

RESEARCH ARTICLE

# ‘Robinson Crusoe on a desert island’? Judicial education in Ireland, 1995–2019

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## Abstract

Since 2019, Irish judicial education has been undergoing major structural change. Prior to the legislative establishment of the Judicial Council in that year, formal training for judges in Ireland was almost non-existent. Innovation in this area was limited to the holding of judicial conferences that occurred annually from the mid-1990s onwards. This paper places the training of Irish judges in its international context and analyses the reflections of 22 judges on how they learned the skills of judgecraft prior to the creation of a formalised system of judicial education and training. The data demonstrates that members of the judiciary engaged in a range of largely informal learning activities and provides insights into a hitherto unexplored aspect of Irish judicial culture. The data is also of broader significance in highlighting organic and unofficial aspects of judicial education, which can be overlooked in jurisdictions with highly-developed, formalised structures for training the judiciary.

**Keywords:** judicial education; jury trials; Ireland

## Introduction

The modern judge in most common law jurisdictions experiences formal training to a significant degree. However, judicial learning also occurs informally, and this is the mode which has historically dominated in Ireland. This paper explores experiences of judicial education prior to the passage of the Judicial Council Act 2019.

Barry emphasises the importance of ‘not disregarding the more mundane, every-day and intrinsic motivations that may affect judges’.<sup>1</sup> Moorhead and Cowan similarly point out that there has tended to be ‘a distinct lack of interest in the minutiae of judging’.<sup>2</sup> We consider ‘the minutiae of judging’ to be worthy of study. We conducted the first empirical research into how Irish judges interact with juries in criminal trials.<sup>3</sup> Much of this necessitated a focus on apparently mundane or trivial decisions: whether or not to establish a rapport with juries; how best to ensure juror comprehension; whether to provide jurors with written materials.<sup>4</sup> This generated some unexpected data:<sup>5</sup> in discussing how they presided over jury trials the interviewees reflected on how they had acquired the necessary skills to fulfil their role. These reflections illuminate an aspect of Irish judicial culture that has escaped substantive official and academic scrutiny to date; namely, how judicial learning occurred in a system with almost no

<sup>1</sup>BM Barry *How Judges Judge: Empirical Insights into Judicial Decision-Making* (Oxford: Routledge, 2020) p 92.

<sup>2</sup>R Moorhead and D Cowan ‘Judgecraft: an introduction’ (2007) 16 *Social & Legal Studies* 315 at 316.

<sup>3</sup>M Coen et al *Judges and Juries in Ireland: An Empirical Study* (Dublin: UCD, 2020).

<sup>4</sup>We have explored several of these themes in detail in Coen et al, above n 3.

<sup>5</sup>See similarly S Roach Anleu and K Mack ‘Magistrates’ everyday work and emotional labour’ (2005) 32(4) *Journal of Law and Society* 590 at 602.

formalised training. They demonstrate that in the absence of a coherent, overarching, national training programme, Irish judges had recourse to disparate, generally informal, sources and supports in order to develop and maintain their skills and knowledge. We argue that these informal processes of judicial education had much to commend them and that they should not be totally eclipsed by the formalised training now being developed under the Judicial Council Act 2019.

This paper also engages with the education and working lives of a subset of judges that are often overlooked in academic research. Most legal scholarship focuses on the judge as judgment-writer.<sup>6</sup> However, judges also sit in cases where they do not provide a judgment and do not even decide the central issue in the case. Instead another body, namely the jury, determines the ultimate outcome of guilt or innocence. Judges who preside over jury trials perform a function that is crucial to the administration of justice but because they do not produce written outputs they have fallen outside the confines of traditional, doctrinal legal research. In turn, publications that focus on such judges tend not to address their education or skills development.<sup>7</sup>

Moving beyond the study of outcomes, to focus on how judges learn their craft, can lead to valuable insights into judicial values and culture. These intangible aspects of judging can shape how the legal system operates and how it is experienced by those who come into contact with it. Richards examines judicial training and considers how it fits within the broader field of judicial decision-making. She suggests that it is worth examining the components of the judicial learning process in order to add ‘a developmental dimension to the study of judicial decision-making’.<sup>8</sup> Those who are interested in judges and their work should also be interested in the forces that shape judges, such as family background, life experience and the acquisition and development of judicial skills.

## 1. Judicial education in common law jurisdictions

Traditionally, judicial education was not a feature of common law countries. The very idea could even be regarded as somewhat heretical, ‘unnecessary and inappropriate’.<sup>9</sup> However, the need for judicial training has become increasingly accepted in common law systems since the Second World War. According to the International Organisation for Judicial Training:

It was a common conception that Judges already knew everything, and didn’t need any training. This changed as the Judge’s profession began to be seen as a skill that needs to be learned...and updated. As such, the profession is similar to the practice of medicine or education, where the practitioners must be both idealistic and constantly updated in order to serve in the best possible fashion.<sup>10</sup>

This ‘common conception’ rested in part on an assumption, in common law systems, that ‘during their legal careers, practitioners acquired the necessary wisdom and mastery of the law to emerge as fully-fledged judges at the other end’.<sup>11</sup> The appointee to judicial office was regarded as having achieved the necessary legal knowledge, with little thought given to the distinct skills required of judges as compared to advocates. This approach remained entrenched in the Irish legal system until very recently and will be discussed further in Part 3 below.

<sup>6</sup>There are of course exceptions to this general statement. See, for example, Roach Anleu and Mack, *ibid*; P Darbyshire *The Working Lives of Judges* (Oxford: Hart Publishing, 2011).

<sup>7</sup>See, for example, S Doran and J Jackson *The Judicial Role in Criminal Proceedings* (Oxford: Hart Publishing, 2000).

<sup>8</sup>D Richards ‘Learning to sentence: an empirical study of judicial attitudes towards judicial training in Romania’ (2015) 7 *International Journal for Court Administration* 68 at 68.

<sup>9</sup>B Teague and T Daly ‘Judicial mentoring: an introduction – part I’ (2011) 29 *Irish Law Times* 178 at 178.

<sup>10</sup>International Organisation for Judicial Training *Background Document*, available at [https://www.iojt.org/\\_data/assets/pdf\\_file/0014/6143/iojt-background.pdf](https://www.iojt.org/_data/assets/pdf_file/0014/6143/iojt-background.pdf).

<sup>11</sup>Teague and Daly, above n 9, at 178.

In most common law jurisdictions, training and development for judges is provided by national or regional Judicial Colleges or Institutes<sup>12</sup> which were established from the 1970s onwards.<sup>13</sup> These bodies provide different types of training for judges with differing levels of experience. Almost all provide mandatory induction training for new judges.<sup>14</sup> In New Zealand, new judges undergo a 'Judicial Intensive' programme, focusing on 'aspects of court craft, with an emphasis on the skills that judges are called upon to apply immediately, including judicial conduct, social context issues, courtroom management, judgment delivery, bail, sentencing, and dealing with media'.<sup>15</sup> In England and Wales, induction training for new judges on the Crown Court Bench includes a mock trial 'which enables the new recorders to deal with a range of problems'.<sup>16</sup>

Most judicial training bodies offer a mix of training, including skills development,<sup>17</sup> substantive<sup>18</sup> and procedural legal knowledge.<sup>19</sup> Several also offer courses on aspects of the social context of judging,<sup>20</sup> diversity,<sup>21</sup> 'judicial life'<sup>22</sup> and wellbeing.<sup>23</sup> In New Zealand, judges can avail themselves of training on specialised topics such as neuroscience and the psychology of decision making in the courts. In Canada, judicial training encompasses such topics as the realities of prison and 'sex, gender identity, gender expression [and] sexual orientation'.<sup>24</sup>

<sup>12</sup>For example: the New Zealand Institute of Judicial Studies, <https://www.ijs.govt.nz>; The Judicial Institute for Scotland, <https://www.judiciary.scot/home/publications/judicial-institute>; the Canadian National Judicial Institute, <https://www.nji-inm.ca/index.cfm/judicial-education/the-nji-s-judicial-education-portfolio/?langSwitch=en>; the US National Judicial College, <https://www.judges.org/>; the England and Wales Judicial College, <https://www.judiciary.uk/about-the-judiciary/training-support/judicial-college/>; the National Judicial College of Australia, <https://njca.com.au/>. Australian states also have their own judicial colleges, such as the Judicial College of Victoria, <https://www.judicialcollege.vic.edu.au/programs-and-events> and the Judicial Commission of New South Wales, <https://www.judcom.nsw.gov.au/education/>. Also worth noting is the Commonwealth Judicial Education Institute, <http://cjei.org/>.

<sup>13</sup>The Canadian National Judicial Institute was established in 1988; the New Zealand Institute of Judicial Studies was established in 1998; the National Judicial College of Australia was established in 2002. The Scottish Judicial Institute was established in 2013, but judicial training had previously been provided since the establishment of the Judicial Studies Committee in 1997. In England and Wales, training was provided by the Judicial Studies Board since 1979, and it became the Judicial College in 2011. In the United States, the National College of State Trial Judges opened in 1963. The National Judicial College was incorporated in 1978.

