰⁸ and thus ensure that all present see that justice is done by the judge.¹⁰⁹

However, while encompassing these overarching professional feeling rules, the relationship that judges have with jurors is also quite different to the one that they have with other court

¹⁰² Id., p. 125.

¹⁰³ Mann, op. cit., n. 33.

¹⁰⁴ E. P. Thompson, *Writing by Candlelight* (1980) 99.

¹⁰⁵ Roach Anleu and Mack, op. cit. (2005), n. 14, p. 606.

¹⁰⁶ Id.

¹⁰⁷ Bergman Blix and Wettergren, op. cit. (2019), n. 14.

¹⁰⁸ Roach Anleu and Mack, op. cit. (2005), n. 14, p. 609.

¹⁰⁹ Bergman Blix and Wettergren, op. cit. (2019), n. 14.

users. Juries occupy a unique courtroom role as their members are not court users, becoming instead, for a short time, court actors. Therefore, jurors are arguably temporary colleagues of the judge, with both judge and jury members being expected to interact with each other during the trial. Judges therefore realize that they must conform to particular professional feeling rules in their interactions with jurors. Thus, while judges recognize that they may have a ‘bad day’ (Judge 11), they are conscious of the need to suppress certain emotions, particularly those of anger or impatience:

I would never, ever lose my cool. I mean, if you lose your cool, you’ve lost the plot and to a certain extent you’re going to alienate a jury. And that’s something you never want to do, so you don’t. (Judge 17)

While it is possible for a judge to ‘lose their cool’ or get angry in front of the jury, professional feeling rules require judges to remain in control of undesirable emotions. While this means that surface acting may be required to suppress such emotions, Bolton suggests that situations such as the one described by Judge 17 do not represent a difficult challenge, and rather become an integral part of the job, underpinned by the sincere attachments that professionals have to their professional image.¹¹⁰

Avoiding alienating the jury was not the only reason that participants found it necessary to suppress certain undesirable emotions. They also placed a high priority on avoiding an overly informal judge–jury dynamic:

[O]ne also has to be conscious that if one is too casual with the jury, someone on a jury might think ‘Well, I don’t have to bother coming in tomorrow – that judge is an awful nice fella, and if I don’t turn up tomorrow, sure that’ll be fine’. (Judge 13)

Well, you don’t want to get overly matey with them and, I mean, it’s not a sort of clubbish sort of atmosphere. (Judge 08)

These quotes illustrate a common view among participants that professional feeling rules dictate that though judges are in some ways temporary colleagues of jurors, the relationship is asymmetrical, with considerable differences in power, status, and procedural knowledge.¹¹¹ Judges are expected to recognize the unique relationship that they have with jurors as temporary colleagues, yet also convey the seriousness of the jury’s role in a case. They must therefore balance potentially conflicting professional feeling rules. Judge 15 commented:

There has to be a distance because you wouldn’t want to be seen to be, you know, smiling or winking over at the jury because that then might mean you’re giving some signal to them in relation to the evidence that’s been given. So, I think that, you know, a distance but without being aloof, if you understand what I’m trying to say. (Judge 15)

¹¹⁰ Bolton, *op. cit.*, n. 36.

¹¹¹ J. Gibbons, ‘Towards Clearer Jury Instructions’ (2017) 4 *Language and Law/Linguagem e Direito* 142.

Participants' accounts of their interactions with juries also point to an understanding that the balancing of different emotions that they present inevitably means that there are performative elements to their role. As one judge reflected, getting this performance 'right' is important:

You don't want to be a boring old lecturer and you don't want to be a comedian. And you've got to hit somewhere that puts over the essence of their role ... and then send them off to do their vital side of the job. (Judge 07)

This perspective illustrates that in addition to being emotional places,¹¹² courtrooms are also sites of performance and impression management.¹¹³ Both Judge 07 and Judge 15 above recognize the jury as their audience, to whom they seek to portray themselves in a favourable light and in ways appropriate to their role, the setting, and the rules governing the conduct of trials. Judge 11 stated:

I think that we are the public face of the justice system and we're endeavouring to, I suppose, impress people by the system because people come in sometimes with negative views of the system and you want them to go away with perhaps more positive view of the system than they came in with. So, I feel we all have a responsibility to give the best impression of our system than we can, and that involves being pleasant in your interactions with juries and putting them at ease without compromising the formality of the process. (Judge 11)

Impression management is therefore used by judges to achieve a range of objectives:¹¹⁴ to enable the judge to oversee the trial effectively, to carve out the space where the jury does its work, and to ensure that the jurors have a positive experience of jury service and the legal system as a whole. This in turn requires judges to manage emotions in various and often nuanced ways. In exercising impression management, judges must be aware of the local culture of the courtroom and the conduct of trials and manage their emotions to conform to professional feeling rules specific to their unique relationship with jurors. Furthermore, there is a recognition of the need for distance between judges and juries, requiring judges to ensure that they display emotions that demonstrate impartiality and neutrality while simultaneously showing support and respect for jurors.

6.3 | Managing jurors' emotions

Though jurors may be characterized as judges' temporary colleagues, they, like many lay court users, are likely to be unfamiliar with the court setting and procedure. Indeed, several participants pointed to jurors' lack of familiarity with the criminal trial process as presenting both practical and emotional challenges, and some suggested that it is therefore incumbent on judges to ensure that jurors are made to feel comfortable in their new setting and role:

¹¹² Å. Wettergren and S. Bergman Blix, 'Empathy and Objectivity in the Legal Process: The Case of Swedish Prosecutors' (2016) 17 *J. of Scandinavian Studies in Criminology and Crime Prevention* 19.

¹¹³ E. Goffman, *The Presentation of the Self in Everyday Life* (1959).

¹¹⁴ *Id.*

It's very important for me to try and put them at their ease to a certain extent and try and explain the process because you can see quite visibly – it doesn't take a rocket scientist to see bewilderment. They know how they got here: in answer to a summons. They're not quite sure how they wound up on the jury and they're not quite sure what is expected from them. There are some that might feel that this will all be over in an hour just like it is on television, but it's a very different experience. (Judge 19)

You don't want [jurors] to feel nervous. You want them to be at their ease. The danger is that if they feel nervous, they won't be able to apply themselves to the task in hand. So, it's important that they feel at their ease and know exactly what the task is and basically explain to them 'Look ... you rely on the evidence'. (Judge 17)

Important in the successful performance of emotional labour is emotional awareness of others. As Mary Holmes observes, awareness of others' emotional experiences can result from emotional reflexivity, which is 'the intersubjective interpretation of one's own and others' emotions and how they are enacted ... It is a capacity exercised in interaction with others.'¹¹⁵ In the previous section, judges recalled how they use emotional reflexivity to manage their own emotions, whereas here we see it deployed to consider how a person may feel when taking on the role of a juror, and in particular that it may not align with the juror's preconceptions of how jury trials proceed. Both Judge 19 and Judge 17 described being able to see from the way in which newly appointed jurors act that they themselves must perform emotional labour to manage emotions associated with feeling ill at ease. For judges to become aware of this, they must use empathy to take the perspective of a prospective juror at the beginning of a trial, similar to the Swedish judges in Bergman Blix and Wettergren's study.¹¹⁶ Judge 17 elaborated on the emotions that jurors might be feeling when they appear ill at ease, as well as suggesting one of the ways in which judges perform emotional labour to support jurors to feel more comfortable in their role. They also instil confidence in jurors by providing clear directions, enabling them to focus on the task in hand.

Putting the jury at ease is important for judges at the beginning of a trial, when developing trust and rapport. This continues throughout the trial, with judges endeavouring to maintain the trust relationship. For the judges in our study, understanding the emotions of others remains an important aspect of their role to provide clear signposting and direction, ensuring that the trial proceeds efficiently. However, it also provides an important link for the judge to the unique experience of jurors, and the impact that that experience might have on their wellbeing. As one judge explained, '[i]t's important that the judge at least indicates to the jury that he/she is concerned for their welfare and is there to assist them' (Judge 14). Therefore, demonstrating concern for juror wellbeing is an important professional feeling rule and is thus not considered a transgression of professional boundaries. Participants understood that part of this duty of care requires them to be, at times, humorous or witty when interacting with jurors:

I know when people come in and have to sit on a jury, they're obviously tensed up; they've never gone through this procedure before. I try to talk to them in a manner which would relax them all the time and the odd time you might make a witty remark just to ease the tension, you know. (Judge 20)

¹¹⁵ M. Holmes, 'Researching Emotional Reflexivity' (2015) 9 *Emotion Rev.* 61, at 61.

