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Beyond a reasonable doubt: the emotive-cognitive evaluation of intent and credibility

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Abstract

Credibility and intent are important but imprecise legal categories that need to be assessed in criminal trials as neither common nor civil legal systems provide decision-makers with clear rules on how to evaluate them in practice. In this article, drawing on ethnographic data from trials and deliberations in Italian courts and prosecution offices, we discuss the emotive-cognitive dynamics at play in judges' and prosecutors' evaluations of credibility and intent, focusing on cases of murder, intimate partner violence and rape. Using sociological concepts of epistemic emotions, empathy, frame and legal encoding, we show that legal professionals use different reflexive practices to either avoid settling on feelings of certainty or overcome doubts when evaluating credibility and intent. Empathy emerges as a multifaceted tool that can either generate certainty or be used deliberately to instigate or overcome doubts. We contribute to the growing body of literature addressing the emotional dynamics of legal decision-making.

Keywords: criminal law; sociology of emotions; legal decision-making; credibility; intent; empathy

1 Introduction

In the vast majority of democratic systems, criminal trials rotate around judgments of credibility and intent as pivotal aspects for establishing guilt (Eidam, 2006; Ohlin, 2013). Credibility typically refers to the evaluation of witnesses' and defendants' declarations as believable and convincing (Brodsky and Pivovarova, 2016, p. 43; Denault and Dunbar, 2019) – for instance, by looking at their coherence and consistency throughout different stages of the legal process (Kane, 2007).¹ Victims' credibility is particularly determinant in cases lacking evidence other than the victims' statements, such as rape and intimate partner violence (IPV) cases (van Doorn and Koster, 2019, p. 74). As for intent, it has been described as 'one of the most contentious issues for domestic and international criminal law' due to its 'indeterminacy' (Malle and Nelson, 2003; Ohlin, 2013, p. 81). In general, intent refers to the *mens rea* (guilty mind) of the defendant who intended to do something that the law determines as wrong (Moore, 2011). Jurisdictions across the world define intent in different ways. In civil legal systems, for instance, there is a distinction between *dolus directus*, which refers to 'situations where the defendant desires a particular outcome', and *dolus*

¹The term 'credibility' is often used interchangeably with 'reliability'. As pointed out by Herlihy and Turner (2016, p. 160), credibility refers to the 'honesty and genuineness' of a person, also described as veracity (Porter and ten Brinke, 2009, p. 120), whereas the reliability of their account concerns 'a judgement about the accuracy with which they are describing a given event'. For a review of the different meanings attached to the concept of credibility, see Simon-Kerr (2023). In this article, we use the term 'credibility' while acknowledging that it is the reliability of the testimony that is legally relevant in deciding legal cases.

indirectus, concerning ‘situations where the defendant is aware of the practical certainty of the outcome but is indifferent to the result’ (Ohlin, 2013, p. 82). That is, the challenging aspects of intent assessments rotate around the reconstruction of defendants’ mental states, to decipher what they actually knew or wanted while committing the offence (Eidam, 2006, p. 241). In practice, decision-makers try to determine intent by objective means, considering ‘what the actor does, which means that the law evaluates intent by circumstantial evidence’ (Crump, 2010, p. 1072). This echoes parameters used in credibility assessment, where legal actors search for objective aspects in the witnesses’ narratives, such as contradictions, linearity and mistakes, to arrive at a judgment of credibility based on facts (Landström *et al.*, 2019).

Credibility and intent, therefore, share the feature of being imprecise legal prerequisites (Crump, 2010; Menaker and Cramer, 2012), as neither common nor civil legal jurisdictions provide legal professionals, such as judges and prosecutors, with specific rules as to how they should be evaluated in practice. This raises questions connected to the way they achieve objective interpretations of thoughts, feelings and desires of lay people within the boundaries of their discretion. From a sociological perspective, credibility and intent assessments can be seen as interpretive processes in which legal professionals need to navigate subjective experiences in order to grasp what is deemed objective information – for example, evaluating whether a contradiction in a statement depends on the witness lying, having forgotten or being nervous in court. To establish if a person is objectively credible or has objectively intended to commit a crime, judges and prosecutors need to engage in at least rudimentary forms of empathy (Bergman Blix, 2019), trying to see situations from the standpoint of the person giving testimony or being accused of the charges. By putting themselves in the shoes of the individuals whose credibility or intent is under evaluation, legal professionals can understand and make inferences about the events at stake during the trial (Roach Anleu and Mack, 2021, p. 72). This interpretive process brings emotions, particularly *epistemic* emotions, into play. Feelings of curiosity, interest, doubt, un/certainty and scepticism are central in the process of knowledge acquisition and evaluation (de Sousa, 2009). This study examines how the interpretive process of credibility and intent assessment unfolds with a focus on professional decision-makers’ (i.e. judges’ and prosecutors’) emotions in cases of homicide, IPV and rape. In the analysis, we find two contrasting processes: situations where participants start with a feeling of certainty about intent and credibility and try to problematise their certainty by doubting, and opposite instances, where participants feel doubt at the beginning of their decision-making process and try to move towards a feeling of certainty about their decision. Empathy emerges as a multifaceted tool that can both generate certainty or be used deliberately to instigate or overcome doubts.