<sup>14</sup>In addition to induction programmes and ongoing training, some jurisdictions also provide training opportunities for would-be judges. The United States Judicial College offers a Judicial Academy, which is a practical course for attorneys who aspire to become judges: National Judicial College, Judicial Academy, <https://www.judges.org/judicial-education/judicial-academy/>. The UK offers a judicial work shadowing scheme for lawyers: <https://www.judiciary.uk/about-the-judiciary/judges-career-paths/information-about-shadowing-a-judge/>.

<sup>15</sup>New Zealand Institute of Judicial Studies 2021 *Prospectus*, [https://www.ijs.govt.nz/prospectus/2021\\_Prospectus\\_for\\_Internet.pdf](https://www.ijs.govt.nz/prospectus/2021_Prospectus_for_Internet.pdf).

<sup>16</sup>See <https://www.judiciary.uk/about-the-judiciary/training-support/judicial-college/criminal/>. See further Judicial College Prospectus 2019–2020, p 8, <https://www.judiciary.uk/wp-content/uploads/2017/12/judicial-college-prospectus-for-courts-judiciary-2019-2020.pdf>.

<sup>17</sup>In England and Wales, the Judicial Skills and Abilities Framework 2014 'brings together a single set of skills and abilities providing clear expectations common to all jurisdictions and against which judicial office-holders are selected, trained, encouraged and appraised'. Foreword and Editorial Note, Judicial Skills Framework Resources: <https://www.judiciary.uk/about-the-judiciary/training-support/judicial-skills-framework-resources/foreword-and-editorial-note/>. See also <https://www.judicialcollege.vic.edu.au/programs-and-events>.

<sup>18</sup>For example in Scotland: <https://www.judiciary.scot/home/publications/judicial-institute>.

<sup>19</sup>Australia's National Judicial College offers a two-day course on jury management, for example, focusing on practical issues which arise in jury trials: <https://njca.com.au/wp-content/uploads/2019/12/Jury-Management-2021-Flyer.pdf>.

<sup>20</sup>A seminar on 'Building Cultural Competence' was offered by the National Judicial Institute of Canada in 2019–20. National Judicial Institute *The Changing Role of The Judge: In Review 2019–20* p 27, <https://www.nji-inm.ca/index.cfm/judicial-education/in-review-2019-2020/>; see further below. See also <https://www.judiciary.uk/wp-content/uploads/2020/08/judicial-college-strategy-2018-2020.pdf>, <https://www.judiciary.scot/home/publications/judicial-institute> and <https://www.judicialcollege.vic.edu.au/programs-and-events>.

<sup>21</sup>New Zealand Institute of Judicial Studies 2021 *Prospectus*.

<sup>22</sup>[www.judicialcollege.vic.edu.au/programs-and-events](https://www.judicialcollege.vic.edu.au/programs-and-events).

<sup>23</sup>New Zealand Institute of Judicial Studies 2021 *Prospectus*.

<sup>24</sup>Canadian National Judicial Institute *In Review: The Changing Role of the Judge 2019–20*, p 28.

Training is delivered in different formats across common law jurisdictions, with courses, seminars and workshops ranging from an hour or two to several days. Active learning in small group settings appears to be the norm, with seminar-style sessions or workshops favoured over passive lectures or conferences.<sup>25</sup> Several jurisdictions also provide some online or remote training opportunities for judges.<sup>26</sup> Some training bodies produce annual curriculums<sup>27</sup> with a selection of courses from which judges may choose, depending on their development needs. These are often offered alongside regular national or regional conferences, at which issues of general interest to the judiciary are presented.

The question of who delivers judicial training is approached differently across common law jurisdictions, though most favour a ‘judge-led’ approach.<sup>28</sup> In Canada, the National Judicial Institute states that while judicial education should be judge-led, ‘[t]his does not mean that only judges teach. Rather, it means that judges are in charge of the design and delivery of courses that are taught by judges and members of the academic and larger community.’<sup>29</sup> The New Zealand Institute of Judicial Studies frequently brings in experts in different fields, such as neuropsychology.<sup>30</sup> Several jurisdictions have developed online platforms to support judicial training.<sup>31</sup>

The necessity for judicial training has also been recognised in civil law jurisdictions. Blatman-Kedrai *et al* provide a useful overview of the history of judicial training,<sup>32</sup> pointing out that the first judicial training bodies in civil law countries were established in the 1950s and 1960s.<sup>33</sup> A broad distinction can be drawn between the way judges in civil law countries are trained, compared with those in common law countries. In the former, training tends to be front-loaded (lasting a year or two) to compensate for new judges’ relative inexperience. Richards calls this ‘initial training’, and contrasts it with ‘induction training’ in common law jurisdictions, where judges are recruited from the ranks of experienced legal professionals.<sup>34</sup>

## 2. Judicial education in Ireland 1995–2019

Traditionally, Irish academics and politicians tended not to regard members of the judiciary as a cohort who would benefit from education or training. This may be explained in part by a traditional culture of deference to judges and the fact that judicial appointment was perceived as the high point of a legal career; a recognition that expertise and excellence had already been achieved. The separation of powers in the Irish Constitution was also cited as an obstacle,<sup>35</sup> and historically judges resented suggestions that they needed training or education.<sup>36</sup>

<sup>25</sup>The National Judicial College of Australia, <https://njca.com.au/>.

<sup>26</sup>The National Judicial Institute (NJI) of Canada provides a mix of online and in-person events. Canadian National Judicial Institute *Education Portfolio*, <https://www.nji-inm.ca/index.cfm/judicial-education/the-nji-s-judicial-education-portfolio/>. The NJI was particularly responsive in the wake of Covid-19, and quickly began producing webinars on topics related to the pandemic: Canadian National Judicial Institute *In Review: The Changing Role of the Judge 2019–20*.

<sup>27</sup>See for example the 2019–20 Prospectus from the Judicial College for England and Wales and the 2021 Prospectus from New Zealand Institute of Judicial Studies.

<sup>28</sup>Judicial Institute for Scotland, <https://www.judiciary.scot/home/publications/judicial-institute> and the National Judicial College in the US, <https://www.judges.org/>.

<sup>29</sup>National Judicial Institute *In Review 2016–2018*, p 8, <https://www.nji-inm.ca/index.cfm/judicial-education/in-review-2016-2018/>.

<sup>30</sup>New Zealand Institute of Judicial Studies *2021 Prospectus*.

<sup>31</sup>The Judicial Institute for Scotland develops and publishes online resources for practising judges, on its ‘Judicial Hub’ intranet, <https://www.judiciary.scot/home/publications/judicial-institute>. The Canadian National Judicial Institute has, since spring 2020, ‘accelerated its move towards an enhanced digital education platform, including webinars, facilitator-led online courses, podcasts, and videocasts’: Canadian National Judicial Institute *In Review: The Changing Role of the Judge 2019–20*.

<sup>32</sup>D Blatman-Kedrai *et al* ‘Peer group consultations as a judicial training model’ (2019) 38(2) *The Review of Litigation* 167.

<sup>33</sup>*Ibid*, at 174. By contrast, training bodies in common law countries were mainly established from the 1990s onwards.

<sup>34</sup>Richards, above n 8, at 69.

<sup>35</sup>Dáil Deb, vol 428, col 5, 30 March 1993.

<sup>36</sup>In 1998 Liz MacManus stated in the Dáil (lower house of parliament) that judges did not like the word ‘education’ and that ‘judicial studies’ was regarded as more acceptable. See Dáil Deb, vol 488, col 6, 12 March 1998.

Until July 2021 and the publication of the first annual report of the Judicial Council, there were no publicly-available official or academic publications on judicial education in Ireland.<sup>37</sup> This is perhaps unsurprising, given the absence of the types of formal training which were the norm in other countries. Domestic legal literature on the judiciary tended to focus on the issues of judicial appointment<sup>38</sup> and disciplinary processes,<sup>39</sup> both of which have featured significantly in public controversy and debate from the 1990s onwards.

From the 1970s there were calls for specialist training in a wide range of areas encompassing both substantive legal topics and what could more broadly be described as judicial skills. These included sentencing,<sup>40</sup> family law,<sup>41</sup> cases involving the sexual abuse of children,<sup>42</sup> charging juries in rape trials,<sup>43</sup> equality issues,<sup>44</sup> third party disclosure of complainants' counselling records in sexual offences trials,<sup>45</sup> insurance costs,<sup>46</sup> 'the intent and purpose of rights-based mental health law'<sup>47</sup> and determining whether it is in the best interests of children to give evidence in family law proceedings.<sup>48</sup> While such subject-specific training might indeed have been beneficial, the prospect of its delivery was somewhat unrealistic in the absence of a formal system of judicial education with basic induction and mentoring processes.

