

RESPECT, REFORM AND RESEARCH: AN EMPIRICAL INSIGHT INTO JUDGE-JURY RELATIONS

Abstract: In March 2020, a report entitled 'Judges and Juries in Ireland: An Empirical Study' was launched by Chief Justice Clarke at the Criminal Courts of Justice.¹ The report summarises the research findings of a pioneering study conducted between 2017 and 2019, in which 22 judges and 11 barristers with experience of criminal jury trials were interviewed. The purpose of this research was to examine the perspectives, experiences and approaches of judges who preside over criminal trials on indictment, particularly in relation to their interactions with the jurors who determine guilt or innocence in those cases. This article presents selected findings from this study, focusing on judicial perspectives on the contemporary judge-jury relationship. A key contribution of the article is that it addresses an enduring research gap by illuminating how trial judges perceive trial by jury and their own role within it.

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Introduction

Although the vast majority of criminal cases in Ireland are tried by a judge sitting alone in the District Court, the Constitution requires that the most serious offences are tried by a jury.² While jury trial in this jurisdiction has long been the subject of what might be termed 'traditional' legal scholarship analysing contemporary or historical issues,³ a dearth of empirical research on jury trial has persisted in Ireland for many years.⁴ More broadly, there

* The authors wish to acknowledge the support received from the Fitzpatrick Family Foundation in support of this research.

¹ Mark Coen, Niamh Howlin, Colette Barry and John Lynch, *Judges and Juries in Ireland: An Empirical Study* (UCD, 2020).

² Article 38.5.

³ See for example Conor Hanly, 'The 1916 Proclamation and Jury Trial in the Irish Free State' (2016) 39(2) *Dublin University Law Journal* 373; David Johnson, 'Trial by Jury in Ireland, 1860–1914' (1996) 17(3) *Journal of Legal History* 270; David Johnson, 'The Trials of Sam Gray: Monaghan Politics and Nineteenth Century Irish Criminal Procedure' (1985) 20 *Irish Jurist* (ns) 109; John McEldowney, 'The Case of *The Queen v McKenna* and Jury Packing in Ireland' (1977) 12 *Irish Jurist* 339; John McEldowney, 'Stand By for the Crown: An Historical Analysis' (1979) *Criminal Law Review* 272; Mark Coen, 'Apprehended Bias: The Case of Jurors' (2010) 32 *Dublin University Law Journal* 121; Mark Coen, 'Interference with Jurors and its Potential Legal Consequences' (2011) *Criminal Law and Procedure Review* 142; Mark Coen, 'Hearsay, Bad Character and Trust in the Jury: English and Irish Contrasts' (2013) 17(3) *International Journal of Evidence and Proof* 250; Mark Coen and Niamh Howlin, 'The Jury Speaks: Jury Riders in the Nineteenth and Twentieth Centuries' (2018) 58(4) *American Journal of Legal History* 505; Mark Coen, 'The Work of Some Irresponsible Women: Jurors, Ghosts and Embracery in the Irish Free State' (2020) 38(3) *Law and History Review* (forthcoming); Niamh Howlin, 'The Politics of Jury Trials in Ireland' (2015) 3(2) *Comparative Legal History* 272; Niamh Howlin, 'Irish Jurors: Passive Observers or Active Participants?' (2014) 35(2) *The Journal of Legal History* 143; Niamh Howlin, 'The Terror of Their Lives: Irish Jurors' Experiences' (2011) 29(3) *Law and History Review* 703; Niamh Howlin, 'Multiculturalism, Representation and Integration: Citizenship Requirements for Jury Service' (2012) 35 *Dublin University Law Journal* 148-172; Niamh Howlin 'Fenians, Foreigners and Jury Trials in Ireland 1865-69' (2010) 45 *Irish Jurist* 51; Niamh Howlin 'Controlling jury composition in Nineteenth-Century Ireland' (2009) 30(3) *Journal of Legal History* 227; and Niamh Howlin *Juries in Ireland: Laypersons and Law in the Long Nineteenth Century* (Four Courts Press 2017).

⁴ The unclear contours of the common law and constitutional restrictions on conducting empirical research with jurors have undoubtedly contributed to this research deficit. See *People (Longe) v AG* [1967] IR 369 and *O'Callaghan v AG* [1993] 2 IR 17.

is also limited empirical research on Irish criminal trials generally, with existing work almost exclusively focused on sentencing⁵ and victims of crime.⁶ Moreover, as the District Court has been a particular focus for researchers,⁷ there is currently a research gap in relation to the pre-sentencing stage of Irish criminal trials for non-minor offences.

Conscious that the dynamics of Irish jury trials had not been investigated to date, we decided to assess how judges interact with jurors in criminal trials. A number of factors make an Irish study of judge-jury relations particularly appropriate. Firstly, as outlined above, a gap in knowledge on jury trials in Ireland has existed for many years. The current study addresses this gap by being the first to explore judicial perspectives, experiences and approaches using qualitative interviews.⁸ Secondly, there is a rich international literature on jury procedure and judge-jury interactions. This reflects the significant changes to jury trials across the common law world over the past two decades. For example, the provision of aids to deliberation,⁹ judicial and legislative responses to the challenge of online jury misconduct,¹⁰ a tendency to have standardised, mandatory directions on particular issues,¹¹ and increasing emphasis on the responsibility of judges to ensure that time is not wasted,¹² have fundamentally changed

⁵ Ian O'Donnell and Clare Milner, *Child Pornography: Crime, Computers and Society* (Willan 2007) 136-147; David Riordan, 'The Role of the Community Service Order and the Suspended Sentence in Ireland: A Judicial Perspective' (unpublished PhD thesis, University College Cork, 2009); Niamh Maguire, 'Consistency in Sentencing' (2010) 10(2) *Judicial Studies Institute Journal* 14; and Clare Hamilton, 'Sentencing in the District Court: "Here be Dragons"' (2005) 15(3) *Irish Criminal Law Journal* 9.

⁶ Ivana Bacik, Liz Heffernan, Patricia Brazil and Marguerite Woods, *Report on Services and Legislation Providing Support for Victims of Crime* (Commission for the Support of Victims of Crime 2007); Shane Kilcommins, Máire Leane, Fiona Donson, Caroline Fennell and Anna Kingston, *The Needs and Concerns of Victims of Crime in Ireland* (Commission for the Support of Victims of Crime 2010); Claire Edwards, Gillian Harold and Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (University College Cork 2012).