¹¹⁶ Bergman Blix and Wettergren, op. cit. (2018), n. 14.

And I used to jokingly say near the end ‘I’m not going to let you up town to see the latest showing of how many shades of grey was it?’ Whatever it was. [laughing] And they’d say ‘Oh well, Jesus – this guy is kind of half human’. Because they’re looking at somebody with a wig on him, with the formal gear, and it relaxes them, and it says to them that this guy understands ... I would have viewed my relationship with them that I’m the boss. But I would like to be the boss in as kindly and as understanding a way that I could. (Judge 01)

Both Judge 20 and Judge 01 again place themselves in the position of jurors,¹¹⁷ understanding that jurors may well feel tense and emotionally overwhelmed by the courtroom and indeed by themselves as judges,¹¹⁸ and use humour to relieve tension.¹¹⁹ In both cases, we see privileged emotional deviance, whereby the judge makes a witty or humorous remark in disregard of professional feeling rules that dictate suppression of emotion in order to retain impartiality and neutrality.¹²⁰ Furthermore, Judge 01 engages in privileged emotional deviance through humour to arguably reduce the power differential between them as the judge and the jury and to demonstrate their humanness, thus normalizing judicial emotion.¹²¹ For Judge 01, humour is also used as an emotion management tool to show respect to the jury, as it is by the judges in Scarduzio’s study.¹²² Respectful treatment of jurors was a prominent topic of discussion throughout the interviews, and many participants said that such treatment is grounded in practical concerns, which we have explored elsewhere.¹²³ Here, however, judicial respect is not only about being courteous to jurors but also involves getting to know and understand them and how they might be feeling. This in turn enables judges to assist jurors to manage their own emotions.

6.4 | Managing the emotional impact of criminal trials on jurors

There is increasing recognition internationally of the impact of jury service on jurors’ wellbeing. Studies have drawn attention to stress and anxiety experienced by jurors,¹²⁴ and previous research suggests that a minority of jurors may experience short- and long-term vicarious trauma following their participation in jury service.¹²⁵ It has also been suggested that judges are aware of the emotional impact of jury service but often have limited avenues to provide support.¹²⁶ Many judges in the current study acknowledged the potential negative effects of jury service on jurors’ emotional

¹¹⁷ Id.; Roach Anleu and Mack, op. cit. (2005), n. 14.

¹¹⁸ Bergman Blix and Wettergren, op. cit. (2019), n. 14, p. 108.

¹¹⁹ Roach Anleu and Mack, op. cit. (2018), n. 14; Scarduzio, op. cit., n. 3; Wojciechowski et al., op. cit., n. 15.

¹²⁰ Scarduzio, op. cit., n. 3; Bergman Blix and Wettergren, op. cit. (2018), n. 14.

¹²¹ Maroney, op. cit., n. 2.

¹²² Scarduzio, op. cit., n. 3.

¹²³ Coen et al., op. cit., n. 16.

¹²⁴ M. K. Miller and B. H. Bornstein, ‘The Experience of Jurors: Reducing Stress and Enhancing Satisfaction’ in *Stress, Trauma, and Wellbeing in the Legal System*, eds M. K. Miller and B. H. Bornstein (2013) 247.

¹²⁵ N. Robertson et al., ‘Vicarious Traumatization as a Consequence of Jury Service’ (2009) 48 *The Howard J. of Crime and Justice* 1; E. Welsh et al., ‘The Impact of Jury Service on Scottish Jurors’ Health and Well-Being’ (2020) 59 *The Howard J. of Crime and Justice* 3.