In 1994 the Law Reform Commission recommended 'that measures should be taken as a matter of urgency to enable the judiciary to organise judicial studies on a systematic basis'.<sup>49</sup> The matter was debated in the Dáil (lower house of parliament) throughout 1993 and 1994. Some public representatives were fiercely opposed to the idea of judicial training, arguing that a programme of training or education would interfere with judicial independence.<sup>50</sup> Others welcomed the provisions of the Courts and Courts Officers Bill 1994, outlined below, and expressed a hope that the judiciary

<sup>37</sup>See further *The Judicial Council Annual Report 2020*, pp 16–18, [https://judicialcouncil.ie/assets/uploads/documents/Annual\\_Report\\_2020\\_English.pdf](https://judicialcouncil.ie/assets/uploads/documents/Annual_Report_2020_English.pdf).

<sup>38</sup>J Carroll 'You be the judge part I: a study of the backgrounds of superior court judges in Ireland in 2004' (2005) 10(5) *Bar Review* 153; J Carroll 'You be the judge part II: the politics and processes of judicial appointments in Ireland' (2005) 10(6) *Bar Review* 182; D Feenan 'Judicial appointments in Ireland in comparative perspective' (2008) 1 *JSIJ* 37; J Carroll MacNeill *The Politics of Judicial Selection in Ireland* (Dublin: Four Courts Press, 2016); L Cahillane 'Judicial appointments in Ireland: the potential for reform' in L Cahillane et al (eds) *Judges, Politics and the Irish Constitution* (Manchester: Manchester University Press, 2017) p 123; D Kenny 'Merit, diversity and interpretative communities: the (non-party) politics of judicial appointments and constitutional adjudication' in Cahillane et al, *ibid*, p 136; P Gallagher 'Challenges to the rule of law in 21st century Ireland' in E Carolan (ed) *Judicial Power in Ireland* (Dublin: Institute of Public Administration, 2018) p 273; J Carroll MacNeill 'Changing the judicial selection system in Ireland' in Carolan, *ibid*, p 324; D Feenan 'Judicial appointments in Ireland: some comparative perspectives' in Carolan, *ibid*, p 360.

<sup>39</sup>See 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 Review* 14; L Cahillane 'Ireland's system for disciplining and removing judges' (2015) 38(1) *Dublin University Law Journal* 55; B Murray 'The removal of judges' in Carolan, *above n 38*, p 62; C Scott 'Regulating judicial conduct effectively' in Carolan, *above n 38*, p 381; MM Collins 'The accountability of the least powerful and dangerous branch' in Carolan, *above n 38*, p 394.

<sup>40</sup>Dáil Deb, vol 346, col 9, 13 December 1983; Law Reform Commission *Consultation Paper on Sentencing* (Dublin 1993) p 371; Seanad Deb, vol 125, col 1, 27 June 1990.

<sup>41</sup>Seanad Deb, vol 88, col 6, 23 February 1978 (Senator Mary Robinson).

<sup>42</sup>For example Law Reform Commission *Consultation Paper on Child Sexual Abuse* (Dublin 1989) p 194.

<sup>43</sup>S Leahy 'Summing up in rape trials: the challenge of guiding effectively and without prejudice' (2013) 23(4) *Irish Criminal Law Journal* 102 at 106.

<sup>44</sup>Dáil Deb, vol 573, col 4, 5 November 2003.

<sup>45</sup>Dáil Deb, vol 416, col 8, 5 March 1992; S Leahy 'The defendant's right or a bridge too far? Regulating defence access to complainants' counselling records in trials for sexual offences – part 2' (2012) 22(2) *ICLJ* 34 at 37.

<sup>46</sup>Dáil Deb, vol 985, col 1, 4 July 2019.

<sup>47</sup>C Murray 'Moving towards rights-based mental health law: the limits of legislative reform' (2013) 49(1) *The Irish Jurist* 161 at 181.

<sup>48</sup>M MacMahon 'Can anybody hear me? The duty to promote the voice, wishes and interests of children' (2014) 17(1) *Irish Journal of Family Law* 4 at 7.

<sup>49</sup>Law Reform Commission *Consultation Paper on Family Courts* (Dublin, 1994) p 154.

<sup>50</sup>Dáil Deb, vol 446, col 6, 2 November 1994.

would cooperate with the proposed new system.<sup>51</sup> Frances Fitzgerald (later Minister for Justice) pointed out that it was ‘an extraordinary assumption’ that judges, unlike others, were ‘immune to the need for training’.<sup>52</sup>

The Courts and Court Officers Act 1995 required judges to commit to undertaking relevant training. Under section 19:

A person who wishes to be considered for appointment to Judicial office shall undertake in writing... his or her agreement... to take such course or courses of training or education, or both, as may be required by the Chief Justice or President of the Court.

Following the enactment of this legislation, the Judicial Studies Institute was established in 1996 to facilitate training and education for the Irish judiciary. It later became the Committee for Judicial Studies. The establishment of the Institute, and later the Committee, did little to advance the formal training of Irish judges. The Association of Judges of Ireland<sup>53</sup> highlighted the limited financial resources available, pointing out that the Committee for Judicial Studies<sup>54</sup> was ‘unable to provide the type of continuing training and education that is common in other jurisdictions’.<sup>55</sup>

The main provision of training and continuing education for judges in Ireland between 1995 and 2019 occurred in annual, one-day conferences. Each judge attends a conference specific to their court or a number of courts (explained further below), as well as a national conference. The *Judicial Studies Institute Journal* appeared biannually<sup>56</sup> from 2001 onwards and often featured articles by members of the judiciary as well as academics and practitioners. While many interesting articles on substantive law were published in the journal, including a number enriched by the judicial experiences of the authors,<sup>57</sup> its contribution to judicial education was slight. It was certainly no replacement for formal judicial induction and ongoing professional development, and was a vehicle for sharing knowledge rather than enhancing skills. The journal fell into abeyance between 2010 and 2017<sup>58</sup> and has since been revived as the *Irish Judicial Studies Journal*.

The desirability of a Judicial Council with educational and disciplinary functions was a frequent theme in public discourse from the late 1990s onwards. In 1999 a parliamentary committee recommended the creation of such a council and the drafting of a code of ethics for judges to include the principle: ‘Judges should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office’.<sup>59</sup> The following year a committee composed of judges and the Attorney General also called for the creation of a Judicial Council, with a dedicated Judicial Studies

<sup>51</sup>Ibid.

<sup>52</sup>Dáil Deb, vol 459, col 1, 29 November 1995.

<sup>53</sup>The Association of Judges of Ireland (AJI), founded in November 2011, comprises most of the judges of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court and the District Court. Its aims and objectives include promoting ‘the exchange of ideas on the administration of justice’; furthering judges’ ‘cultural, intellectual and legal proficiency’ and maintaining and promoting ‘the highest standards in the administration of justice’: Association of Judges of Ireland ‘Our aims & objectives’, <https://aji.ie/our-aims-objectives/>.

<sup>54</sup>Often referred to as the Judicial Studies Committee.

<sup>55</sup>See <https://aji.ie/supports/judicial-education/>.

<sup>56</sup>One issue only was published in 2006.

<sup>57</sup>See for example P O’Sullivan ‘A hot tub for expert witnesses’ (2004) 1 JSIJ 1; TE O’Donnell ‘Summary v indictable: choices in the disposal of criminal cases’ (2006) 1 JSIJ 15; P Charleton ‘Employment injunctions: an over-loose discretion’ (2009) 2 JSIJ 1. Judicial speeches with an ‘opinion piece’ flavour were sometimes published. See for example P Carney ‘The case for a national court for indictable crime’ (2002) 1 JSIJ 1; A Hardiman ‘Weasel words and doubtful meanings: a study in the language of “law reform”’ (2007) 2 JSIJ 1. Judges from other jurisdictions also authored articles. See for example JW Kennedy ‘Personality and judicial decision making’ (2002) 2 JSIJ 50; Lord Bingham ‘The rule of law’ (2008) 1 JSIJ 121.

<sup>58</sup>See <https://www.ijjs.ie/about-us/>.

<sup>59</sup>All-Party Oireachtas Committee on the Constitution *Fourth Progress Report: The Courts and the Judiciary* (Dublin: Stationery Office, 1999) p 38.

and Publications Committee.<sup>60</sup> In a passage seeking to balance countervailing perspectives on judicial education, that committee stated:

The ongoing education of professionals is essential in modern society. This concept applies also to judges. However, while such ongoing training and education is an important aspect of judicial accountability it should not be such as to impinge upon the independence of the individual judge.<sup>61</sup>

An Interim Judicial Council was established on a non-statutory basis in 2011 and while a number of sub-committees were constituted it appeared to have little impact,<sup>62</sup> especially in relation to judicial education. The delay in placing the Council on a statutory footing was a source of tension between the executive and the judiciary.<sup>63</sup> The dearth of formal judicial training in Ireland also gave rise to international criticism. It was the subject of comment by the Group of States Against Corruption (GRECO), a Council of Europe body, on several occasions. In its 2014 Evaluation Report on Ireland it recommended ‘that dedicated induction and in-service training for judges be institutionalised and adequately resourced, while respecting the independence of the judiciary’.<sup>64</sup> GRECO also noted the non-implementation of this recommendation in Compliance Reports issued in 2017,<sup>65</sup> 2018<sup>66</sup> and 2020.<sup>67</sup> In its 2020 report it noted that ‘a training needs analysis’<sup>68</sup> was being conducted in Ireland and that the development of induction training was being prioritised.<sup>69</sup> The European Commission for the Efficiency of Justice, another Council of Europe organisation, noted in 2018 that Ireland was one of three responding states (out of 45) that did not provide continuous training for judges.<sup>70</sup>

The Judicial Council was finally established in December 2019 pursuant to the Judicial Council Act 2019. In introducing the Bill that would become the 2019 Act, the Minister for Justice signalled a long-awaited departure from the traditional Irish governmental discourse on judicial education when he stated:

All of us in our professional lives, no matter what we do, need to keep abreast of new developments in advancing technologies, changing practices and anything else that can enhance and further develop our capacity to work in a way that can be described as more efficient. Judges are no different in this regard.<sup>71</sup>

Section 7 of the 2019 Act lists as one of the Council’s functions the promotion and maintenance of continuing education of judges. Section 17 provides that the Judicial Studies Committee may prepare and distribute relevant materials to judges, as well as publishing material relevant to its function. It can provide, or assist in the provision of, education and training on ‘matters relevant to the exercise by

<sup>60</sup>Committee on Judicial Conduct and Ethics *Report* (Dublin: Stationery Office, 2000) p 52.