⁷ Ivana Bacik and Michael O'Connell, *Crime and Poverty in Ireland* (Round Hall Sweet & Maxwell 1998); Maguire (n 5); Hamilton (n 5).

⁸ Qualitative research has been conducted on the pre-trial process of bail: see Mary Rogan and David Perry, 'The Use of Pretrial Detention in Ireland: How Does the Legal Framework Operate in Practice?' (2018) 2 *Criminal Law and Practice Review* 113. Conor Hanly, Deirdre Healy and Stacey Scriver, *Rape and Justice in Ireland* (Liffey Press 2010) examined trial records in rape cases. In a recent study, barristers and solicitors were interviewed about the impact of the new exclusionary rule relating to unconstitutionally obtained evidence in both summary trials and trials on indictment. See Claire Hamilton, *A Revolution in Principle: Assessing the impact of the new evidentiary exclusionary rule* (Irish Council for Civil Liberties 2020) <www.iccl.ie/wp-content/uploads/2020/10/A-Revolution-in-Principle.pdf> accessed 19 October 2020.

⁹ For example, see Robert G Boatright and Beth Murphy, 'Behind Closed Doors: Assisting Jurors With Their Deliberations' (1999) 83 *Judicature* 52; Jacqueline Horan, *Juries in the 21st Century* (The Federation Press 2012); James RP Ogloff, Jonathan Clough, Jane Goodman-Delahunty and Warren Young, *The Jury Project: Stage 1 – A Survey of Australian and New Zealand Judges* (Australasian Institute of Judicial Administration, 2006) 22; Canadian National Judicial Institute, *Model Jury Instructions*, <www.nji-inm.ca/index.cfm/publications/model-jury-instructions/?langSwitch=en> accessed 4 August 2020.

¹⁰ For example, 'Model Jury Instructions' (Judicial Institute for Scotland) <www.scotland-judiciary.org.uk/Upload/Documents/Export_Jury_Manual_20200612_1429.pdf> accessed 4 August 2020; New Zealand Law Commission, *Reforming the Law of Contempt of Court: A Modern Statute* (Report 10-2017) 74-84; David Harvey, 'The Googling Juror: The Fate of the Jury Trial in the Digital Paradigm' (2014) *New Zealand Law Review* 203; Dennis M Sweeney 'Worlds Collide: The Digital Native Enters the Jury Box' (2011) 1 *Reynolds Courts and Media Law Journal* 121; Keith Hogg, 'Runaway Jurors: Independent Juror Research in the Internet Age' (2019) 9(1) *Western Journal of Legal Studies* 1.

¹¹ For example, compare *DPP v McCarthy* [2015] IECA 150 (on whether an internet warning is required in every case) with *The Crown Court Compendium, Part 1: Jury and Trial Management and Summing Up* (Judicial College 2019) 3-1.

¹² For example, Judicial College of Victoria, *Victorian Criminal Proceedings Manual*, ch 6 <www.judicialcollege.vic.edu.au/eManuals/VCPM/index.htm#27527.htm> accessed 4 August 2020; Penny Darbyshire, 'Judicial Case Management in Ten Crown Courts' (2014) *Criminal Law Review* 30; *R v McClelland* [2015] IECA Crim 1080; Lord Justice Judge, *Review of Efficiency in Criminal Proceedings* (Judiciary of England and

criminal trial practice elsewhere. It was thus an appropriate time to examine the same issues in Ireland. Thirdly, anecdotal evidence suggested that variations in practice exist among the Irish judiciary in respect of issues such as warning the jury not to conduct internet research. It was therefore important to identify practices and ascertain divergences in judicial approaches in Ireland and the rationales that underpin them. Such insights will be of particular value in discussions on reform.

A central aim of this research was to explore how judges interact with jurors in criminal trials. The study examined a wide range of issues pertaining to jury trial, including charging the jury; the provision of written materials to jurors; jury misconduct; the use of technology in jury trials; jury interference and the impact of the gender of the judge on jury trials. These issues were explored in semi-structured interviews with judges and legal practitioner participants. The purpose of this article is to synthesise and reflect the views of the judge participants on three key themes identified in the data: respect, reform and research. Our analysis revealed these as overarching general themes present in the data. A discussion of these areas reveals how judges perceive the judge-jury relationship in Ireland today, and what reforms and developments they would like to see in the future. A key contribution of this article therefore is that it presents, for the first time, data on the views and experiences of judges who preside over criminal trials on indictment on three major issues, namely their relationships with juries, suggestions for reform and the feasibility of research with jurors in Ireland. It also presents some reforms proposed by the research team, prompted by the results of the study. More broadly, it illuminates the under-researched area of Irish criminal trials. The article includes a significant amount of original material not already published in the report. Before considering the substantive themes, the methodology of the study will be outlined.

Methodology

The findings presented in this article are drawn from a qualitative study of judge-jury interactions in Ireland. This research entailed a series of individual face-to-face semi-structured interviews with serving and retired Circuit and Central Criminal Court judges, and with barristers with criminal practices who have experience of jury trial. Internationally, qualitative research interviews with judges are an established and well-recognised methodology.¹³ Overall, there were 33 participants in the study; 22 judge participants and 11 practitioner participants. Interviews with judge participants took place between June 2017 and May 2018. Interviews with practitioners were held between July 2018 and December 2018. However, the data presented in this article relates to the judge participants only.

Invitations to participate in the study were circulated to 47 serving and retired judges across Ireland.¹⁴ A purposive sampling approach was employed aiming for variations in location, experience and gender. Responses were received from 26 judges, with 22 expressing an interest in participating in the research. All 22 of these judges participated in interviews. The sample included 4 retired judges. Of the 22 judges who were interviewed, 16 were male and

Wales, January 2015) 74; Jenny McEwan, 'The Changing Face of Criminal Litigation in England and Wales: Editor's Introduction' (2010) 14(2) *International Journal of Evidence and Proof* 89.

¹³ See for example, O'Donnell and Milner (n 5); Jennifer Carroll, 'You Be the Judge: A Study of the Backgrounds of Superior Court Judges in Ireland in 2004 Part 1' (2005) 10(5) *Bar Review* 153; Esther Nir, 'Approaching the Bench: Accessing Elites on the Judiciary for Qualitative Interviews' (2018) 21(1) *International Journal of Social Research Methodology* 77.

¹⁴ Participation was open to retired judges to broaden the pool of potential participants.

six were female. The sample included 10 Circuit Court judges and 12 Central Criminal Court judges. While some of the Central Criminal Court participants were assigned to non-criminal cases in the High Court at the time of the study, they each had experience of presiding over criminal jury trials. The Circuit Court judges in the sample had presided over jury trials in a range of locations across the country, both urban and rural.