¹²⁶ D. M. Flores et al., ‘Judges’ Perspectives on Stress and Safety in the Courtroom: An Exploratory Study’ (2009) 45 *Court Rev.: The J. of the American Judges Association* 76.

wellbeing. Some observed that jurors may experience emotional strain when considering a verdict, as their decision will have serious consequences for one or more parties involved in the case. The novelty of the courtroom setting and procedures for jurors was also highlighted as relevant here, with Judge 21 reflecting that the emotional weight of deliberations may be intensified by the unfamiliarity of the experience:

I think if you're just plucked in off the street, so to speak, into that situation, it can be very daunting, I think, and there are serious consequences coming out of your decision and I think people are conscious of that. I think jurors are conscious of that. That, you know, there can be very serious consequences whichever way they go. So really what you're trying to do, you're really bringing them into the legal world for a short period of time, asking them to do something really important, and then releasing them. (Judge 21)

Several participants also pointed to the nature of the offence(s) and evidence, and underlined the need to understand and manage what may be very emotionally difficult circumstances for jurors. This was particularly highlighted by judges of the Central Criminal Court, who preside over trials involving fatal violence and serious sexual offences. These participants described attending to jurors' emotional needs, as they perceive them, by using humour, displaying gratitude, or emphasizing the importance of the jury's role in the trial process. As these participants explained, in their experience juries may need to be encouraged and reassured during and after these unpleasant cases:

[Jurors are] more or less dragooned into coming in and giving up periods of time serving on what might be difficult or unpleasant cases. You know, I'm almost invariably up here in the Central Criminal Court doing sexual cases or murder and they're not particularly palatable, so you have to jolly them along a bit, and you do have to say even though they have been there by compulsion, 'Thanks very much for taking part and giving up this fortnight of your lives'. (Judge 08)

If I think that a case has been particularly difficult and particularly in the Central [Criminal Court] where the cases are ... serious and they have an emotional aspect to them, and the jury's worked very hard, and it's very tiring, and it's very difficult, [and] you can see they are upset when they come back, you can see they are exhausted ... I think it is only fair to, well, always to thank them ... and to do that in a proper way. (Judge 09)

Other participants similarly acknowledged the potential emotional toll on jurors of serving on trials where there may be heightened concerns about jury interference or intimidation from external sources. These participants described their efforts to reassure jurors and remind them that they can disclose any issues that they may encounter during their service:

[W]hat I did do at the end of the trial, when they had convicted him ... because I knew of their concerns, I said to them 'Look, you've done exactly what you had to do' ... and that was to reassure them more than anything else because I knew they were worried and concerned about their safety, having served on that jury. (Judge 17)

[C]ertainly if I were going to be dealing with a, you know, 'gangland'-type harm or something like that, [I] would be ... very alive to making sure the jury are looking comfortable and keeping an eye on them ... Making sure the channels of communication are open without saying why. But making sure that [I] have made it very clear that if there is anything, [they can] talk to me. I think [I] would be very careful in a case like that to make sure they know that. (Judge 22)

Considerate treatment of jurors by judges has been identified as a key factor in mitigating the emotional impact of jury service.¹²⁷ However, as Maroney notes, judges often have limited ability to avoid or meaningfully alter emotion-provoking situations for jurors during a trial.¹²⁸ Acknowledging these limits, some judges emphasized their practice of issuing future excusals from jury duty. When a judge releases a jury at the end of a trial, they may choose to excuse jurors from serving on a jury for a specified period, including, where they see fit, for life.¹²⁹ This was described as a 'little bonus' (Judge 08) for jurors and a means to demonstrate to jurors that they are 'really properly thanked' (Judge 21) at the conclusion of an emotionally challenging trial. This practice of offering exemptions from future service represents a public acknowledgement of the emotional impact of jury service, and these exemptions become a gift that is presented in recognition of this emotional toll. These practices suggest that judges are aware of the emotional demands of the juror experience, and that they develop approaches to acknowledge and mitigate the negative emotional consequences of jury service where possible.

7 | CONCLUSION

This article contributes to our understanding of the emotional labour performed by judges in their interactions with other court users and actors by using the experiences and perspectives of criminal trial judges in Ireland as a case study to examine their approaches to emotion management in their relationship with jurors, a topic that has been under-explored within the international literature on emotion and judging. It further contributes to the existing scholarship by illuminating how Irish judges learn and habituate professional feeling rules. It additionally highlights how judges present emotions to jurors to demonstrate impartiality and objectivity, while also skilfully using empathy in various ways to keep the trial on track, put the jurors at ease, and build rapport.