<sup>61</sup>*Ibid*, p 47.

<sup>62</sup>See <https://aji.ie/supports/the-interim-judicial-council/>.

<sup>63</sup>See for example C Keena ‘Chief Justice complains about lack of Judicial Council’, *The Irish Times*, 26 September 2016, p 1.

<sup>64</sup>GRECO *Evaluation Report: Ireland* (2014) p 37, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6921>.

<sup>65</sup>GRECO *Compliance Report: Ireland* (2017) p 9, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168072bebb>.

<sup>66</sup>GRECO *Interim Compliance Report: Ireland* (2018) p 8, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808c1be1>.

<sup>67</sup>GRECO *Second Interim Compliance Report: Ireland* (2020) p 9, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a06655>.

<sup>68</sup>*Ibid*.

<sup>69</sup>*Ibid*.

<sup>70</sup>European Commission for the Efficiency of Justice *European Judicial Systems: Efficiency and Quality of Justice* (CEPEJ Studies No 26, 2018) p 99, <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>.

<sup>71</sup>Seanad Deb, vol 645, col 1, 22 November 2017.

judges of their functions'.<sup>72</sup> The education and training function of the Judicial Studies Committee is broader than that of its non-statutory predecessor. The legislation makes this aspiration clear by detailing issues on which the Committee may provide training. These include, but are not limited to:

- (i) dealing with persons in respect of whom it is alleged an offence has been committed;
- (ii) the conduct of trials by jury in criminal proceedings;
- (iii) European Union law and international law;
- (iv) human rights and equality law;
- (iv) information technology; and
- (v) the assessment of damages in respect of personal injuries.<sup>73</sup>

The Committee also has a remit to establish, maintain and improve communication with bodies representing judges in other jurisdictions, and international bodies representing judges.<sup>74</sup> Kennedy suggests that the 2019 Act represents 'a crucial and unrepeatable opportunity to develop modern, innovative, and fit-for-purpose mechanisms for key functions such as... judicial education and training'.<sup>75</sup>

Some nascent change is already evident. The Director of the Judicial Studies Committee, a senior member of the judiciary, now dedicates 50% of their time to developing judicial education,<sup>76</sup> which is a clear indicator of the new status of judicial education in Ireland. This attitudinal shift is evident at all levels of the judiciary; the 2020 Report of the Judicial Council noted that 'Most judges indicated a willingness not only to be trained but to undergo additional training (whether within or outside of working hours) in order to facilitate and develop the training of others'.<sup>77</sup>

### 3. Methodology

Studies of judicial activity can take many diverse forms, including archival research, experimental studies or role analysis.<sup>78</sup> Our study falls into the category of role analysis, which involves the judges themselves generating insights and analysis, including through interviews. These kinds of studies, according to Barry, are about 'judges' self-reflections, their thoughts on aspects of the judicial process and about how they "do" judging'.<sup>79</sup>

In this paper we draw on data from a qualitative study of judge-jury interactions in Ireland. This research examined judicial and legal practitioner perspectives on how judges preside over criminal jury trials and their approaches to interacting with jurors. We conducted semi-structured interviews with 33 participants: 22 judges and 11 barristers. The discussion in this paper is solely based on the data from the 22 judge participants, who were drawn from the Circuit Criminal and Central Criminal Courts of Ireland.<sup>80</sup> Interviews with judge participants were held throughout Ireland between June 2017 and May 2018.

We recruited judge participants based on purposive sampling. Experience of presiding over criminal jury trials was the single criterion for inclusion in the study. Participation was open to both

<sup>72</sup>Judicial Council Act 2019, s 17(3)c.

<sup>73</sup>*Ibid.*

<sup>74</sup>*Ibid.*, s 17(3)d.

<sup>75</sup>R Kennedy 'Formal training is needed to ensure judicial excellence' 15 April 2021, Law Society Gazette of Ireland, <https://www.lawsociety.ie/gazette/top-stories/formal-training-is-needed-to-ensure-judicial-excellence>.

<sup>76</sup>*Annual Report 2020*, above n 37, p 17.

<sup>77</sup>*Ibid.*

<sup>78</sup>Barry, above n 1, p 7.

<sup>79</sup>*Ibid.*, p 8.

<sup>80</sup>Jury trials in Ireland are conducted in either the Circuit Criminal Court or the Central Criminal Court. The Circuit Criminal Court is organised on a regional basis, sitting at various locations throughout Ireland. It deals with all except the most serious offences, such as murder and rape, which are tried in the Central Criminal Court. The Central Criminal Court (the High Court exercising its criminal jurisdiction) historically sat only in Dublin, but in recent times the Court has travelled to several other locations around Ireland.

currently serving and retired judges. Invitations to participate were sent to 47 current or former Circuit Criminal Court and Central Criminal Court judges throughout Ireland. We received responses from 26 judges and 22 participated in an interview. The sample of 22 judges comprises 16 men and six women. Length of service ranged from one year to 31 years, and four participants were retired at the time of their interview. The sample includes 12 judges with experience of jury trials in the Central Criminal Court and ten judges from the Circuit Criminal Court. All participants had experience of presiding over criminal jury trials, but this experience varied across the cohort. Five participants had sat in fewer than 20 criminal jury trials, three participants reported more than 20 but fewer than 50, three participants had done between 50 and 100 trials, and ten estimated that they had presided over more than 100 criminal jury trials.<sup>81</sup>

An interview schedule was developed by drawing on key themes within extant literature on judging and jury trials. The interviews explored judge participants' perceptions of the judge-jury relationship and their approaches to interacting with jurors. We also focused on their experiences of presiding over criminal jury trials, including their approaches to charging jurors and their views on topics such as juror comprehension, use of written directions and jury misconduct. While discussing their views and practices in relation to jury trials, judge participants also reflected on how they developed the knowledge and skills required to preside over a jury trial and manage relationships with juries. The flexibility of the semi-structured interview approach facilitated exploration of this unanticipated topic during interviews.<sup>82</sup>

Twenty-one interviews were audio-recorded and transcribed. One participant requested not to be recorded. In that instance, detailed notes were taken by the interviewer, and these were typed up immediately after the interview. Transcripts and interview notes were anonymised, and each participant was assigned a number (eg J1). While the size of our sample means that it is not possible to generalise our findings,<sup>83</sup> the use of semi-structured interviews generated rich data on participants' perspectives and facilitated an in-depth exploration of the nuances of their approaches to interacting with juries.<sup>84</sup>

Participants' reflections on their learning processes were analysed using thematic analysis, a flexible approach for identifying, analysing and reporting patterns within data.<sup>85</sup> All authors contributed to the analysis process. A broad approach was adopted for initial coding of the transcripts, which ensured data extracts were contextualised.<sup>86</sup> Transcripts were independently coded and agreed by more than one member of the research team.<sup>87</sup> There were several codes relating to education, professional development, mentoring and experiential learning, and these were organised into a theme of judicial education, which was reviewed and refined by the project team. Data from this theme and its sub-themes form the basis of our discussion below.

#### 4. Judicial learning in Ireland 1995–2019

Participants in our study learned to be judges in the period between the passage of the Courts and Courts Officers Act 1995 (which, as we have seen, resulted in the introduction of annual judicial conferences and the *Judicial Studies Institute Journal*) and the enactment of the Judicial Council Act 2019. These judges frequently characterised themselves as learners and reflected on their learning

<sup>81</sup>One participant did not provide this information.

<sup>82</sup>A Galletta *Mastering the Semi-structured Interview and Beyond: From Research Design to Analysis and Publications* (New York: New York University Press, 2013).

<sup>83</sup>JW Creswell *Qualitative Inquiry and Research Design: Choosing among the Five Approaches* (Los Angeles: Sage, 3rd edn, 2013).

<sup>84</sup>S Kvale *Doing Interviews* (London: Sage, 2007) p 11.

<sup>85</sup>V Braun and V Clarke 'Using thematic analysis in psychology' (2006) 3 *Qualitative Research in Psychology* 77.