Ethical approval for the study was granted by the University College Dublin Human Research Ethics Committee. Interviews with judge participants explored their perspectives on their role in a criminal jury trial, their approach to interacting with juries and their views and experiences on a range of relevant topics, such as jury misconduct, the use of technology in jury trials and jury interference. Interviews were audio-recorded and transcribed verbatim. The transcripts were analysed using thematic analysis, following Braun and Clarke's analytical framework.¹⁵ Themes were identified and refined using an inductive approach, beginning with open coding of all transcripts.¹⁶ All authors contributed to the analysis process.

Respect for juries

It was evident during our interviews that judge participants were deeply appreciative of jurors and made a conscious effort to accommodate their needs and treat them with respect. This finding aligns with previous international studies that consider judges' experiences and views on their interactions with jurors. Much of this previous research has focused on the practical courtesies judges afford to jurors. For example, a collaborative study between researchers in Australia and New Zealand found that judges were attuned to the juror experience, with most judges in the study allowing time for a jury to 'settle in' and displaying awareness of jurors' potential fatigue and boredom by seeking to give breaks where possible.¹⁷ Similarly, a survey of trial judges in the US found that judges often asked jurors about their preferences for the timing of breaks, instructed court officials to be sensitive to jurors' needs and attempted to maintain a positive rapport with jurors.¹⁸ It has also been argued that the physical environment of jury facilities may reflect the level of respect with which the system treats the jury,¹⁹ and recent research from Australia and New Zealand suggests that judges are aware of the negative impact of poor design and facilities on the juror experience.²⁰ There is also increasing recognition internationally of the impact of jury service on jurors' wellbeing. Several US studies have drawn attention to stress and anxiety experienced by jurors, with considerate treatment of jurors by judges identified as a key factor in reducing the negative impact of jury service.²¹ Measures to mitigate juror stress and anxiety, such as counselling,

¹⁵ Virginia Braun and Victoria Clarke 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 71.

¹⁶ Michael Quinn Patton, *Qualitative Evaluation and Research Methods* (2nd edn, Sage 2000).

¹⁷ Ogloff and others (n 9) 22.

¹⁸ David M Flores, Monica K Miller, Jared Chamberlain, James T Richardson and Brian H Bornstein, 'Judges' Perspectives on Stress and Safety in the Courtroom: An Exploratory Study' (2009) 45(3) *Court Review: The Journal of the American Judges Association* 76.

¹⁹ Jane Goodman-Delahunty, David Tait and Natalie Martschuk 'Procedural Fairness and Jury Satisfaction: An Analysis of Relational Dimensions' in Denise Meyerson, Catriona Mackenzie and Therese MacDermott (eds), *Procedural Justice and Relational Theory: Philosophical, Empirical and Legal Perspectives* (Routledge 2020).

²⁰ Jonathan Clough, Ben Spivak, James R P Ogloff, Janet Ruffles, Jane Goodman-Delahunty and Warren Young, *The Jury Project 10 Years On: Practices of Australian and New Zealand Judges* (Australasian Institute of Judicial Administration 2019).

²¹ Monica K Miller and Brian H Bornstein, 'The Experience of Jurors: Reducing Stress and Enhancing Satisfaction' in Monica K Miller and Brian H Bornstein (eds) *Stress, Trauma, and Wellbeing in the Legal System* (Oxford University Press 2013); Flores and others (n 18).

debriefing and training for judges on awareness of stress and anxiety have been characterised as important components of respectful treatment of jurors.²²

Judge participants in the current study were asked how they would characterise the judge-jury relationship. Many emphasised respectful and considerate treatment of jurors as foundational in their relationships and interactions with jurors in criminal trials. A typical response was: 'I treat them with respect. They are there to do their job, I have mine. I treat them in a civil fashion. I'd like to think that I respect them as intelligent people' (Judge 06). Several judges referred to the fact that the courtroom dynamic must be mutually respectful. As one judge put it: '[Y]ou have to show respect, the same respect for them as you'd expect them to show for you' (Judge 17). Some emphasised that an atmosphere of respect was preferable to a more informal approach to judge-jury relations:

[W]hile one has to be very deferential towards juries, one also has to be conscious that if one is too casual...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'. A jury have to understand that it's mandatory jury service and if they are on a jury it's a serious business.

(Judge 13)

Another judge echoed this sentiment when they said: 'It can't be a chummy relationship, it has to be very, very professional, but there has to be some kind of mutual trust' (Judge 21). Indeed, while there was disagreement among the judicial participants about whether a rapport was something a judge should strive for with the jury, they all agreed that a respectful relationship between judge and jury was essential. The term 'rapport' had negative connotations for some judges in that it could suggest over-familiarity or an even an attempt to influence jurors, whereas 'respect' struck the right note for all.

In the pages that follow, distinct dimensions of judicial respect for jurors, as revealed in the interviews, will be discussed. The reasons underpinning the respect judges have for jurors will be examined, followed by consideration of the ways in which judges manifest that respect during trials.

Foundations of respect

Judge participants cited multiple reasons explaining why they believed in the importance of respect and considerate treatment of jurors. One judge identified respect for the jury system and jurors as a constitutional imperative:

[T]he People under the Constitution decided, we'll try serious cases...They didn't decide to hear the small cases, the parking fines, they decided to hear

²² Goodman-Delahunty (n 19). A Committee of the Canadian House of Commons has recently recommended that judges be provided with training that increases their understanding of jurors' mental health needs, see: *Improving Support for Jurors in Canada: Report of the Standing Committee on Justice and Human Rights* (House of Commons, Ottawa, May 2018) 43
<www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP9871696/justrp20/justrp20-e.pdf>
accessed 4 August 2020.

the serious cases, so the whole mentality of judges must be respectful of the Constitution and the People's decision in that regard.

(Judge 06)

Other judges referred to more practical and less lofty reasons underpinning their respect for jurors. Many pointed to the fact that the system of trial on indictment in Ireland is wholly reliant on the participation of lay people and that they effectively provide an essential service without compensation of any kind. One judge articulated this as follows: '[T]hey must be treated very respectfully and gratefully too because without them we wouldn't have our very good criminal justice system' (Judge 16). A respectful attitude to jurors was also perceived by participants as the minimum the system could do to acknowledge the inconvenience and disruption that jury service entails.