Participants described learning how to interact with jurors, and other court users and actors more broadly, primarily through a process of informal occupational acculturation. Here, professional feeling rules were mainly learned through observing more experienced judges, both from the perspective of a legal practitioner prior to their appointment to the bench and as a newly appointed judge. These observations aided judges in developing their own practices for interacting with juries within these feeling rules, with surface acting initially used to disguise unwanted emotions such as nervousness or uncertainty. This was particularly true in respect of newly appointed judges. Importantly, for judges in our study, information about expected feeling rules was wholly implicit and unwritten, meaning that they did not have explicit or written sources from which to gain understanding of appropriate judicial emotional labour expectations. Our findings therefore illuminate how judges learn and habituate feeling rules not directly accessible in written

¹²⁷ Id.

¹²⁸ T. A. Maroney, 'Emotional Regulation and Judicial Behaviour' (2011) 99 *California Law Rev.* 1485.

¹²⁹ Juries Act 1976, s. 9(8).

guidance or made clear through formal training processes. With the Judicial Studies Committee's programme of formal education for Irish judges now underway, participants' experiences suggest that both newly appointed and experienced judges would benefit from training on emotion management strategies. Among the first initiatives introduced by the Judicial Studies Committee was training on avoiding re-traumatization in sexual violence trials, piloted with experienced criminal trial judges in 2021.¹³⁰ Announcing this training, Minister for Justice Helen McEntee stated:

When a person becomes the victim of a terrible crime, I want them to have the confidence that the criminal justice system, and all those who work within it, will treat them with dignity and empathy and will support them at every turn.¹³¹

Here, we see explicit reference to emotions to be used by Irish judges in sexual violence trials, which mirrors some of the written guidance recently emerging in other jurisdictions, such as England and Wales and Queensland, as discussed earlier. As judicial education continues to develop through formal training and publications such as conduct guides, we argue that understanding how judges learn and become acculturated to less easily discerned professional feeling rules is of critical importance in drafting meaningful direct guidance on appropriate judicial practice. We therefore encourage researchers to engage in further empirical explorations of emotional labour performed by judges with jurors and other court users and actors, the findings of which could be used to inform training programmes, judicial manuals, ethical guidelines, and other relevant materials.

The findings presented in this article illuminate judges' awareness of emotions and practices in the context of emotional labour by adhering to professional feeling rules that focus on the preservation of professional integrity and a duty of care towards jurors. Clear overlaps with previous research on judges have been identified in our study. Our participants were acutely aware that the courtroom is an emotional arena, and that they are expected to manage both their own emotions and those of jurors within an 'emotive-cognitive judicial frame'.¹³² As for the Swedish judges in Bergman Blix and Wettergren's study,¹³³ of particular importance to participants is projecting the impression of neutrality to other court actors. This is achieved by managing, and where necessary suppressing, emotions in order to ensure that the requisite distance between themselves and the jury is maintained. This type of impression management is directed both at the jury and at other court users.

Maroney makes reference to the fact that judges in different jurisdictions have 'distinct cultural scripts' and that 'judicial objectivity' varies depending on the country in which the judge conducts their role.¹³⁴ Bergman Blix and Wettergren concur, observing that judges in different countries are influenced by 'culturally specific emotional regimes'.¹³⁵ In our study, Irish judges made clear reference to the need for a 'balance' in their emotional displays towards juries, described by Judge 15 as 'distance without being aloof', and by Judge 07 as not wanting to be either 'a boring old

¹³⁰ Judicial Council, 'Judicial Studies Committee' *Judicial Council*, 10 October 2023, at <<https://judicialcouncil.ie/judicial-studies-committee>>.

¹³¹ Department of Justice, 'Specialist Training across Justice Sector to Better Support Victims in Sexual Violence Cases Announced by Minister McEntee' *Gov.ie*, 28 October 2020, at <<https://www.justice.ie/en/JELR/Pages/PR20000250>>.