<sup>86</sup>RE Boyatzis *Transforming Qualitative Information: Thematic Analysis and Code Development* (Thousand Oaks, CA: Sage, 1998).

<sup>87</sup>N Mays and C Pope 'Qualitative research: rigour and qualitative research' (1995) 311 *BMJ* 109.

experiences. These reflections were generally unprompted and flowed naturally from their engagement with the central focus of our interviews with them, namely their interactions with juries in criminal trials. Answering questions on charging juries in particular caused participants to consider their own professional growth and skills development. One participant evoked a sentiment expressed by many participants when they stated: 'I'm learning every day... That's one of the reasons that... makes the job so... satisfying' (J20). Judges learn their craft in many ways. As Richards observes:

While formal training is an important component in helping judges learn how to make decisions, one could hypothesise that there are other instances in which judges learn how to do their job, either by actually having to make decisions in concrete cases (learning by doing), by using a variety of tools in their practice (legislation, precedential outcomes in similar cases, guidelines, reports, recommendations) or by asking their peers for advice in difficult situations (peer learning).<sup>88</sup>

Our research supports Richards' hypothesis. While many different methods of learning were identified by judges in our study and will be discussed below, the absence of formal training prior to 2019 was referred to in stark terms by some:

[T]he training I got as a judge when I started... was, I walked into the room on a Monday morning... I was handed a file and my list and you went straight out onto the bench. That was your first day, that was my training. (J12)

[O]ne of the things I noticed when I got appointed first was... there was no training at all... Like you just went straight into the job. (J17)

These accounts are similar to those provided by English judges interviewed by Darbyshire who were appointed in the period from 1975 to 1982.<sup>89</sup> Those judges recalled a complete absence of formal training and the feeling of 'being thrown in at the deep end'.<sup>90</sup> One of our interviewees referred to the mixture of formal ceremony and informal expressions of support they encountered on the first day of their judicial career:

The day you make your declaration [of office] you are welcomed by one and all that you bump into. And one and all will tell you that if you ever need any assistance, pick up the phone. (J3)

Statements like this underline the fact that, despite recent positive developments under the 2019 Act, judicial education in Ireland is at an embryonic stage.

The data from our interviews demonstrates that new appointees to the criminal jury courts in Ireland rely heavily on their experience as practitioners in those courts and on informal supports provided by established criminal judges. In the absence of a structured system of judicial education, judges referred to a variety of sources of knowledge, training and development, generally of an informal nature. These will now be analysed.

### *(a) Experiential learning*

Experiential learning is 'learning from experience or learning by doing',<sup>91</sup> and is a significant aspect of how judges learn to be judges. It was a particularly prevalent form of judicial learning in Ireland prior

<sup>88</sup>Richards, above n 8, at 70.

<sup>89</sup>Darbyshire, above n 6, pp 105–106.

<sup>90</sup>Ibid, p 105.

<sup>91</sup>LH Lewis and CJ Williams 'Experiential learning: past and present' (1994) 62 *New Directions for Adult and Continuing Education* 5 at 5.

to training developments under the 2019 Act. While experiential learning can include simulations and role play (such as mock trials), the Irish system is very reliant on high-stakes experiential learning. In other words, judges learn how to preside over jury trials by presiding over real trials, with all the cost, publicity and serious consequences that attend them. Many participants in our study referred to their experiential learning while on the bench, for example:

[I]n the early stages – it’s like riding a bike; you’re a bit wobbly for the first few months and then you get it going. (J1)

[T]he way that I have learned about it is through experience and trial and error. (J19)

In a study which involved interviewing 25 English judges, Fielding similarly found that members of the judiciary ‘emphasized “learning by doing”,<sup>92</sup> and that ‘practical skills like preparing notes for summing-up, were developed... idiosyncratically’.<sup>93</sup> A number of our participants described the risks and vulnerabilities that attend learning in a real courtroom:

You learn on the job and in your first number of jury trials you’re inevitably going to muck up. You’re going to have problems. And lawyers are ruthless. They’ll take advantage of your weakness as a judge if you’re not controlling the trial properly or if you make mistakes. (J5)

[I]f you were, I suppose, to maybe do a little bit of mock trial experience yourself as a judge under supervision that could be helpful so you’re not actually directing a jury for the first time in a real trial involving real accused persons. (J11)

Interestingly, both of these judges had been highly experienced criminal practitioners prior to judicial appointment. Two other judges described presiding over a jury trial as ‘daunting’. Not all newly-appointed judges to the Circuit or Central Criminal Courts have previous criminal trial experience as practitioners; some of our interviewees had practised solely in the civil courts and had no experience of appearing in criminal jury trials. At least 3 out of the 22 approached criminal trials as complete novices. Among the obvious advantages possessed by criminal judges with practitioner experience of jury trials is their familiarity with the substantive law and procedure of such trials. One interviewee identified an additional advantage, namely an insight into the tactics of counsel:

[P]eople who have done a lot of crime and know barristers quite well, the way they operate, know immediately whether a point is good or bad. You have to listen to it obviously, but you know very very quickly “Is this rubbish or not?” and sometimes barristers, they throw out a thing there and they test a judge, especially newer judges. They will try points and they try to make judges nervous, that’s their function... to worry judges about certain points. So if you’ve been doing that all your life yourself... it helps hugely when you come into the actual environment of being a judge in the trial. (J10)

A number of judges referred to the difficulty they imagined colleagues experienced when encountering criminal trials for the first time in a judicial capacity. Perhaps more striking was that some interviewees who had extensive experience of criminal jury trials as practitioners mentioned the challenge of making the transition to presiding over such trials. As one participant observed: ‘[B]eing a judge is strange when you start off... when you’re used to being down the other side’ (J9). Thus, while there was recognition that previous criminal trial experience as a practitioner was enormously helpful, for many it was capable of providing only some of the knowledge and skills necessary to fulfil the role of a trial

<sup>92</sup>NG Fielding ‘Judges and their work’ (2011) 20 *Social & Legal Studies* 97 at 107.

<sup>93</sup>*Ibid.*

judge. This resonates with Kirby's assertion that 'the qualities inherently required of an advocate are substantially different from those required for a judge'.<sup>94</sup>

Experiential learning is likely to remain a core part of judicial education and skills development even when formalised education and training is the norm. However, comments about 'wobbly' starts and 'trial and error' raise questions about the impact of this type of learning on accused persons, particularly when it has not been preceded by low stakes training incorporating simulated activities or role play. To draw an analogy, few people would wish to be operated on by a surgeon who had never touched a real patient before. 'On the job' learning is risky, and experience is built up incrementally over a long period. It may be a useful form of learning in tandem with other approaches, but it should not be the only way for judges to learn their craft. Prior to 2019 it was disproportionately relied upon in the education of Irish judges.

### **(b) Informal peer learning**

An Irish judge observes that anecdotes 'are the common currency of Judges whenever they get together'.<sup>95</sup> Suggesting that more than anecdotal exchanges are involved, he continues: 'telling stories... can be a useful method of communicating important information relating to our work'.<sup>96</sup> Early in our interviews it became clear that informal discussions with judicial colleagues provided important peer learning opportunities for both new and experienced judges. For example:

[W]here judges really pick up stuff is by talking to other judges who do the same kind of work, chatting and that kind of way. It's a more informal thing. (J2)

Such interactions can also be characterised as 'peer group consultation'. According to Blatman-Kedrai *et al.*, peer group consultation is a method of judicial training that involves judges meeting regularly to 'engage in open dialogue about their work'.<sup>97</sup> They argue that this is one of the best types of training for judges, using the Israeli courts as an interesting case study. Indeed, the 'peer group educational model'<sup>98</sup> has been incorporated into the structured judicial training programmes of many common law jurisdictions. While the Irish version was situated within informal judicial networks in the period covered by this paper, it appeared to have many of the advantages associated with more formalised judicial peer learning. These include reducing the sense of isolation judges can experience and 'sharing successful solutions to common problems, lessening the need to learn by trial and error'.<sup>99</sup>

Many interviewees described a supportive atmosphere in which colleagues were very willing to help when asked. The following statement is reflective of a large number of similar views expressed:

[T]here are plenty of people you can pick up a phone to or ask guidance from and it's always very freely given... I mean, I've had to proactively go to colleagues... and say 'Well look, I'm facing into this is there anything you might have on that?'... But it's always forthcoming, you know. (J21)

One interviewee stated that '[s]trong networking' ensures that judges aren't in the position of 'the loner... up until midnight wondering what to do' (J7). Some judges gave examples of situations which would cause them to seek advice from colleagues. These included 'if it was an unusual case with unusual directions' (J11); 'if you have a particular sort of knotty problem' (J10) and 'when it comes

<sup>94</sup>M Kirby 'Modes of appointment and training of judges – a common law perspective' (2000) 26(1) Commonwealth Law Bulletin 540 at 540.

<sup>95</sup>D Riordan 'Immigrants in the criminal courts' (2007) 7(2) IJSIJ 95 at 95.

<sup>96</sup>*Ibid.*

<sup>97</sup>Blatman-Kedrai *et al.*, above n 32, at 168.