Existing difficulties in empanelling juries were alluded to by several judges, who referred to the low level of replies to summonses and the making of excuses not to serve by those who present themselves.²³ It was felt that judicial disrespect of those who are willing to serve would exacerbate these problems by alienating even more people from the system:

You try and think of the fact that they are pretty much dragged in with some reluctance and you don't make it any harder for them and in general they're very conscientious and committed and they pull together pretty well.

(Judge 08)

You have to remember that in this country jurors are not paid, they come along voluntarily, an awful lot of people won't serve and won't turn up...So you have to be careful to ensure that you don't make it more difficult to agree to serve.

(Judge 02)

Overall, there was a sense that those citizens who are prepared to serve are deserving of praise and gratitude for their civic-mindedness, in a climate where this is not universal and cannot be taken for granted.²⁴

Many judge participants also referred to their perceptions of jurors' approach to their role when discussing respect. Often when judges stated that they held jurors in high esteem, they cited the diligence and the seriousness with which they have observed them undertaking their tasks. The sophisticated questions asked by jurors were pointed to by some judges as evidence of their conscientiousness:

Remember there are 12 of them, and 12 heads really are better than one. They spot points that might not occur to the legally qualified person - you see that in the questions they ask. If a question hasn't been asked by an advocate, they spot that and ask why it wasn't asked.

(Judge 14)

²³ See for example, Kevin Foxe, 'Just 20% Showed Up for Jury Duty Last Year,' *The Irish Examiner*, (4 March 2020) 2.

²⁴ Similar observations have been made by Goodman-Delahunty and others (n 19) regarding willingness to serve. The authors argue that enhanced relational contact between courts and juries may increase jurors' positive civic attitudes, willingness to serve and overall satisfaction with the criminal justice process.

Other judges referred to ‘very nuanced’ (Judge 15) and ‘really insightful’ (Judge 16) questions they had received from jurors. Another indicator of jury diligence was perceived in communications judges received from jurors about potential problems, such as approaches to them by non-jurors or concerns they had about fellow jurors:

[T]hey are so honest, I mean, they come in and tell you the tiniest of things.
(Judge 06)

Every time a jury tells you something [about a potential irregularity] ... you know they have heard the warning and they know what’s supposed to happen. So, any time anything is reported to me, I am glad, because it tells me that they are taking their job seriously.

(Judge 04)

Another foundation of judicial respect for jurors was the belief that they reach the ‘right’ verdict most of the time. When asked if they had ever disagreed with a jury verdict, the response of the overwhelming majority was that they had once or twice, but that it was rare.²⁵ There was also a consensus that questionable acquittals are much more common than questionable convictions. The following statement typifies the overall attitude of the judicial participants to jury verdicts:

[J]uries have an awful lot of common sense...they rarely get it wrong...I’ve only once come across a conviction that I didn’t think was warranted...They’ve let a few people off that they shouldn’t but that’s fine, that’s the way the common law is designed, if they weren’t sure they weren’t sure, that’s the long and the short of it.

(Judge 12)

Respectful treatment of jurors was also motivated in some cases by the common-sense view that if one treats people with civility, one will receive more cooperation and engagement from them. In essence, a pleasant atmosphere creates a good working environment that will lead to good outcomes: ‘[I]f you treat...the jury panel with courtesy and respect you can’t go wrong’ (Judge 19).

Judges were also conscious that the way jurors are treated by judges informs public perception of the administration of justice. The involvement of ordinary citizens in the courts was seen as an opportunity to demonstrate that they operate in a modern and professional manner:

[W]e 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 a more positive view...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

²⁵ This may be contrasted with the findings of American and English studies that disclosed a considerable rate of disagreement in relation to verdicts between judges and juries. See Harry Kalven and Hans Zeisel, *The American Jury* (Little Brown 1966) 56-59; John Baldwin, and Michael McConville, *Jury Trials* (Clarendon Press 1979) 46, 54-56, 79.

formality of the process.

(Judge 11)

The corollary of this is recognised in the English *Equal Treatment Bench Book*, which cautions that when judges do not behave appropriately the consequences are ‘the perception of unfairness (even where there is none), loss of authority, loss of confidence in the system and the giving of offence.’²⁶

Several judge participants recalled that historically juries were not always treated respectfully. Judges in times past were ‘very stern...extraordinarily cross’ (Judge 10), ‘terrifying’ (Judge 16) and had pretensions to ‘majesty’ (Judge 18). A number of judges spoke about instances during their time in practice at the Bar when they perceived juries as being treated with discourtesy or a lack of consideration and stated that they wanted to have a different relationship with jurors themselves. For example, one judge stated:

[S]ome of the judges and indeed some of the judges with big reputations were in fact very rude to juries and I never kind of understood that...I just thought some of the things that I saw I wouldn’t have been happy with...So I think you just try to treat the jury like you’d like to be treated if you were in that position.

(Judge 09)

Judges cited the more egalitarian nature of modern society as a reason for greater consideration and less pomposity in judicial interactions with jurors. In the words of one judge: ‘There wouldn’t be the same barrier that there was between the judiciary and the general public or jurors that was there before’ (Judge 17).

It can thus be seen that judges invoked myriad reasons as to why they regarded jurors as deserving of respect. Recognition of the personal sacrifice involved in sitting on a jury was very strong among the interviewees. The fear that an absence of respect for jurors would deter even more people from undertaking jury service also underpinned judicial attitudes. A belief in the conscientiousness of jurors and the general soundness of their verdicts also informed the viewpoint of judges. In the next section we consider how judges demonstrated or attempted to demonstrate their high opinion of juries in practical ways during trials.

Manifestations of respect

For the judges in our study, an attitude of respect for juries was insufficient on its own; it had to be manifested by action in the conduct of trials. This demonstrates that judge participants were aware of how they might be perceived by jurors and were keen to communicate respect and courtesy when interacting with them. They provided many examples of how they gave effect to their high opinion of juries and voiced strong opinions on the treatment they believed they should receive. They emphasised ‘basic politeness’ (Judge 05) as a starting point: ‘Welcoming them and ... acknowledging that they have given up their time to deal with the case...I’m very pleasant always to them, I don’t criticise them for being late or anything like that, you know.’ (Judge 18).

²⁶ *Equal Treatment Bench Book* (Judicial College, March 2020) 5 <www.judiciary.uk/wp-content/uploads/2018/02/ETBB-February-2018-amended-March-2020.pdf> accessed 4 August 2020.

Judges also referred to the characteristics they sought to avoid in their interactions with the jury:

[I]t doesn't help us to be pompous and self-regarding and therefore one should try to avoid that.