Previous research on emotions in credibility assessment has largely investigated the consequences of witnesses’ emotional displays on decision-makers’ evaluations. The psychological literature on the topic highlights that credibility evaluation is far from an exact and reliable process and judges and prosecutors are no better at these evaluations than lay people (Ask and Landström, 2010, p. 393). Defendants’ emotional displays have been studied in relation to credibility (Wessel *et al.*, 2012), and with a focus on the link between emotionality and remorse, rather than intent (Sundby, 1998; Wood *et al.* 2014), with a few exceptions (Bladini *et al.*, 2023). The literature on decision-makers’ emotions is still very limited, with a few studies on how judges’/mock jurors’ emotions impact credibility assessments, primarily in rape cases (Wallin *et al.*, 2021). In this study, we extend this line of enquiry to both credibility and intent evaluations in a wider set of cases, to analyse potential similarities and differences in the emotive-cognitive processes used by legal professionals when assessing indeterminate legal categories. We adopt a sociological approach to the study of emotions in legal decision-making, accounting for the institutional dimension embedded in emotional experiences in actual practice, such as legal principles and rules, often neglected in psychological and philosophical approaches (Bergman Blix and Wettergren, 2016). We draw on interviews with and shadowing of Italian judges and prosecutors, observations of

court trials and deliberations. Using Italy as a case study, this research adds a civil-legal perspective to the dominant Anglo-American research on the role of emotions in legal decision-making.

In the following, we review previous studies on emotions in legal decision-making, while introducing our sociological-theoretical framework based on concepts of epistemic emotions, empathy, frames and legal encoding. We then describe the study's research context, methods and analytical approach, followed by our empirical findings. In the conclusion, we summarise and discuss our findings, raising issues for further research.

2 Emotions in legal decision-making

Research in the field of law and emotion departs from the theoretical standpoint that rational action entails emotion and cognition as inseparable dimensions (Barbalet, 1998; Bergman Blix and Wettergren, 2019) even in legal decision-making, conventionally associated with the ideal of logic rationality devoid of emotional content (Maroney, 2011). Previous research has shown emotions to be part of legal decision-making in decision-makers' emotional mood when coming to court and their reactions to presented evidence, and in how they perceive the emotionality of witnesses and defendants.

The first strand of studies often focuses on decision-makers' experience of *strong* emotions, such as anger, sadness, disgust and moral outrage. Drawing on psychological appraisal theories (Tiedens and Linton, 2001), these studies use similar methods by inducing specific feelings in investigators or mock jurors (typically, college students) through videos, writings or pictures. What they show, in broad terms, is that some emotions (anger, disgust, moral outrage) are associated with a greater sense of certainty diminishing information processing (Lerner and Tiedens, 2006), whereas others (sadness) are linked to uncertainty, associated with keeping one's mind open to further inquiry (Sambrano *et al.*, 2021). Participants experiencing sadness, for instance, process the case material more thoroughly than angry ones, are more susceptible to the content of witnesses' statements (Ask and Granhag, 2007) and better detect testimonial inconsistencies (Semmler and Brewer, 2002). Angry participants, instead, tend to rely on stereotypes, preconceived expectations and beliefs about the case, disregarding subsequent information (Ask and Granhag, 2007). Anger further affects mock jurors' attribution of legal responsibility and blame by enhancing perceptions of intent, and increasing punitiveness towards the perpetrator (Ask and Pina, 2011). A minor group of studies, however, shows more complex results, demonstrating that the motivating effect of anger can lead to accurate analytic processing (Moons and Mackie, 2007; Bergman Blix and Törnqvist, 2025). Moral outrage, defined by Salerno and Peter-Hagene (2013) as a combination of anger *and* disgust, increases mock jurors' certainty about guilty verdicts. Anger or disgust can also be elicited by gruesome photographic evidence of victims, causing higher conviction rates (Bright and Goodman-Delahunty, 2006). In sum, this group of studies mostly sees strong emotions as sources of bias or error in decision-making, raising some important points, particularly in relation to the role of un/certainty in legal decision-making. Professional judges and prosecutors, like jurors, need to feel certain about their decisions. For legal professionals, however, the epistemic process leading towards certainty can follow a different path due to their professionalisation and repeated encounters with similar situations, helping them manage their emotions when processing information and evidence (Wallin *et al.*, 2021; Bergman Blix and Minissale, 2022; Minissale, 2023). In this article, we continue in this direction by zooming in on the distinctive traits of legal professionals' emotional-epistemic processes when evaluating credibility and intent.

The second strand of research focuses on how emotions displayed by witnesses and defendants influence evaluations of guilt and sentencing. These studies shed light on the role emotions play in legal decision-making in indirect ways, through how witnesses' and defendants' emotions impact decision-makers' epistemic processes (for a systematic review see van Doorn and Koster, 2019).

According to the emotional victim effect (EVE) theory, victims expressing strong negative emotion are perceived as more credible than victims displaying little emotion or positive feelings (Ask and Landström, 2010). Specifically, the ideal credible victim is expected to express passive/low-status emotions such as fear, sadness, guilt and shame, signalling 'submission, conformity and lack of power' (Bosma *et al.*, 2018, p. 958). Although the vast majority of these studies focus on rape cases, their findings are replicated in studies on different crime types, like sexual harassment (Jenkins *et al.*, 2023) and child physical abuse (Melinder *et al.*, 2016). Decision-makers' own emotions, such as compassion evoked by emotional victims, are also seen as determining positive credibility assessment (Kaufmann *et al.*, 2003).

The literature further demonstrates that the institutional setting in which jurors engage in group deliberation can contribute to mitigating the EVE. This emerges in experiments with mock juries deciding rape cases in Norway (Dahl *et al.*, 2007) and the UK (Ellison and Munro, 2009). 'Emotionally flat' testimonies with calm victims showing an unemotional appearance initially caused perplexity, later lessened by group discussion. This suggests that in a setting that includes the collective decision-making process of juries, the effects of emotional expression on credibility judgment can vanish (Ellison and Munro, 2009, p. 1152).