<sup>98</sup>PM Li 'How our judicial schools compare to the rest of the world' (1995) 34(1) Judges' Journal 17 at 17.

<sup>99</sup>*Ibid.*, at 18.

to directing a jury about provocation' (J18). While the overwhelming majority of participants evinced a relaxed attitude to seeking assistance from colleagues, a small number were more reticent, for example:

[V]ery occasionally... if I had a query in my mind there is one, two or three people that I would be happy to run it by but I think you have to take responsibility for your own work at the end of the day so I mean I don't find that I go outside myself much. That may be a failing in me... (J9)

Another judge stated that sometimes they would ask other judges for 'a steer on something or other'. However, they added that 'as often as not I have disregarded the advice I was given' (J22). They elaborated by saying that a judge ultimately has to come to their own view of the law in a particular area, and the views of colleagues, while potentially helpful, cannot displace one's own independent interpretation. It is interesting to note that although the two judges quoted immediately above were among the least enthusiastic about approaching colleagues for their insights, they nevertheless did not rule out doing so. It is probable that even interviewees who resort to help from colleagues more frequently would also be selective in relation to whom they would approach.

In addition to an established convention of informal discussions with colleagues, there was evidence of more structured group discussions, as in the following statement about regular lunches among criminal judges in a particular location:

[Y]ou would get a younger judge in and they'd be saying, 'Oh God, how am I going to do that?' And someone might say, 'Ah sure you can't do that, for God's sake'. And somebody else might say, 'Well, hang on a minute just run that by me again'. Now, it gives confidence that various things are opened up to the younger judge. But it also gives confidence to the judge who can see that there are seven people sitting around this table and not everybody is in agreement. So I can have a look at it and I'll decide it myself. (J1)

Fielding noted that several English judges emphasised the importance of discussing matters with colleagues over lunch or dinner, and that less experienced judges were likely to seek out colleagues for informal meals and discussion.<sup>100</sup> One judge in our study, who described themselves as 'a lone Circuit Court judge', pointed out that opportunities for informal discussions were not as available to members of the judiciary presiding over jury trials outside major cities:

There's six or seven of them in Dublin. So they have the opportunity to discuss, to compare, to contrast, to deliberate amongst themselves how to approach [things]. I don't have that readily available to me... I just do my own thing and try and do it to the best of my ability. (J9)

This reflection serves as a reminder that while supportive judicial networks exist, access to such networks is subject to geographical and, presumably, other limitations. One's level of acquaintance with established judges and one's willingness to approach peers for advice may constrain the extent to which informal work conversations are available as a resource. With the move to structured training of the Irish judiciary, judges will almost certainly continue to learn from their peers, and there may be opportunities for more formalised peer learning. Training programmes need to be conscious of the specific needs of 'isolated or itinerant judicial officers',<sup>101</sup> in particular the importance of providing 'information and formalized collegial support to substitute for... the absence of informal networking arrangements'.<sup>102</sup>

<sup>100</sup>Fielding, above n 92, at 107.

<sup>101</sup>L Armytage *Educating Judges: Towards Improving Justice* (Leiden: Brill Nijhoff, 2015) p 103.

<sup>102</sup>Ibid.

**(c) Bench books**

A bench book may be defined as an ‘instructional manual’<sup>103</sup> for the judiciary, composed of guidance on all the major issues which a judge might expect to encounter in a particular area.<sup>104</sup> In the context of criminal trials by jury a bench book generally consists largely of specimen directions or template instructions on specific issues (for example, offences, defences and different types of evidence) to assist a judge in charging the jury.

While the function of a bench book is not primarily educational, it is nonetheless an important resource for judges and may be particularly helpful to new appointees. Ireland does not have an official, regularly updated and publicly available bench book similar to the Crown Court Compendium.<sup>105</sup> A number of semi-official bench books created by experienced judges exist and were described as useful by a number of interviewees.<sup>106</sup> Handbooks prepared by judicial researchers were also mentioned, albeit with less frequency. Views on whether an official bench book should be introduced were mixed, with some judges stating that the materials already described constitute a *de facto* bench book. Others thought that a consolidated bench book could be particularly helpful for those at the beginning of their judicial careers:

I suppose it would be of some use, yes. I suppose especially perhaps for less experienced judges. (J6)

[T]o have a bench book as something of a security net for someone who finds themselves thrown into a criminal trial who may not have a huge amount of experience... would probably not be a bad idea. (J11)

However, some judges were not entirely comfortable about standardised directions, viewing them as encroaching on their independence and falsely implying that the same direction (eg on a particular defence) could be given in every case. The latter concern was articulated as follows:

[T]he fear... is that people will begin to... over rely on them and not tailor them sufficiently and then say: ‘Well I don’t have to worry about that or think about that, I’ll just print that up in the morning...’. (J21)

One judge suggested that standardised directions created an undesirable shortcut and that a judge would be better prepared for interactions with counsel if they had formulated their own directions after reading the relevant authorities. Another raised operational issues about a consolidated bench book, questioning who would be responsible for creating and updating it.

There is certainly scope for exploring further the potential to use, update and maintain centrally-produced materials which can support judges. Indeed, work is currently underway in the Legal Research and Library Services division of the Courts Service to produce a standardised form of bench book.

**(d) Sharing written materials**

The sharing of written materials among judges was mentioned almost as frequently as informal discussions by participants in our study. This practice can be viewed as somewhere between the use of bench books and peer learning. It is distinguishable from informal peer learning as it involves the creation,

<sup>103</sup>R Munday ‘The bench books: can the judiciary keep a secret?’ (1996) Crim LR 296 at 297.

<sup>104</sup>See, for example, *The Equal Treatment Bench Book* (2021), <https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/>.

<sup>105</sup>See [www.judiciary.uk/publications/crown-court-compedium-published/](http://www.judiciary.uk/publications/crown-court-compedium-published/). Bench books were not initially publicly available in England and Wales. See Munday, above n 103.

<sup>106</sup>Two bench books were referred to frequently in the interviews, namely those prepared by Judge Anthony Kennedy and Mr Justice Peter Charleton respectively.

distribution and editing of written resources. Such resources are not necessarily bench books, as described above, but fill a gap which exists due to a lack of centrally- or officially-produced documents.

Charging the jury was seen as a particularly challenging dimension of the trial judge's role and shared materials related almost exclusively to that task. Some judges said that they consulted transcripts of trials conducted by other judges, for example:

I would certainly have looked at transcripts of other judges' charges on issues like murder. And people are good in that respect. (J4)

Many interviewees referred to a culture of sharing specimen directions or charges:

When I became a judge, an experienced judge gave me [a prototype charge] that he had. Then I modified it over the years myself to my own ends. (J5)

A small number of judges stated that they had not been given any templates on appointment, for example:

I wasn't given any materials... well I think it was kind of presumed that I knew what I was at because I had been practising... for twenty years so I basically went with the material I had in my own possession. (J9)

This quote underlines again the ad hoc nature of information exchange within the Irish judiciary, particularly before the year 2020. On the other hand, even in a more formalised system one would expect that judges would supplement resources disseminated through centralised channels with more casually circulated materials. One judge stated that they did not believe it was correct to state 'that there are templates going round judges in any big measure' (J18), but on the basis of what other interviewees told us, that would appear to be incorrect. That particular judge was an experienced criminal practitioner prior to appointment to the bench, and may not have had personal experience of receiving templates from fellow judges.

Interviewees spoke about adapting the templates they were given to reflect their own understanding of the law. This was seen by many as an important dimension of judicial independence. Others referred to the need to alter templates so that they were more attuned to their individual personality:

Sometimes you'll read a template belonging to another judge and there will be nothing wrong with it, it's just different, it's not me... It has to be coming from you I think because a jury will know if it's coming from you... So I take a template and... you take them as a jump off point and then you might just add or subtract or just put your own tone into it or you might completely change it. (J21)

Several also described being given templates by more established colleagues, which they amended based on their own experience and which they in turn passed on to newly-appointed judges. A virtuous circle was thus evident; conscious of the materials that had been informally shared with them in the early stages of their judicial careers, many wanted to assist new appointees in the same way.

### **(e) Informal work shadowing**

In the absence of a structured system of judicial training for Irish judges, informal work shadowing processes evolved. Interviewees recounted being contacted by a serving judge at the time of their appointment, with an invitation to observe them presiding over a jury trial. One judge did not know what to expect but found the experience very helpful:

I thought I'd be... sitting in the doorway... trying to hear what was going on... or sit up in the gallery and look down. But no [Judge X] rang me the night before and said... 'Bring your wig and

gown because you'll be sitting on the bench with me'. So... the practitioners addressed everything to both of us even though he was the trial judge... it was a great experience. (J15)

This particular judge had not practised in criminal law, which presumably inspired the serving judge to invite them in the first place. In a comment that throws light on some judges' concern about appearances, another judge queried the appropriateness of a new appointee sitting on the bench with an established judge:

[I]t makes it look too obvious that somebody is a greenhorn if they're back doing a significant trial the week or so later... 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... that works alright. (J8)

Interestingly, in Fielding's study, the English judges interviewed described a reluctance to engage in these sorts of shadowing practices. This was expressed as a matter of convention or etiquette; as one judge remarked, 'convention means that once we take this job we don't go and sit in the court of somebody else. And so we don't know how other people do it'.<sup>107</sup>

Judges who had practised in crime at the Bar were generally not offered the chance to work-shadow a judge. A judge in that position observed: 'I had sat through... years of trials so I didn't really need that' (J22). However, it is arguable that work-shadowing would be valuable even for those with experience as criminal practitioners, in order to obtain insights about judicial practice. These could be valuable even if related to what might be regarded as mundane or technical matters. For example, one interviewee who had been a criminal barrister said that they did not know that they were entitled to a transcript when presiding over their first murder trial.