¹³² Bergman Blix and Wettergren, *op. cit.* (2019), n. 14, p. 141.

¹³³ *Id.*

¹³⁴ Maroney, *op. cit.*, n. 14, p. 814.

¹³⁵ Bergman Blix and Wettergren, *op. cit.*, n. 58, p. 32.

lecturer' or 'a comedian'. As the judge presiding over the case, it is incumbent on them to place justice and therefore neutrality, objectivity, and impartiality at the heart of their administration of trials, but also to acknowledge the performative element of their role in the courtroom. This emphasis on balance hints that Irish judges in the study are mindful of both professional and societal feeling rules, affecting the culturally specific emotional regimes to which the judges are subject. They are therefore required to balance the emotions that they present carefully.

Given the limits of our study, both in terms of its focus and the method by which data was gathered, the performative element and thus the balance of emotions expected of Irish judges could not be fully explored. Therefore, it would be beneficial for future research to be conducted on the emotional labour performed by judges in jury trials, both in Ireland and internationally, to develop a greater understanding of this aspect of the judicial role. This could include not only semi-structured interviews but also observations of judges in the courtroom to shed further light on the performative element of the emotional labour undertaken by judges in their interactions with juries and other court actors, including witnesses (who, like jurors, are temporary but vital court actors).

The judges whom we interviewed are mindful of developing a good working relationship with jurors. This requires building trust and rapport with them. Central to this is empathy, which is demonstrated in a by-the-way manner. However, participants also described how they use empathy to show their concern for jurors' wellbeing. Additionally, we saw the use of humour to demonstrate their understanding of the jurors' position. While this may be considered privileged deviance, how it was described suggests that it forms part of the service provided to jurors in recognition of the sustained civic engagement that they undertake. This service requires judges to be a good host to the jury, and to display their humanity.

The emotional labour performed by judges in our study is considerable. They are cognisant of the need to strike a balance between showing impartiality and demonstrating concern for jurors' emotional needs. Managing emotions in this way can be challenging, and newly appointed judges in particular described using surface acting to ensure that they conform to expected professional feeling rules. The performance of emotional labour using surface acting has been shown to have potentially deleterious effects on workers and can lead to burnout in the form of depersonalization or emotional exhaustion.¹³⁶ Indeed, being a judge and running a criminal trial can entail intensive emotional labour, in that judges are required to skilfully manage their own and others' emotions in often demanding circumstances. As Maroney argues, an appreciation of judges' humanity and the role of emotion in human life would facilitate the acceptance and examination of judicial emotion.¹³⁷ Further research is needed to understand the consequences of performing emotional labour for judges and how potentially negative effects can be ameliorated.

One way in which Bergman Blix and Wettergren see potentially negative emotional consequences for judges being reduced is by engaging in critical reflection. They maintain that there needs to be 'an emotionally embedded tolerance of emotional talk and extended knowledge in the first place'.¹³⁸ Maroney concurs, commenting that 'sharing emotional challenges with other judges is particularly beneficial, strengthening camaraderie and facilitating mutual support', but adds that this appears rare among US judges.¹³⁹ He suggests that there is limited sharing of emotions

¹³⁶ Hochschild, *op. cit.*, n. 26, p. 18; Maroney, *op. cit.*, n. 2; Roach Anleu and Mack, *op. cit.* (2005), n. 14.

¹³⁷ Maroney, *op. cit.*, n. 2.

¹³⁸ Bergman Blix and Wettergren, *op. cit.* (2019), n. 14, p. 174.

¹³⁹ Maroney, *op. cit.*, n. 2, p. 18.

unless it is done by the more experienced 'senior' judge.¹⁴⁰ Alongside uncovering the consequences of emotional labour for judges, scholarship and practice would benefit from increased understanding of the ways in which judges cope with the emotional burdens of their job. Yet, discovering strategies for coping with the emotional texture of their everyday work should not fall solely on the shoulders of the judges themselves. The acknowledgement at organizational and governmental levels of the emotional labour performed by judges and the provision of ongoing training and support (in addition to education provided to newly appointed judges) is critically important.

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¹⁴⁰ Id.