(Judge 09)

[Y]ou maintain a distance without being aloof or without being abrupt or... and I'd always say, 'Good morning', 'Good evening' and their weekends, did they have a nice weekend, you know.

(Judge 15)

Several participants referred to the fact that judicial self-importance and rudeness had been features of the jury trials conducted by their predecessors. They also expressed frustration at the enduring public stereotype of the out of touch, short-tempered judge they had encountered as practitioners. They regarded this as no longer reflective of how judges behave.

Participants gave a number of examples of how they treated jurors with respect. Four judges stated that they emphasised the importance of the juror's role directly to them throughout the trial. One said that they told the jurors to consider themselves judges of the Central Criminal Court for the duration of the trial. Another put it as follows: 'I always tell them they're central, they're the most important people in the room' (Judge 07). This commendable practice not only evinces respect for the jury but also underlines to its members how serious their role is.

Judges were conscious that jurors are people with busy lives outside the courtroom, and many stated that traditionally the system had not been sufficiently sensitive to this. As one judge observed:

I know there are people who are trying to collect children. There are people with all kinds of domestic responsibilities, caring for parents...[I]here are so many people that to ask them to come in here, you know, for full days... It just is a huge ask.

(Judge 21)

One common judicial response to these challenges was to be flexible with sitting times if jurors had to attend medical appointments or funerals or had children to collect from school. This in turn necessitated that the judge be approachable, and make clear to the jurors from the start that they should feel able to ask for some flexibility as regards sitting hours if they need it:

[T]hey must know that they're able to say 'Look Judge I have a difficulty here' or, you know, 'I need a half-an-hour off on Friday' or I need this or that, and they have to feel comfortable enough to say that, because you don't want jury members feeling that they're there under sufferance. They know they have to be there, but you want them to know that if there's something that they need, you'll do your very best to give it to them.

(Judge 16)

Another aspect of respecting jurors' time referred to by many judges was the provision to them of an accurate estimate of the expected duration of the case at the outset. Jurors should also be updated regarding the timescale if this changes mid-trial:

You have to be respectful of them and keep them informed if something is going to go completely off the rails, if a trial that was meant to take a short period is now going to cause grief to the jurors, they have to be brought into the picture.

(Judge 07)

Where possible, avoiding a situation where jurors spend hours in the jury room during legal argument was accorded high priority:

I'm always very conscious that they're not left too long in the jury room when you're dealing with a matter or you're waiting to start and there's a delay.

(Judge 20)

A number of judges said that if it was obvious that a *voir dire* was going to last for the remainder of the day they would send the jury home early rather than 'have them hanging around for no good reason' (Judge 21). The giving of regular breaks and avoiding sitting late were also referred to by a number of judges.

Recognition of jurors' lack of familiarity with court procedure by taking time to explain why certain things were happening was also identified as a manifestation of respect. Similar views on the importance of reassuring jurors about any uncertainties they may have about the trial process are also reported in a US-based study of judicial perspectives on stress in the courtroom.²⁷ For judges in the current study, explaining the *voir dire* process in particular was a prominent example:

I warn them that there will be legal argument and ... they will be asked to leave while I decide on issues...and they need not concern themselves or think that there is anything unusual about that. Juries are frequently in and out during trials and they must not speculate as to what might be going on. [I explain that] [i]t's just in order to ensure that only relevant evidence is put before them and that's my job, and sometimes it's a bit tedious they have to wait around while that's being done.

(Judge 22)

Another judge said that if they were withdrawing a case from a jury and discontinuing a trial, they would explain why they were doing so:

There is a tendency sometimes [to] just say 'An application has been made...and I acceded to that so you're no longer required.' I don't think that's appropriate. I think you should tell the jury why, you know. Because you're not showing respect to a jury if you do that.

(Judge 17)

²⁷ Flores and others (n 18).

Judges voiced annoyance about failures by other court actors to treat jurors with respect. A number identified counsel as sometimes being insufficiently mindful of the value of jurors' time:

I have got very frustrated over the years in criminal jury trials about the way trials run sometimes, where there is a lack of respect for the jury by the lawyers, particularly in terms of time estimates and ticking time and things like that.
(Judge 05)

Judges did not always agree on what was respectful and what was not. One area where differences of opinion were evident was in relation to judicial commentary on verdicts. Two judges said that in difficult cases in the past, they had stated that juries had reached the correct verdict. They felt that endorsing the verdict was reassuring and supportive of the jurors. Three other judges regarded this course of action as inappropriate, with one commenting: 'I have to respect the jury's verdict. I mean it'd be wholly inappropriate for me to comment on a jury's verdict. I think that would be very disrespectful to the jury' (Judge 17).

Similarly, while the notion of respect for juries was something judges referred to in a general sense, it also featured in responses to specific questions, such as whether judges would give particular directions on questions like the conduct of deliberations or the consequences of jury misconduct. Some judges described directions of that nature as insulting to jurors because they felt that they intruded into the jury's domain or dealt with matters that were obvious:

I don't see the evidence before me of juries being wayward or frivolous or needing an enormous amount of very, you know, teacher-like warnings or notices put up all over the place.
(Judge 08)

However, others did not feel that such directions were disrespectful to jurors and took the view that they would assist them as lay persons unfamiliar with the trial process. For some, the possibility that jurors would not understand everything and might be 'left in the dark' (Judge 02) had the greatest potential to be disrespectful, while for others giving them what they regarded to be overly basic instructions and directions was regarded as the bigger evil.

Regardless of individual preferences and differences of approach in interactions with jurors, all of the judges interviewed as part of this study placed a premium on treating jurors in a considerate and respectful manner. They were highly attuned to the realities of jurors' lives and were concerned to minimise the inconvenience of jury service to the greatest extent possible. Their reflections on the treatment of jurors, underpinned by the central idea of respect, came through organically and consistently in the interviews, despite the fact that they were not asked about their opinions of juries or their treatment in a general sense.

Reform

While the main focus of our study was on current judicial practice in relation to the management of jury trials and interactions with jurors, we also collected data about what, if any, aspects of jury trials judges viewed as problematic or in need of reform. This was an important dimension of the research because judges' perspectives on law reform are not usually publicly known. Furthermore, their central involvement in jury trials provides judges

with intimate knowledge about how the system works in practice. All but two of the 22 judicial participants were asked about their views on the most pressing issue regarding judge-jury relations and whether there were any aspects of jury trials that they would like to see reformed or standardised. Unsurprisingly, judges mentioned a number of different areas of concern, and many highlighted more than one.