While the collegiality that underpins informal work shadowing is to be commended, it raises the question whether it is acceptable to rely on a few conscientious colleagues to reach out and offer such support to newer colleagues. Irish judges are overworked<sup>108</sup> and many simply do not have the capacity to take this on. Furthermore, newer judges may not have the connections and social capital needed to form these relationships; not being known by more experienced judges could be a barrier. As the size of the judiciary increases, the social and professional bonds between judges may not be as strong as they were in previous generations. Informal work shadowing is too reliant on the goodwill of a number of 'good citizen' judges, and would benefit from being formalised and embedded in Ireland's new official training programme.

#### **(f) Formal mentoring**

Clutterbuck *et al* distinguish between formal 'mentoring programmes' and 'ad hoc individual, informal mentoring relationships'.<sup>109</sup> A formal mentoring programme or scheme is one where mentors and mentees operate within a structured environment. Generally, it involves a supportive relationship between individuals with differing levels of professional experience, and can be focused on both development and support. Clutterbuck *et al* describe mentoring as 'an essential vehicle for change'.<sup>110</sup>

<sup>107</sup>Fielding, above n 92, at 107.

<sup>108</sup>According to the Council of Europe, in 2016 Ireland had 3.5 judges per 100,000 head of population in 2016. The average among countries in the OECD was 21 and the median was 18: European Commission for the Efficiency of Justice *Council of Europe European Judicial Systems: Efficiency and Quality of Justice* (CEPEJ Studies No 26, 2018) p 16, <https://rm.coe.int/overview-avec-couv-18-09-2018-en/16808def7a>.

<sup>109</sup>DA Clutterbuck *et al* 'Introduction' in DA Clutterbuck *et al* (eds) *The SAGE Handbook of Mentoring* (London: SAGE, 2017) p 1.

<sup>110</sup>Clutterbuck *et al*, *ibid*, p 1.

In the context of judicial development, a common approach internationally would be for an overseeing body to assign newly-appointed judges to more senior colleagues.<sup>111</sup> Bremer considers how mentoring schemes can help to alleviate judicial stress and isolation, particularly during the difficult transition from advocate to arbiter.<sup>112</sup> In some judicial mentoring schemes, detailed guidance is provided to both mentors and mentees.<sup>113</sup> Some mentoring programmes involve extensive training for mentors – for example the Massachusetts ‘J2J Programme’.<sup>114</sup> This formal, structured approach was ‘born out of the realization that just asking one judge to “mentor” another without any training, support, or set expectations about goals or outcomes was not effective’.<sup>115</sup> This raises an important point. Professional mentoring is usually a highly structured interaction with specific goals and an end date, and is not the same as a casual relationship where parties are simply at liberty to ‘pop in for a chat’.

Judicial mentoring was described as a ‘relatively unfamiliar’<sup>116</sup> concept in Ireland as recently as 2011. The judges we interviewed provided conflicting accounts of whether there was an organised, as opposed to informal, judicial mentoring scheme in place. The interviewee who provided an account that came closest to describing an official system of judicial mentoring stated:

There is now a mentoring process amongst the Circuit Court for judges that want to sign up to it and if I got a phone call to say ‘Look, Judge Joe Bloggs has just been appointed, he’s probably going to be doing a bit of crime and he wants to come down and have a look with you...’ Fine, bring it on, great. (J19)

Although characterised by the interviewee as mentoring, this sounds more akin to the work shadowing discussed in the previous section. The process described by this participant also appears to be informal and provided on an ad hoc basis, suggesting that at the time of the current study any mentoring provision for Irish judges may not have taken account of the issues provided for in the Massachusetts example above.

Progress has recently been made in this area. A formal mentoring scheme was introduced in 2021, and the training of judges in all first instance courts as mentors has begun, with a view to the delivery of “judge-led” mentoring and training, from 2021, to newly appointed judges’.<sup>117</sup> Our data suggests that a formal mentoring scheme of this nature will encounter fertile ground in the pre-existing collegiality of the Irish judiciary, which already finds expression in the sharing of materials, the giving of advice and a certain amount of work shadowing.

### (g) National judicial conferences

The creation of the Judicial Studies Institute in 1996 saw the introduction of annual conferences for judges. A committee that reported in 2000 characterised this as an ‘ad hoc system of judicial studies’.<sup>118</sup> A lack of adequate funding has been cited as the reason why annual conferences were for many years the mainstay of judicial training in Ireland.<sup>119</sup>

<sup>111</sup>See BJ Rouse and JC Bouch ‘Coaching better justice’ *Judicial Edge*, 21 January 2016, [www.judges.org/news-and-info/coaching-better-justice/](http://www.judges.org/news-and-info/coaching-better-justice/).

<sup>112</sup>CF Bremer ‘Reducing judicial stress through mentoring’ (2004) 87(5) *Judicature* 244.

<sup>113</sup>The Pacific Judicial Strengthening Initiative, funded by the government of New Zealand to improve courts services in Pacific Island Countries, has produced a detailed Judicial Mentoring Toolkit, [http://www.fedcourt.gov.au/\\_\\_data/assets/pdf\\_file/0006/58389/Online-Version-Judicial-Mentoring-Toolkit.pdf](http://www.fedcourt.gov.au/__data/assets/pdf_file/0006/58389/Online-Version-Judicial-Mentoring-Toolkit.pdf).

<sup>114</sup>For a discussion of the development of this mentoring scheme see Rouse and Bouch, above n 111.

<sup>115</sup>*Ibid.*

<sup>116</sup>Teague and Daly, above n 9, at 178.

<sup>117</sup>*Annual Report 2020*, above n 37, p 18.

<sup>118</sup>Committee on Judicial Conduct and Ethics, above n 60, p 48.

<sup>119</sup>*Ibid.*

The conferences take the form of a national conference for all judges, and separate conferences for the judges of particular courts. While the Circuit Court judges we interviewed attend a one-day conference dedicated to their particular Court in addition to the national conference for all judges, judges of the Central Criminal Court (the High Court exercising its criminal jurisdiction) do not have a conference relevant solely to their own jurisdiction but instead attend a conference with judges of the Court of Appeal and Supreme Court.

In the course of their interviews, judges discussed these conferences as a source of guidance. Several spoke positively about them; for example:

The conferences are good. We would have various papers at the conferences and a lot of those are very valuable. Extremely valuable because some of the papers would be relevant to what I would be doing. Or I might give a paper myself. (J1)

[J]udicial conferences can be very helpful in terms of sharing views and information on, you know, controversial issues. (J11)

Other interviewees were less enthusiastic, with one stating: ‘[S]ometimes judicial conferences can be very general’ (J2).

Views varied in particular on the utility of the national conferences for all judges:

[W]e get visiting speakers, usually some from England, we’ve had some very distinguished ones and [we] try [to] take topics that will maybe be germane to all the courts. (J8)

There’ll be a couple of speakers and it might be interesting or it might not be. It’s very difficult to tailor a working session for a cross jurisdictional conference. (J12)

While the annual conferences seem to perform a useful function of facilitating information exchange, networking and debate among the judges, they also highlight a number of difficulties with Ireland’s past approach to judicial education. First, they are no substitute for a properly structured and resourced system of training judges from the date of appointment onwards. Secondly, the annual nature of these conferences makes them more infrequent than is desirable for the purposes of meaningful continuing professional development. Thirdly, the existing arrangements group judges into arguably illogical categories of conference. High Court judges hearing cases at first instance share a conference with judges from two appellate courts. There is no conference for judges hearing particular types of cases requiring specialist knowledge, such as those in our study who preside over the trial of indictable crime in courts at different levels. Fourthly, one judge in our study indicated that events for judges were sometimes not scheduled so as to facilitate the attendance of those sitting in provincial locations. Finally, the programmes of the judicial conferences are not publicly available, in contrast to the practice in other jurisdictions of making the content of judicial education and training programmes publicly available on their websites.<sup>120</sup>

#### ***(h) International training and networking***

International judicial networking has increasingly been a feature of the judicial role. International networks and conferences can be an important source of information sharing, support and training. While some organisations promote the independence of the judiciary, others are more focused on judicial education.