Studies focusing defendants' emotional displays in rape cases show that expressions of sadness and despair positively affect their perceived credibility, whereas neutral or more 'light hearted' emotional displays decrease credibility ratings (Wessel *et al.*, 2012). In a Swedish study of rape cases, defendants' expressions of sadness were further read as evidence of negligence, rather than intentionality, evoking sympathy in the judges and determining acquittals (Wallin *et al.*, 2021). Here we see a link between defendants' emotional displays, intent evaluation and judges' own emotions. In other studies, defendants' expressions of sadness and despair were interpreted as a sign of remorse and regret, eliciting empathy in the decision-maker (Wessel *et al.*, 2012). The intersection between defendants' emotions and legal decisions is mostly investigated in relation to remorse, rather than intent. These studies are important for the current article, as they show how judges or jurors use emotional information to make inferences about a person's internal state, also prevalent in evaluations of intent. In the USA, jurors got angry and astonished when facing 'emotionally flat' defendants in capital cases, considering them unremorseful and voting for a death sentence (Sundby, 1998). In a study from the UK, mock jurors with higher empathy held defendants less responsible for the offense, even when defendants did not show emotions at all (Wood *et al.* 2014).

Similar to studies on decision-makers' own emotions, research on the impact of emotional testimonies on legal professionals shows inconsistent results. Emotional depositions from IPV cases, for instance, did not increase credibility judgments from Swedish Police Academy students with criminal and legal training (Landström *et al.*, 2019, p. 81). Another study compared credibility ratings by Norwegian court judges with those of lay people, showing that court judges' votes for a guilty verdict were not influenced by witnesses' displayed emotions (Wessel *et al.*, 2006). However, in a Danish study, criminal justice professionals considered victims more credible when 'calm and quiet', expressing themselves 'in a passive, low-status emotional tone', with not 'too little' nor 'too much' emotion (Johansen *et al.*, 2022, p. 9). This is echoed in a study of immigration judges in the UK, who evaluated credible asylum narratives as the ones containing no emotional 'bumps' (Baillot *et al.*, 2013). In the Danish and UK examples, moderate emotional expressions are interpreted as a sign of credibility. This draws attention to the fact that preconceived ideas about victims' appropriate emotional demeanours are culturally dependent, and the specific 'emotion regime' (Reddy, 2001) of each country/jurisdiction creates normative expectations of the ideal credible victim or defendants' emotional displays.

In sum, although there are scholarly suggestions pointing to legal professionals' distinctive capacity to interpret emotions in a more critical manner than jurors, the results so far are inconsistent, demonstrating the emotional complexity of evaluating intent and credibility. In the

following, we present our theoretical toolbox for analysing judges and prosecutors' evaluations of intent and credibility.

3 Emotions and the epistemic process of evaluating intent and credibility

While empirical research into witnesses' and defendants' emotions has given some clues into emotions' role in information processing and evaluation, knowledge about the emotional dynamic of evaluating information and deciding on credibility and intent so far mainly builds on philosophical theorising on *epistemic emotions* (de Sousa, 2009). Epistemic emotions such as certainty, interest and doubt motivate and orientate knowledge acquisition and evaluation and prompt emotional reflexivity – monitoring one's own and others' emotions (Holmes, 2010). They are crucial for decision-making since they help us encompass the virtually infinite set of plausible aims and means that any decision problem affords, and select among possible ends (de Sousa, 2009, p. 139). In legal decision-making, epistemic emotions are regulated by law. Judges and prosecutors cannot *feel certain* early on in the proceeding; they need to *doubt* ('beyond reasonable doubt'), and they need to feel certain for the right reasons. These legal principles put epistemic emotion work at the heart of the deliberative process (Bergman Blix, 2022). In our analysis, we focus in particular on the emotions of certainty and doubt in the process of evaluating and deciding on credibility and intent.

Certainty is a feeling that supports the validity of inferences, 'signaling sufficient grounds to claim knowledge about something' (Törnqvist and Wettergren, 2023, p. 213). Certainty incorporates feelings of safety and security. When a person feels certain, they want to stay certain, '[the] feeling of certainty becomes locked in by feelings of disinterest and resistance to questioning that certainty' (Bergman Blix, 2022, p. 63). We use the term 'certainty' to denote a feeling related to a specific decision, which in court is a gradient feeling implied in the 'probable doubt' principle.

Doubt is an epistemic emotion bearing 'on hypotheses already entertained, propositions that have already made some claim on our assent' (de Sousa 2009, p. 147). When feeling doubt about a preposition, one evaluates 'that belief as epistemically unsafe, as something it would be rash to believe on the basis of the reasons I currently possess' (Hookway, 2008, p. 61). Doubt has a motivational impact, as it prompts us to inquire further, gain information and revise our knowledge, to move towards certainty (Vazard, 2021). Legal doctrine also hints at the importance of doubt in legal decision-making. Garapon (2016, p. XV), for instance, sees the process of doubting as made of three 'mental' operations: 'putting in doubt', where the judge suspends judgments already made; 'putting the evidence to the proof', by testing hypotheses through imagination and identification 'with the position of each protagonist'; and 'emerging from doubt', ending indecision. As we shall see, our analysis partially rhymes with this model, but we emphasise that the 'mental operation' of doubting incorporates emotional processes and that the feeling of doubt can be a spontaneous as well as a deliberate strategy.