The most commonly raised issues related to improving the treatment of jurors. Judges once again prioritised manifestations of respect to jurors, and for a majority it was the touchstone when considering how the system of trial by jury could be improved. A sentiment expressed by one participant captures the wider mood of the cohort: 'I think the most pressing issue is are they given sufficient regard, are they looked after sufficiently, are they compensated sufficiently?' (Judge 21).

Five judges referred to the increased length of trials as an issue that was giving rise to problems. Reasons advanced for longer trials included the greater complexity of the law, more disputes about the admissibility of evidence and an increase in prosecutions associated with fraud and other financial wrongdoing. Requiring jurors to give up months of their lives to serve on trials was described as 'a huge imposition' (Judge 13). Judges also stated that it was not reasonable to expect self-employed persons to act as jurors in long trials because of the effect on their income and livelihood. Several stated that they felt that they had to excuse people in that position. This in turn was acknowledged as giving rise to a potentially unconstitutional situation whereby 'there is a constriction in the jury pool, particularly in long cases' (Judge 10). It can thus be seen that judges were very conscious of the effect of long trials on jurors' lives and the legitimacy of the jury system. They regarded the issue of long trials as a phenomenon of relatively recent vintage that warranted further analysis and discussion. One judge went so far as to suggest that there should be minimum rights for jurors, including not being subjected to trials lasting more than a certain length of time.²⁸ While it is difficult to see how this could be achieved in practice, it nevertheless demonstrates how keenly some participants felt about the burdens placed on jurors by the increased length of trials. Concern about the impact of jury service on jurors was also to the fore in relation to two reforms that the vast majority of participants called for, namely the introduction of a system of pre-trial hearings and a system of juror expenses.

A common subject raised by judges in response to questions about reform was the current absence of pre-trial procedures to determine issues such as the admissibility of evidence in advance of trial. The fact that a jury has to be empanelled, and immediately sent out of the courtroom, before contested issues of law are determined was described as giving rise to juror 'frustration' (Judge 09) and being 'very disrespectful' (Judge 22) of juries and their time. Some judges also mentioned the illogicality of a system where the jury may be empanelled, sent out and then discharged without ever hearing evidence:

It causes me logistical nightmares...I could spend two hours empanelling a jury and then send them away and have them back the next day or two days later and tell them there is nothing. A complete waste of time...and it brings

²⁸ A similar proposal has been made in Arizona by Federal Judge Mark W Bennett, who argues that a 'Juror Bill of Rights' would not only significantly enhance the juror experience, but also promote a jury-centred approach to judging that would engender greater respect and courtesy for jurors, see Mark W Bennett, 'Reinvigorating and Enhancing Jury Trials Through an Overdue Juror Bill of Rights: A Federal Trial Judge's View' (2016) 48 Arizona State Law Journal 481.

the whole thing into disrepute because they're saying, 'Well what the hell was that all about?'

(Judge 17)

The introduction of preliminary hearings has been called for on a number of occasions over recent decades,²⁹ and the judges in our study who discussed this question were dissatisfied with the lack of legislative progress in this regard. It is clear that a system of pre-trial hearings would reduce the amount of time jurors spend out of the court for *voir dire* purposes, thereby attenuating the time commitment demanded by jury service overall. This was a major reason why judges favoured change in this area, again demonstrating how attuned they are to the impact of trials on jury members.

Judges raised the financial burden of jury service with great regularity during our interviews. They were overwhelmingly critical of the current system, in which jurors are paid no expenses and the cost of jury service is borne entirely by employers and the self-employed.³⁰ Judges characterised this situation as 'appalling' (Judge 12) and 'most unfair' (Judge 17). A number of judges recounted stories of people pleading that they could not afford to undertake jury service. For example:

A juror asked to be excused after two days of trial. The reason was that he was coming from the far end of [the county] and it was costing him €30 a day in petrol. And he said, 'I will not be able to feed my kids if this goes on much longer.' Now, to my way of thinking, a juror first and foremost gives of their time and energy, which we have to recognise. They serve on a jury, but service on a jury should not mean service with your pocket. You should get reasonable out of pocket expenses.

(Judge 03)

While participants were clear that jury service is a civic obligation that should not attract payment, they were equally clear that the performance of a civic duty should not financially disadvantage the person who has no choice but to undertake it. As one judge put it: 'I don't think it is acceptable to demand that people give up sometimes lengthy periods out of their lives and be at a financial loss in order to do so' (Judge 11).³¹ Judges demonstrated a deep awareness of the range of issues jurors face in relation to the cost of jury service, including the absence of car parking facilities and the particularly difficult position of jurors in receipt of social welfare payments. Participants' views on the question of juror payment suggest that judges feel that jurors deserve to be paid expenses on the basis of fairness, and also that the introduction of such a system would eliminate one of the reasons why people may be

²⁹ Most notably by the Working Party on the Jurisdiction of the Courts, chaired by Fennelly J. See *The Criminal Jurisdiction of the Courts* (Stationery Office, Dublin, 2003) 204. A similar recommendation was made recently in the sexual offences review conducted by Tom O'Malley. See *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (2020) 59. See also the comments of the Director of Public Prosecutions, Claire Loftus, as reported in Ann-Marie Hardiman, 'As Justice Requires' (2019) 24(2) *Bar Review* 40, 40.

³⁰ Employers must pay employees and apprentices who serve on juries: The Juries Act, s 29. There is no financial support for jurors who are self-employed or in receipt of Jobseeker's Benefit or other social welfare payments. Ireland diverges from the approaches taken in most other common law jurisdictions in this regard: see Coen and others (n 1) 130-131.

³¹ This is echoed by a recent study by the Canadian Juries Commission. See Olivia Stefanovich, 'As Courts Prepare to Restart Jury Trials, Advocates Call for Fair Pay for Jurors' (CBC News 4 August 2020) <www.cbc.ca/news/politics/stefanovich-jury-duty-post-covid19-1.5648374> accessed 5 August 2020.

reluctant to undertake jury duty. The Law Reform Commission recommended the adoption of a system of flat rate expenses in its 2013 report,³² and the matter is one of the areas under scrutiny by the Justice Sector Working Group on Jury Service.³³ One participant was dubious as to the prospect of reform in this area, stating: '[B]elieve me it's not going to happen. It's not going to happen' (Judge 10).