<sup>120</sup>The New Zealand Institute of Judicial Studies publishes an annual prospectus on its website, detailing all of the programmes and events scheduled for the year. See Institute of Judicial Studies *Prospectus 2021*. The Judicial Institute for Scotland publishes an annual report on its website which includes details of the courses delivered each year: see Judicial Institute for Scotland *Annual Report 2019–2020* pp 23–25, [https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/annual-report-2019-2020.pdf?sfvrsn=c6882555\\_4](https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/annual-report-2019-2020.pdf?sfvrsn=c6882555_4).

Members of the Irish judiciary participate in several European networks, including the European Network of Councils of the Judiciary,<sup>121</sup> the European Judicial Training Network,<sup>122</sup> the Consultative Council of European Judges,<sup>123</sup> the Network of the Presidents of Supreme Judicial Courts of the European Union<sup>124</sup> and the European Association of Judges.<sup>125</sup> Specialised European networks in which Irish judges are involved include the European Judicial Network in Civil and Commercial matters,<sup>126</sup> the European Union Forum of Judges for the Environment,<sup>127</sup> the Association of European Competition Law Judges<sup>128</sup> and the European Association of Labour Court Judges.<sup>129</sup> Internationally, Irish judges are represented on the International Association of Judges, but not on the International Organization for Judicial Training.<sup>130</sup>

The Irish judiciary also has strong working relationships with neighbouring Judicial Councils: the Judicial Studies Board for Northern Ireland;<sup>131</sup> the Judicial College for England and Wales<sup>132</sup> and the Judicial Institute for Scotland (JIS).<sup>133</sup> Relations between the Scottish and Irish judiciaries are particularly strong. Several participants in our study referred to a practice of Irish judges attending training in Scotland. For example:

A number of judges here have been sent off to Scotland and attended the course there. I was not one of them. I don't know why I wasn't sent, somebody obviously must have thought that I was able to do it without that. (J3)

[I]n Scotland there is a kind of judge school. And I certainly attended there not long after I was appointed, and I found it very helpful. I picked up things there about trials and about the management of trials. (J2)

In its 2019 Report, the Judicial Institute for Scotland noted the importance of the UK and Ireland Judicial Studies Council (UKIJSC) for retaining a relationship with Ireland, particularly post-Brexit. In 2020 the JIS reported on a judicial leadership event which was attended by senior judges from across the UK, Northern Ireland and Ireland, including all three Chief Justices.<sup>134</sup> The UKIJSC<sup>135</sup> has an annual conference and meeting which rotates between the four jurisdictions. Although this was the least-frequently mentioned source of judicial education among our interviewees, those who referred to training in Scotland were very positive about the nature and standard of training there, suggesting an appetite among Irish criminal trial judges for the introduction of similarly formalised education provision to that offered by the Judicial Institute for Scotland.

<sup>121</sup><https://www.encj.eu/>.

<sup>122</sup><https://www.ejtn.eu/About-us/>.

<sup>123</sup><https://edoc.coe.int/en/efficiency-of-justice/6817-the-consultative-council-of-euroepan-judges-ccje.html>.

<sup>124</sup><https://www.network-presidents.eu/page/network-0>.

<sup>125</sup><https://www.iaj-uim.org/regional-groups/>.

<sup>126</sup>[https://e-justice.europa.eu/content\\_european\\_judicial\\_network\\_in\\_civil\\_and\\_commercial\\_matters-21-en.do](https://e-justice.europa.eu/content_european_judicial_network_in_civil_and_commercial_matters-21-en.do).

<sup>127</sup>[https://www.eufje.org/index.php?option=com\\_content&view=article&id=40&Itemid=228&lang=en](https://www.eufje.org/index.php?option=com_content&view=article&id=40&Itemid=228&lang=en).

<sup>128</sup><https://www.aeclj.com/>.

<sup>129</sup><http://ealcj.org/>.

<sup>130</sup>The IOJT was established in 2002 in order to promote the rule of law by supporting the work of judicial education institutions around the world. A volunteer, non-profit organisation, the IOJT has 123 member-institutes from 75 countries, including judicial colleges in Ireland's neighbouring jurisdictions of Northern Ireland, England and Wales, and Scotland, [https://www.iojt.org/\\_\\_data/assets/pdf\\_file/0027/40986/statutes-2019.pdf](https://www.iojt.org/__data/assets/pdf_file/0027/40986/statutes-2019.pdf).

<sup>131</sup><https://www.judiciaryni.uk/who-are-judicial-studies-board#:~:text=The%20Judicial%20Studies%20Board%20for,Board%20is%20%E2%80%9Cjudge%20driven%E2%80%9D>.

<sup>132</sup><https://www.judiciary.uk/about-the-judiciary/international/training-for-overseas-judges/>.

<sup>133</sup><https://www.judiciary.scot/home/publications/judicial-institute>.

<sup>134</sup>Judicial Institute of Scotland *Annual Report 2020*, p 3.

<sup>135</sup>This Council does not have its own website.

## Conclusions

Our interviews confirmed the unstructured and under-resourced nature of judicial education in Ireland before the establishment of the Judicial Council in 2019. However, they also revealed the myriad ways in which Irish judges learned their craft during this period. Their self-led learning included elements of experiential learning, knowledge exchange, work shadowing, conference attendance, mentoring and participation in training in other jurisdictions. Uncovering informal methods of judicial learning, which presumably co-exist with official training in other jurisdictions, is an important exercise and one that is somewhat overlooked in the literature on judicial education.

Collegiality emerged as a strong theme in supporting and sustaining what was an informal approach to judicial education. It was regarded as both an aid to learning and a protection against isolation: ‘You don’t want to feel like you’re... Robinson Crusoe on a desert island’ (J8). Our data demonstrates that what Dressel *et al.* have termed ‘between-bench relations’<sup>136</sup> are in a vibrant state in Ireland. While there is much to commend in the collegial nature of this system, it may not be open to all judges to the same extent, particularly those sitting outside urban centres. In the post-2019 world, the teaching and learning dimension of existing judicial networks should be harnessed in structured, judge-led workshops without displacing ongoing collegial interactions of an organic nature.

The conferences and seminars organised by the Judicial Studies Committee (and formerly by its predecessor body) formed the core, most centrally-organised dimension of judicial education from 1995 to 2019. These events are generally regarded as useful by members of the judiciary who preside over jury trials. However, the pre-2019 arrangements were not without difficulty. While conferences may constitute a valuable component of an official system of judicial training, they do not displace the need for other elements, including formalised induction and mentoring processes.

Judges in our study were overwhelmingly positive about receiving training. Only one indicated that they were opposed to more formal training, stating: ‘I’m very cynical about judicial training, because my training was listening to how it was done, watching how it was done for years’ (J6). However, other judges with similar practitioner experience in criminal trials emphasised how different the judicial role is to that of the advocate. Dependence on high stakes ‘on the job’ learning came through forcefully in interviews. In the words of one judge: ‘[I]f you say one thing wrong you could end up... scuppering the whole trial’ (J15). A very public and expensive procedure in which a person’s good name and liberty hang in the balance is far from an ideal learning environment. Until very recently, it was the main way in which Ireland’s criminal judiciary learned its skills.

Some interviewees were critical of what they termed the absence of training, while others described themselves as adequately supported by informal means but indicated that they would be open to a greater variety of educational opportunities. The impact of judicial training on maintaining public confidence in the judiciary was mentioned by one judge, but not in the way one might expect. Rather than creating a desire for better training and supports, this concern manifested itself as a fear of looking ‘like a greenhorn’ (J8, cited above). Appearances are important to some judges, and the idea that the judge should appear on the bench fully-formed still seemed to have some currency in Ireland shortly before the passing of the 2019 Act.

The Judicial Studies Committee recently completed a training needs analysis, and the Director has developed ‘a workplan for the future delivery of judicial training’ and strengthening links with neighbouring judicial colleges and with the European Judicial Training Network. In the first year of operation of the Committee, all newly appointed judges were provided with ‘dedicated induction training, emphasising conduct and ethics’.<sup>137</sup> A mentoring system was introduced in 2021, with all new judges being assigned a trained mentor. Training sessions have also been provided on such topics as unconscious

<sup>136</sup>B Dressel *et al.* ‘Courts and informal networks: towards a relational perspective on judicial politics outside western democracies’ (2018) 39(5) *International Political Science Review* 573 at 576.

<sup>137</sup>*Annual Report 2020*, above n 37, pp 17–18.

bias, vulnerable witnesses, and avoiding re-traumatisation. Over 30 judges to date have received training in pedagogical methods or peer training.<sup>138</sup>

A distinctively Irish process of judicial education between 1995 and 2019 emerges from the data; it was heavily reliant on informal networks and has long been overtaken in most common law jurisdictions. As the Chief Justice of Canada pointed out in 2018, '[i]t takes more than a judicial appointment to become a judge; a commitment to lifelong learning is essential'.<sup>139</sup> It will be interesting to see if our study captured the dying days of a particular approach to judicial education that will be swept away by a properly resourced Judicial Council Act 2019, or if Ireland will continue to be an international outlier in this area in the years to come.

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<sup>138</sup>See <https://judicialcouncil.ie/judicial-studies-committee/>.

<sup>139</sup>Chief Justice Richard Wagner in *In Review 2016–2018*, above n 29, p 2.