Our conceptual framework further includes empathy, generally understood as the capacity to tune into others' emotions (Wettergren and Bergman Blix, 2016, p. 22), allowing individuals to understand and make inferences about the perspective of another by imagining being in the position of that person (Del Mar, 2017). Empathy thus differs from other concepts often used interchangeably, such as compassion ('the feeling that arises in witnessing another's suffering and that motivates a subsequent desire to help': Cuff *et al.*, 2016, p. 145) and sympathy, which also relies on perspective-taking, but is accompanied by an increased sensitivity to the emotions of the other person (Clark, 2010). The use of empathy in law is controversial precisely because empathy is often confused with sympathy and associated with the desire to offer assistance to one of the parties, thus more broadly with jeopardising impartiality. Focusing empathy, stories told in court can elicit empathic attuning in the form of imagination of motives and the intent of the people involved in the case (Bergman Blix and Minissale, 2022, p. 22), and emotions serve imagination by

guiding representations of events, so that legal professionals imagine what is necessary to satisfy their epistemic needs and purposes (Morton, 2013). Rules and principles embedded in the ‘judicial frame’ – the specific framing of judicial practice conceiving emotions as the enemy of rationality (Bergman Blix and Wettergren, 2018) – can restrict the aspects that legal professionals consider, potentially distancing them from emotions elicited in court. The judicial frame requires legal professionals to purify lay stories to fit into legal categories (Felstiner *et al.*, 1980). However, testimonies of victims, witnesses and defendants can open up for consideration a more complex ‘reality frame’ – the wider social frame within which the event has taken place – activating empathic perspective-taking (Bergman Blix, 2019, p. 174). Elsewhere, we have described the process as *legal encoding* to include different techniques regulating emotional attunement to the narratives, such as *demarcation*, which refers to the strict temporal and content boundaries of stories, and *proximation*, regulating empathic perspective-taking and emotional attunement (Bergman Blix and Minissale, 2022). Understanding the emotional impact of legal encoding as part of legal decision-making will help us explore how legal professionals translate lay stories into legal narratives that fit the categories of intent and credibility.

Before venturing into the analysis, we describe the legal setting in which our study takes place and the methods used to collect and analyse our data.

4 Data and methods

The data used in this article were collected within the Justemotions project financed by the ERC (grant no. 757625).² The project investigates, using ethnographic methods, the emotive-cognitive process of legal decision-making in courts and prosecutors’ offices in two civil legal systems (Sweden and Italy) and two common legal systems (the USA and Scotland).

Italy is a civil-legal jurisdiction with a long inquisitorial tradition. In 1988, a legal reform introduced an adversarial model of criminal justice, importing Anglo-American procedural aspects such as preliminary hearings and cross-examination, while maintaining some of the inquisitorial features (Illuminati, 2005). For instance, during preliminary investigations, prosecutors have to search for both incriminating and exculpatory evidence, meaning that they need to be impartial, keeping their mind open for further inquiries. At trials, prosecutors are formally a public party, so their function is to act ‘objectively’, in the sole interest of preserving law and justice (Fabri, 2016, p. 219). Once prosecutors ask for the indictment, the case is sent to a preliminary hearing judge or directly to trial, depending on the type of crime and the evidence available. If the case goes to full trial (*dibattimento*), the evidence must be presented directly in front of the trial judge (principles of orality and immediacy). A judge or a panel of three judges decides the case, depending on the crime type. Murder cases are decided by an assize court, with two professional judges and six lay judges.³ At trial, evidence is submitted in front of the court through direct, cross- and re-examination of witnesses. Here judges are supposed to have a passive role; in practice, they frequently intervene and ask for more evidence *ex officio* (*on their initiative*) when deemed necessary. The judge must convict when considering the defendant guilty of the charges beyond reasonable doubt. Guilt and sentence are decided at the same trial/deliberation. The Cassation Court (2019, no. 12250) provides guidance on how to determine credibility, by looking at coherence, clarity and lack of contradictions. When evaluating intent, instead, the criminal code establishes which form of *dolus* is required for each crime, distinguishing between different subcategories of intent. Appeal courts can partly or completely change the previous judgment and sentence, and they can also collect new evidence if

²The research has been ethically approved by the Swedish Ethical Review Authority and the Italian Commission for Ethics and Integrity in Research within the National Research Council.

³When we conducted fieldwork, defendants in murder cases could choose the abbreviated trial in front of a preliminary hearing judge, but this option was removed with Law No. 33/2019.

considered absolutely necessary. Here judges and prosecutors reconstruct the story through documents and transcripts without interacting with lay people whose credibility or intent is under scrutiny.

The international project originally included fraud, IPV and homicide cases to obtain rich variation in emotional expectations and types of evidence. During fieldwork, other crime types such as rape, theft and libel were added since they were often included in our selected cases. In Italy, we shadowed 34 prosecutors and 40 judges while they prepared and decided cases; we observed 158 hearings and 47 deliberations (40 at tribunals and seven at the court of appeal). We interviewed participants before and after hearings to follow the development of the decision-making process throughout its different stages. In total, we followed 80 cases. Shadowing entailed following professionals during their workday and engaging in continuous reflection on their activities (Czarniawska, 2008; Bergman Blix and Minissale, *forthcoming*) and on the development of decision-making more specifically. When observing trials, we focused on how legal professionals participated in the examination of witnesses and defendants and how emotions arose and were managed during the process. We kept track of body language, facial expressions, glances and gazes, the use of explicit emotion words, tone of voice, interruption of speech, questions put to laypeople and interaction with other legal professionals. During deliberations, we also paid attention to the reasoning leading to the final verdict.

We thematically coded the anonymised material in the coding program NVivo, combining inductive codes emerging from fieldwork (Willig, 2014, pp. 14–15), such as specific emotions relating to situated decision-making, with deductive codes relating to the theoretical frame of emotion theory and previous research. The categories used in the coding scheme were elaborated throughout several meetings between the researchers working within the international project, to ensure reliability both within and between datasets.

For this article, we selected cases of homicide, rape and IPV, since these crimes, due to the seriousness of the sentences at stake (homicide and rape) and to the specific features of the evidence involved (victim vs defendant words in IPV and rape), compel professionals to articulate their reasoning in a more articulate manner than other crime types, bringing to the fore the emotional dilemmas underpinning credibility and intent assessment. In the following, to guarantee anonymity, we use fictitious names, and an age range of + five years to indicate professional experience. Words/sentences in italics indicate pronunciation with emphasis, and capital letters indicate higher pitch.