Participants were clearly concerned that some features of jury service, such as the absence of a system of preliminary hearings and expenses, may be interpreted by jurors as evincing a systemic indifference to their needs. The potential hardship and annoyance for jury members caused by these issues may risk undermining the efforts individual judges make to treat jurors with consideration. For some participants, this gave rise to frustration, as resolution of these enduring, resource-dependent issues was beyond the scope of the judicial role. No matter how respectful and courteous the individual judge, if jurors do not feel respected by the system as a whole, their willingness to serve and their performance may be negatively affected.

While the majority of concerns and reform issues judges alluded to related in some way to the treatment of jurors, some did not. Three judges said that they would like to see the introduction of written directions that could be given to juries, including centrally-created, official directions on difficult legal issues like self-defence and provocation.³⁴ Four judges identified social media and the internet as an enormous challenge, and advocated various solutions such as the creation of a statutory offence of jury misconduct and the giving of a warning about the internet in every case.³⁵ Three judges referred to the reluctance of jurors to serve and the low number of persons who attend in response to a jury summons as an issue of concern. As mentioned earlier, the difficulty in getting jurors to serve appears to partially influence the judges' stated aim of treating those who do attend for service with respect. It may also explain why their reform recommendations were largely concentrated in the areas of pre-trial hearings and jury expenses. Judges believe that if those reforms were introduced by the Oireachtas, jury duty would be less burdensome in both temporal and monetary terms and the attendance of those called to undertake it might improve as a consequence.

Research

At present, there is no formal mechanism for judges or the Courts Service to receive feedback from jurors. There may be a number of historical reasons for this. The notion of receiving feedback from participants in official processes with a view to monitoring their operation and performance is a relatively new one.³⁶ In the context of juries specifically, there may have been a concern that any questioning of jurors would be contrary to the common law secrecy

³² Law Reform Commission, *Jury Service* (LRC 107 - 2013) 116.

³³ The Working Group was established in April 2018 and its terms of reference direct it to examine the recommendations made by the Law Reform Commission in its 2013 report (n 32). Members of the group are officials in the justice sector, including in the Department of Justice and Equality, the Courts Service, An Garda Síochána and the Office of the Director of Public Prosecutions.

³⁴ An analysis of the views of the entire interview sample of 22 judges on the provision of written materials to jurors is contained in Coen and others (n 1) 57-70.

³⁵ An analysis of the views of the entire interview sample of 22 judges on jury misconduct is contained in Coen and others (n 1) 92-110.

³⁶ See for example, Nicola Barr and Gillian Montgomery, 'Service User Involvement in Service Planning in the Criminal Justice System: Rhetoric or Reality?' (2016) 13 *Irish Probation Journal* 143.

rule, or might offend against the principle that once a trial is over jurors are *functus officio* and must be allowed to ‘melt back into the community’ immediately.³⁷ Neither of these jury-related arguments is very persuasive, however. The contours of the common law jury secrecy rule are unclear,³⁸ but its main purpose is to ensure candour in the jury room and to protect jurors from post-verdict retaliation.³⁹ Bearing those rationales in mind, the rule most likely attaches only to the content of the jury deliberations rather than to all aspects of jury service. In relation to the second possible objection, the filling out of an anonymous questionnaire on a voluntary basis would not interfere in any way with the privacy or other rights of jurors.

While many judges said that they never received any feedback from jurors, two judges indicated that they had, on occasion, received unsolicited communications post-trial from jurors reflecting on their time at court. One of them recounted:

I’ve had letters from jurors thanking me for, you know...how I dealt with them and for explaining the law in the way I dealt with it, and I’ve had letters complaining. Letters from jurors directed to me complaining about the fact that...they felt left alone, that they felt nobody was telling them what was going on.

(Judge 12)

Several judges stated that they wanted to know about jurors’ experiences of jury service, particularly whether they felt supported and whether they understood the legal directions. One judge enumerated the sorts of areas on which they would like to hear jurors’ views:

I’d like to know more of how the jury felt, you know, were they happy [with] the way they were treated? Did they feel that they were being sent to their room too often? Did they feel that the case took too long? Did they understand...what was going on? Could they hear things properly? What improvements would they like to see? Have they any criticisms of the judge? Have they any criticisms of the barristers? Do they feel that the case could be run in a different way or procedures could be more user-friendly? ...Would they like shorter working hours or longer working hours?

(Judge 11)

Judges clearly want more information about jurors’ experiences of criminal trials, not least so that they can review their own practice in light of such feedback. This desire for feedback linked in with an issue on which we sought judges’ views directly, namely the usefulness and legality of interviews with jurors conducted by academics.

Jury research has been conducted by academics in common law jurisdictions similar to Ireland, most notably in Australia and New Zealand.⁴⁰ The New Zealand research was

³⁷ James J Gobert, ‘In Search of the Impartial Jury’ (1988) 79(2) *Journal of Criminal Law & Criminology* 269, 274.

³⁸ The judgment of the English High Court in *Attorney General v New Statesman* [1981] QB 1 is a famous example. See also Mark Coen, ‘Elephants in the Room: The Law Reform Commission Consultation Paper on Jury Service - Part I’ (2010) 20(3) *Irish Criminal Law Journal* 75.

³⁹ For discussion of the rationales for the secrecy rule see Michael McHugh, ‘Jurors’ Deliberations, Jury Secrecy, Public Policy and the Law of Contempt’ in Mark Findlay and Peter Duff, *The Jury Under Attack* (eds) (Butterworths 1988) 56; Joseph Jaconelli, ‘Some Thoughts on Jury Secrecy’ (1990) 10 (1) *Legal Studies* 91.

⁴⁰ Jane Goodman Delahunty, Neil Brewer, Jonathan Clough, Jacqueline Horan, James RP Ogloff, and Jessica Pratley, *Practices, Policies and Procedures that Influence Juror Satisfaction in Australia* (Australian Institute of Criminology

extensive in its scope, and included the examination of matters relating to the deliberation process. No such research has been conducted in Ireland, although its potential value is clear in providing an evidence base for law reform and changes in court practice and procedure. The Law Reform Commission has acknowledged that '[t]here is a lack of research on the operation...of juries in this jurisdiction,'⁴¹ giving rise to a situation where 'consultation, anecdotal evidence and comparative research' are the best indicators of the internal functioning of the Irish jury system.⁴² This is clearly an unsatisfactory position and the Commission has twice recommended statutory reform to permit jury research with former jurors.⁴³ Without a statutory provision authorising research, the legal position is unclear. It is possible that asking a juror about their jury service may amount to a common law contempt of court, even when the trial has concluded. It is also possible that provided a researcher avoided asking former jurors about their deliberations, the researcher would stay within the law. In light of this uncertain legal landscape, we asked the judges if they thought the academic interviewing of jurors was currently lawful. Only one judge who was asked this question stated that interviews of that nature would be unlawful and stated further that it would be a contempt of court. By contrast, a number of judges pointed to the absence of an express prohibition on the interviewing of jurors:

If there's no law saying they can't speak to you, well then that's a matter for them if they want to speak to you or not.