5 Resisting certainty: doubting as a tool

Philosophical theorising on the feeling of certainty in decision-making has focused on its settling role, how it ‘freezes inquiry’ (de Sousa, 2009, p. 146). In our analysis, we find that judges and prosecutors often start their decision-making process on intent and credibility with a feeling of certainty. When presented with different pieces of evidence, they immediately, sometimes intuitively, make sense of them, establishing what is going on in a case (Minissale, 2024). However, this type of certainty and the knowledge associated with it are experienced as invalid, still to be scrutinised in light of the evidence. Participants problematise their certainty by deliberately engaging in a process of *doubting*, which entails restricting interest to the evidence available or expanding interest towards that still to be acquired, sketching out counter-arguments and scrutinising alternative hypotheses. In this type of emotive-cognitive practice, the feeling of doubt is managed deliberately and strategically to remain open to alternative explanations and avoid freezing the inquiry. It allows judges and prosecutors to arrive at a feeling of certainty for what is finally recognised as a deliberate (legitimate) evaluation of credibility or intent. We illustrate this process through examples from different crime types, accounting for differences and similarities in how intent and credibility are assessed.

In our first example, we meet preliminary investigation judge Alice (40+). In this case, one of the defendants is the owner of a care home for older people, accused of IPV⁴ and rape against two elderly women. Judge Alice met the victims during the *incidente probatorio*, the taking of evidence during the preliminary investigation, which takes place if the offended person is in a particularly vulnerable condition. Judge Alice illustrates her impressions about one of them, anchoring her credibility judgment on the poignancy of the testimony:

‘Well, I perceived this lady . . . *at times*, I had some ideas . . . especially when she talked about her . . . [hesitation] well, yes, of these sexual things that were done to her [smiles], but she said it in a way . . . that you did not know . . . whether it was [slight laughter] true . . . I mean, you were in this uncomfortable situation [. . .] Then, on the other hand, at some point [slower pace] she showed . . . *anger*, against this woman (wife of the defendant) . . . which made you understand that she had suffered wrongs, *STRONGLY!* . . . tears came to her eyes . . . and then, that is . . . there was an emotional involvement in all of it.’

(Judge Alice, 40+, follow-up interview)

Judge Alice’s evaluation of the veracity of the testimony starts with scepticism (‘she said it in a way . . . that you did not know . . . whether it was true’), but then switches into certainty (‘which made you understand that she had suffered wrongs, strongly’) when the victim is perceived as angry and tearful. In judge Alice’s account, the ‘emotional involvement’ displayed by the victim is a sign of credibility, which rhymes with previous findings about the impact of emotionally compelling testimonies on judges’ assessment of credibility (Dahl *et al.*, 2007; Landström *et al.*, 2019). Alice empathically attunes (cf. Bergman Blix and Minissale, 2022) with the emotions displayed by the victim to the point that she is convinced of the credibility of her testimony (‘she had suffered wrongs’). What is important to note is how judge Alice reflexively attempts to remain open to alternative explanations by instrumentally inducing feelings of doubt:

‘she made statements that . . . are objectively open to EVALUATION! It will be necessary to frame it within all the other things that I do not know [. . .] Could the facts . . . because she said that she had never been raped, huh . . . in the sense that the sexual . . . [hesitates] performance, she made it because she basically felt *coerced*, but it is not like she was slapped, received blows, things like that . . . So, there was something missing in this . . . that maybe I do not know . . .’

(Judge Alice, 40+, follow-up interview)

In this quote, judge Alice questions her certainty by focusing on what she presents as intricate aspects of the evidence ‘objectively open to evaluation’, such as the victim never openly talking about being raped. When restricting interest to what is relevant under the judicial frame – the content of testimony, rather than the emotional display accompanying it – judge Alice seems to decrease her level of certainty expressed earlier in the interview. Knowing that she met the victim when the investigations were still ongoing leads the judge to consider that ‘it will be necessary to frame it [the deposition] within all the other things that I do not know’ since ‘there was something missing’. Judge Alice’s example draws attention to the twofold way emotions enter the process of credibility assessment: first, at the level of embodied perception of credibility based on the emotional display of the layperson, in line with previous research, and, second, in the resistance of

⁴Article 572 of the Italian criminal code regulates IPV, referring to any form of abusive conduct against ‘a person in the family or otherwise cohabiting, or a person under one’s authority or entrusted for reasons of education, instruction, care, supervision or custody, or for the exercise of a profession or art’.

her certainty as being based solely on empathic attuning to the emotional display. Her certainty at this stage becomes a signpost for needing to doubt to comply with institutional expectations; she deliberately introduces doubts in the reasoning and demarcates (Bergman Blix and Minissale, 2022) inconsistencies in the narrative. Judge Alice needs further validation to move towards a settled certainty.

Moving to a different crime type and to the evaluation of intent, the next example is a case of murder where the victim is a young woman whose body was never found. The central piece of evidence is a wire-tapped phone call in which a close friend of the defendant, talking to his girlfriend, said that the defendant confessed to him that 'he made the girl disappear'. The intent of the defendant is difficult to assess as the crime story is very intricate, with a group of friends having had fights that are hard to reconstruct at the time of the trial. At the centre of these fights is infidelity that the victim threatens to reveal. Prosecutor Olga (30+), however, has a gut feeling about the motive:

Olga: 'All these couples . . . and [hesitates] what is my . . . My idea is that [witness 1] had sexual intercourse with the defendant. The victim found this out and wanted to tell everything to [witness 2 – current girlfriend of the defendant], so she could kill two birds with one stone: she could get her historical best friend back, and she could also have revenge on her ex-boyfriend, who broke up with her. And this is why the defendant killed the victim.'

Int: 'That's the idea that you got during the trial?'

Olga: 'Let's say that . . . reading the documents in the dossier, I already had a similar idea, but it was more a supposition. Then, seeing the reactions, the behaviour of the witnesses, I became convinced . . .'

(Prosecutor Olga, 30+, follow-up interview)

One way to understand this quote is that prosecutor Olga already had a sense of knowing the true story behind the murder when 'reading the documents in the dossier'. By naming it as an 'idea', a 'supposition', she is framing this as subjective knowledge about the story, its characters, their intentions ('this is why'; 'could have revenge'). We understand it as a *gut feeling* because of the intuitive character of this type of knowledge about the 'true story' of a crime (Minissale, 2024). In the quote, it is possible to note that the prosecutor is trying to make sense of the messy reality presented to her, by reconstructing the line of events that led to the murder. Olga points to the defendant's potential motive to kill the victim, who allegedly threatened to tell his girlfriend about his affair. The prosecutor does not mention intent but refers to it implicitly when making inferences based on the motive. Previous literature stresses that to understand intentional behaviour we need to make inferences about the 'range of possible goals implied by these behaviors' and about 'how all these pieces of information can be coherently integrated' (Molden, 2009, p. 38). Prosecutor Olga shows interest in the motive even though in Italy, as in many criminal law systems, defendants' motives for offending have no bearing on the assessment of their liability (Kaufmann *et al.*, 2003; Eldar and Laist, 2017), as it is only intent that matters. While motives answer the question why the crime is committed, intent refers to the 'willingness' to do something that the law determines as wrong (Hessick, 2006, p. 95). In our material, intent and motive often intersect in legal professionals' reasoning. Especially in murder cases, it seems crucial for professionals to understand the motive in order to infer intent implicitly. The gut feeling about the motive invites prosecutor Olga to feel certain by bringing order to the story with an interpretation that clings to social reality, making sense of the story under the reality frame (Bergman Blix, 2019). Olga, however, tries to resist her certainty by pointing to the fact that the gut feeling only later on became a conviction, once she interacted with lay people in court ('seeing the reactions, the behaviour of the witnesses'). In this way, she anchors the legitimacy of her knowledge

under the judicial frame, since she delays her feeling of settled certainty until the evidence has been presented during trial. In the continuation of the interview, prosecutor Olga clarifies how she used doubt to problematise her gut feeling, exploring alternative interpretations of the facts at stake, such as that the victim might not have been murdered, but disappeared on her own account:

Olga: 'There was also the line of inquiry of voluntary escape, and I also wondered about that.'

Int: 'Ah, you also considered this option?'

Olga: 'Yes, WHY NOT! She's an adolescent, after all. But for an adolescent to escape, there must be a motive . . . When she disappeared, she's actually . . . happy [cute tone – smiles], she has a new love, she's planning her 18th birthday, she has new friends, a new best friend. It doesn't seem to me that she was . . . in a condition that pushes a 17-year-old girl to escape. She was making plans . . . also that night, "call me at midnight", to her boyfriend, whom she had been waiting for for three days . . . So, it doesn't seem to me that this way of doing, of planning, is coherent with a voluntary escape just a few hours later.'

(Prosecutor Olga, 30+, follow-up interview)

Prosecutor Olga's focus on the experiences and emotions potentially felt by the victim can be read as empathic attuning aimed at scrutinising a hypothesis going against her gut feeling. Notably, in the previous example, with judge Alice, empathic attuning made the judge certain of the credibility of the witness, but her empathy-based certainty was not considered legitimate for a conviction. Here, instead, since empathic attuning is used to explore an interpretation that goes against the prosecutor's gut feeling, this is perceived as a legitimate way of reasoning. That is, empathic attuning is not considered problematic when exploited to test counter-arguments, to resist what the legal professionals perceive as invalid certainty, whereas it is questioned when it leads to an assessment of credibility or intent/motive solely based on the emotional display of the layperson. We recognised this pattern also in rape cases.

In the following example, with appellate judge Michela (55+), the victim agreed to have sexual intercourse with two men, receiving money in exchange, but then the modalities changed into sadomasochism. At first sight, judge Michela expresses certainty about the non-credibility of the victim. Her first impression of the case after having read the documents was that the victim:

'agreed to it (the sexual intercourse), because she did not run away; she stayed there until the next morning, because she said she would have slept there, because in the taxi she spoke in that way, because she then told her friends "I would do it again", right?'

(Judge Michela, 55+, pre-hearing interview)

At the start of this deliberation, judge Michela expresses certainty about how to interpret the behaviour of the victim as indicative of consent, implicitly denying her credibility. When demarcating (Bergman Blix and Minissale, 2022) specific fragments of the narrative, the judge's reasoning around credibility can be seen as commonsensical and based on stereotypes about the behaviour of ideal victims of rape ('did not run away', 'stayed there until the next morning', 'would have slept there') (Ellison and Munro, 2009; Wallin *et al.*, 2021).

Judge Michela, however, tries to resist this certainty by doubting and making an empathic effort to understand the victim, considering information about her life before the events. When expanding her interest beyond the judicial frame – the events described in the charges – judge Michela engages in a full-blown empathic immersion in the narrative. She reflects on the victim's 'frailty', 'perception of herself, [of] her physical integrity, [of] her sexuality'. At the end, she changes her mind and considers the victim credible:

‘Then, actually, reading things with more calm . . . reading again through the whole event [sad-serious tone] . . . the fact that she did *not* want to file a report at all costs, that she *derailed* the investigation, that she did *not* want to . . . that she was *dragged* to the hospital by her mother . . . So, once you reconstructed *everything*, you were faced with a character . . . a *personality* that was consistent with what had happened and that she recounted in an *extremely genuine way*, including saying things [surprised tone] that . . . *go against herself*, like, ‘‘I would have stayed the night, etc.’’ [bored tone] . . . her frailties were also her strong points . . . and we had *no reason* to doubt her . . . she had said things against herself because this is how TRANSPARENT she is! [serious tone] I mean, she speaks clearly . . . FOR REAL! Her personality is like that; she is a person LIKE THAT!’