(Judge 20)

How can it be contempt of court to talk about, you know, serving on a jury and what happened. Personally, I think that's just simply unrealistic, it's nonsense.

(Judge 09)

Another reason invoked by judges as to why contempt of court could not arise was that the trial would be over when the interviews with jurors would take place. There was little support for the idea of contempt as 'an interference with the due administration of justice...as a continuing process.'⁴⁴ The idea that jury secrecy ends with the conclusion of the trial was also evident from the statements of six judges who said that there was an old tradition of lawyers, Gardaí and judges' criers and tipstiffs approaching jurors at the conclusion of trials and asking why they decided as they did. This informal convention, which a number of judges said was dying out, informed their view that there is no legal barrier to post-verdict interviews with jurors. Participants distinguished between media interviewing of jurors (which they stated should never be allowed) and 'very controlled' (Judge 03), judicially authorised research of an academic nature. A number of judges stated that the research would have to anonymise both the jurors and the trials in which they were involved in order to be lawful.

Research and Public Policy Series, 87/2009); Jill Barbara Hunter, *Jurors' Notions of Justice: An Empirical Study of Motivations to Investigate and Obedience to Judicial Directions* (University of New South Wales, Sydney, 2014) <[www.lawfoundation.net.au/ljf/site/templates/grants/\\$file/UNSW_Jury_Study_Hunter_2013.pdf](http://www.lawfoundation.net.au/ljf/site/templates/grants/$file/UNSW_Jury_Study_Hunter_2013.pdf)> accessed 4 August 2020; Warren Young, Neil Cameron and Yvette Tinsley, *Juries in Criminal Trials, Part Two, Volume 2: A Summary of the Research Findings* (NZLC PP37, Wellington 1999).

⁴¹ Law Reform Commission, *Jury Service* (LRC CP 61-2010) 58.

⁴² *ibid.*

⁴³ Law Reform Commission, *Report on Contempt of Court* (LRC 46-1994) 50; Law Reform Commission, *Jury Service* (n 32) 130-131.

⁴⁴ *Attorney General v Leveller Magazine* [1979] AC 440, 449 (Lord Diplock).

Finally, we asked the judges if they thought academic or official research into juries would be worthwhile. Five judges indicated that they would not favour the carrying out of such research. Among the reasons they gave were that there was no obvious need for such research, that jurors should be left alone once they have delivered their verdict, that the confidentiality of the process was important and that it would be difficult for researchers to prevent former jurors from discussing the specific case in which they had been involved. By contrast, a clear majority of the judges we interviewed saw real value in an academic study of the jury system in which the voices of jurors would be heard:

I think it would be well worth doing afterwards. I mean...there is a huge dearth of information as far as the judiciary are concerned, because we've no idea what goes on.

(Judge 17)

I think it would be very helpful because you're asking judges what their experience is [in this study]. It would be very interesting to hear what juries say about judges.

(Judge 18)

Are we ever really going to know what might work better if we don't talk to them themselves?

(Judge 21)

These reflections recall the simple yet compelling statement of Baldwin and McConville: '[I]t is only with knowledge of how a tribunal actually performs its task that properly informed decisions can be taken about it.'⁴⁵ It is perhaps not surprising, as the authors of an empirical study on judges who preside over jury trials, that we would strongly agree with the judges who expressed views in favour of empirical research with former jurors. As the legislature has shown no inclination to legislate to permit interviews with jurors as part of a bona fide academic research programme, we advocate that a research committee be established under section 16 of the Judicial Council Act 2019. Such a committee could scrutinise all proposals for empirical research on the courts system, including with former jurors, and would replace the current committee chaired by the Chief Justice that examines proposals to interview judges. The committee could stipulate the terms and conditions attaching to such research and would provide a framework within which researchers could undertake research without fear of criminal prosecution. The beneficiaries of such research would be judges, future jurors and the People of Ireland, in whose name justice is administered.

Conclusion

The most prominent theme to emerge from our interviews with twenty-two judges about their experiences of jury trials was the respect that they have for jurors. The judges were deeply impressed by the contribution jurors make to the administration of justice and were able to point to evidence that supported their admiration, such as the intelligent and perceptive questions they ask during trials. For the interviewees, 'respect' was not merely a word to be invoked, but a core value that had to be manifested throughout the trial. They provided many examples of their treatment of jurors that were influenced by a desire to

⁴⁵ Baldwin and McConville (n 25) 38.

demonstrate courtesy and consideration. In particular, they were very mindful of the inconvenience of jury service and sought to mitigate it where possible, for example by accommodating requests for flexibility and ensuring jurors' time was not wasted. When asked about reform of the jury system, they prioritised changes that would demonstrate increased respect for jurors by reducing delays during trials and minimising the financial burden of jury service. They lamented the lack of feedback they receive from jurors and most were supportive of the interviewing of jurors by academic researchers. Once again, their main interest in research was to discover how jurors find the process, and to examine if they want changes to make the system more user-friendly.

One could ask if judges stating that they respect jurors is all that surprising. However, the judges in our study did much more than make that assertion. The depth of their reflections on respecting jurors was remarkable. It informed their outlook and their practice as judges in trials on indictment and assumed the status of a guiding principle. In addition, cultural change was never far below the surface when judges spoke about their commitment to respecting juries. Many stated that they had witnessed a far less thoughtful and pleasant judicial attitude to jurors when they were practitioners. These participants were consciously striving to break with the habits of the past and recognised that contemporary society requires more empathetic and approachable judges.

This study demonstrates that judges are aware of the needs and difficulties of jurors and endeavour to support them to the greatest extent possible. However, it also highlights that while judicial manifestations of juror respect are very important, more is required to make jury service less onerous and more efficient. The Oireachtas needs to become much more attuned to the legislative and resource-dependent measures that only it can implement to improve the system. It is hoped that the Justice Sector Working Group on Jury Service will take cognisance of the need for a system of pretrial hearings and juror expenses when making its recommendations and that any subsequent Juries Bill will incorporate these innovations.