(Judge Michela, 55+, follow-up interview)

When Judge Michela moves from certainty to doubt by engaging in empathic attuning with the victim (cf. Bergman Blix and Minissale, 2022), she seeks to understand the victim’s personality to make sense of the story. Empathy returns here as an interpretive device where one imagines what the other person felt under specific circumstances, and how those feelings motivated consequent actions. This echoes previous research with police officers and mock jurors who assessed the credibility of rape victims, accounting for their life history and social relations, to establish personality characteristics (Areh *et al.*, 2009; Sommer *et al.*, 2016). What is new in our analysis refers to the empathic mechanism used by legal professionals to resist their certainty about credibility and intent. When used to counter test their (preconceived) feelings of certainty, empathic attuning is considered a legitimate and rational strategic tool in legal deliberation.

In sum, our material shows that when starting the deliberation with a feeling of certainty that is perceived as problematic, professionals introduce doubts in their reasoning by calibrating their proximity to the narrative at stake. Either they resist certainty that is based solely on empathy (judge Alice) by re-establishing emotional distance and demarcating the pieces of evidence going against their certainty, or they resist certainty that is based on gut feelings (prosecutor Olga) or stereotypes (judge Michela) by considering the bigger story at stake (i.e. the reality frame) and establishing empathic proximity to the stories, using empathy as a tool to interpret intentions, motives and feelings of individuals. In this deliberative work, empathy is cognitively controlled but can stretch from instrumental perspective-taking (prosecutor Olga) to full-blown immersion (judge Michela) (Wettergren and Bergman Blix, 2016).

6 The burden of doubt: struggling for certainty

Participants did not always start the deliberation with a feeling of certainty about credibility and intent. In other instances, they aligned with institutional demands by experiencing doubt at the beginning of their decision-making process. When doubting the credibility of witnesses and victims, the source of doubt was often tied to contradictions and inconsistencies in the narratives. For intent, participants’ doubts stemmed from not knowing how to translate the complex reality at stake into pre-defined legal categories connected to the specific type of intent required for the crime under evaluation. Here, legal professionals demonstrate interest in taking decisions that are both legally sound and reflecting the nuances of the story at stake. Doubt is managed by scrutinising all the evidence, by treating the story like a puzzle where intent and credibility are pieces that need to fit within the whole narrative of the case and, as seen in the previous section, by using empathy as an interpretive tool. This process allows legal professionals to arrive at a feeling of certainty for what they recognise as the correct legal categorisation.

The following case, with preliminary hearing judge Valerio (55+), provides an example of this emotional reflexive practice. A man is accused of IPV against his mother. In IPV crimes, the legal

prerequisites to be assessed according to Italian legislation are the *habitualness* of the abusive behaviour, which refers to criminal actions repeated over time by the perpetrator, and *generic intent*, consisting in the awareness and willingness to inflict physical and/or psychological suffering on the victim in a continuous and habitual manner (article 572 code of criminal law). Judge Valerio starts the deliberation reflecting on the complexity of the story at stake. The defendant has some mental issues but is considered ‘capable to stand at trial’ according to the forensic expert’s report. In other words, his mental issues are seen as not interfering with the state of mind required for IPV. The friction between the abstract category of criminal intent and the actual reality under evaluation (judicial frame vs reality frame) makes judge Valerio doubtful:

‘Advocates and experts leave the room. Valerio immediately turns to the trainee student inviting her to express what she thinks about the case [smiling], then adds: “Here the problem is that of wilful intent . . . The specificity of the wilful intent . . . There’s a huge mother/son issue . . . it’s a *competition* between them. I would also say the wilful intent necessary for IPV is generic . . . We only need the awareness that doing this has certain consequences . . . persisting with violent conduct requires awareness/will. It is possible that he [the defendant] wants to abuse as a reaction to the control [of the mother]. I would convict him for continued injuries . . . Anyway, the law says that [reads the article aloud].’

(Fieldnotes, observation deliberation)

In this first sequence of the deliberation, judge Valerio expresses doubt about the correct way to encode the defendant’s behaviour: intent to abuse or intent to cause injury, which amount to two different crimes.⁵ This points to a distinguishing feature of doubt, an emotion ‘bear[ing] on hypotheses already entertained’ (de Sousa, 2009, p. 147). The difficulty of translating a complex story within legal codes is visible in the insistence on intent/awareness throughout the excerpt. When considering the larger story at stake and empathically attuning to the perspectives of the individuals involved, judge Valerio accounts for a competitive relationship between mother and son where both parties are seen as responsible. Indeed, while being shadowed, judge Valerio described a tense situation in the family where the mother ‘had a tragic family life’, ‘had already lost two sons and her husband’ and had ‘invasive and obsessive behaviour towards the defendant, who she wanted to control in some way’. The empathic attuning with the broader story of these individuals is the source of doubt about which crime type to select and initially leads the judge to conclude that the defendant wanted to react to ‘the control’ of the mother. At this point, the judge seems willing to ‘convict him for continued injuries’ (a less serious crime). Importantly, doubt motivates judge Valerio to endorse further action, reading the code aloud. Indeed, a distinguishing feature of doubt lies in its motivational impact, as it prompts us to gain more information, explore alternative meanings and revise our knowledge, to move towards a feeling of certainty (de Sousa, 2009; Vazard, 2021). In this case, judge Valerio attempts to overcome his doubt by focusing on the exact content of the written norm, sketching out alternative categorisations:

‘Valerio keeps reading the code carefully; it seems like he is facing some difficulties. He reads the text aloud a couple of times, at a slower pace . . . “Ah . . . OKAY! At this point, there are two alternatives: *materially*, there is a crime, but no wilful intent. Or there is wilful intent, but no habitualness. I am *absolutely* not of the idea that he did not want to abuse her; however, it is an unhealthy relationship. I [defendant] need to understand that by doing this, I humiliate you . . . it needs this leitmotif. Here, effectively . . . yes, he threw her out of the house . . . but not by

⁵In the Italian criminal code, the crime of injuries refers to situations where there is a violent act resulting in ‘physical or mental illness’ (article 582), whereas IPV (art 572) requires repetition over time (i.e. habitualness of the conduct) of ‘oppressive actions suitable to harm the victim’ (Cassation Court 2019, no. 12196).

coercion. She left out of fear.” [...] Valerio turns to the trainee student: “You have studied this. Which one do you think is most coherent? a) Condemn him for IPV; b) don’t condemn him, because there is reciprocity. The problem is that the wilful intent [required by law] is generic. There is certainly an unhealthy relationship – never mind . . . let’s leave it as it is” [resigned but confident tone]. Valerio dictates the verdict to the clerk: the defendant is guilty of IPV.’

(Fieldnotes, observation deliberation)

What we can see in this excerpt is that judge Valerio tries to bring order to his reasoning both by interacting with the trainee student – even though he does not wait for her to answer, but exploits her to think out loud – and by outlining alternative encodings (*‘materially there is a crime, but no wilful intent. Or there is wilful intent but no habitualness’*; ‘a) Condemn him for IPV; b) don’t condemn him, because there is reciprocity’). He even personalises the prerequisites by putting himself into the shoes of the defendant by the use of a first-person pronoun (‘I need to understand that by doing this, I humiliate you’). His doubt about the coherence between legal codes and the complex ‘unhealthy relationship’ keeps surfacing. The focus on specific episodes (‘he threw her out of the house . . .’) can be interpreted as an attempt to demarcate objective aspects of the story, facilitating legal encoding by cutting off interest into its complex elements (Bergman Blix and Minissale, 2022).

Overall, the example draws attention to the way doubt can originate by not knowing how to translate the reality under scrutiny within the range of subcategories related to intent. This also signals how important it is for legal professionals to account for the particularities of the individual experiences at stake. Judge Valerio ultimately abandons his initial idea of requalifying the crime as injuries, convicting the defendant for IPV. It is interesting to look at how the judge reflected on his decision during the follow-up interview, to fully grasp how his initial doubt was connected to a perceived friction between intent considered under the judicial frame or the reality frame:

Valerio: ‘Today . . . I carefully listened to the expert witness, eh [hesitates] . . . I tried to think whether . . . by considering the question on a strictly juridical level . . . there was possibly room for an interpretation that corresponded more to the reality . . . that is . . . what, in reality, was the wilful intent . . . wilful intent in relation to a family situation . . . that I am not saying was degenerated but extremely fragile . . .’

Int: ‘In fact, initially you were heading towards . . . a requalification of the crime of IPV.’

Valerio: ‘YES!’

Int: ‘Then you returned to the IPV . . .’

Valerio: ‘Indeed . . . indeed . . . but because, let’s say, the . . . ehm . . . [hesitates] here a series of juridical type data comes into question, you see . . . what convinced me was that there is no need for specific wilful intent, but for a generic wilful intent . . .’

Int: ‘And now, you feel convinced – that is, certain – about the decision you made, beyond any . . .’

Valerio: ‘[interrupting] Yes, yes, yes . . . the more I think about it, the more I’m convinced.’

(Judge Valerio, 55+, follow-up interview)

As illustrated in this quote, judge Valerio deems it important to achieve a correspondence between the actual reality and its legal categorisation (the reality and the judicial frame), which is what generated his feelings of doubt. Legal prerequisites such as credibility and intent form the boundaries for how to approach the stories at stake. What ultimately prevails, allowing for an ending of doubt, is the correctness of the juridical reasoning ('what convinced me was that there is no need for specific wilful intent, but for a generic wilful intent'). Overcoming doubt requires emotions, which is visible in the way judge Valerio shows commitment to dig deeper into the legal meaning of 'intent', is sensitive towards the complex story between mother and son and uses empathy to understand both perspectives ('It is possible that he wants to abuse as a reaction to the control [of the mother]'; 'She left out of fear'). Focusing on legal encoding allows him to purify the story of the details that he considers legally irrelevant. In the opposite way to judge Michaela's route from distance to empathic immersion, here Valerio begins by being fully immersed in the reality and feeling doubt; then he distances himself from the reality frame by linking the evidence to the law in a step-by-step manner. As mentioned earlier, *proximation* entails regulating empathic attuning to the complexity of stories told in court (Bergman Blix and Minissale, 2022). This finally leads Valerio to feel confident in the correctness of his reasoning.

To provide a contrast between crime types, we now illustrate a similar emotional reflexive practice in a case of attempted murder, where preliminary hearing judge Luigi (50+) uses empathic attuning to overcome his doubt about the defendant's intent. In this abbreviated trial, the defendant is accused of injuries against his former wife, and of having attempted to kill her new partner – by stabbing both of them and then continuing to abuse the new partner. What captured the judge's attention is the fact that the defendant himself called the police after the assault, asking for immediate intervention 'otherwise he would have killed them'. In preliminary hearings, judges read all case material before the trial. After having read the investigative material, judge Luigi articulates his first thoughts on the case:

Int: 'What are the key points of this case?'

Luigi: 'The coherence of facts in relation to their legal categorisation. I imagine that one of the discussion topics will be this, requalifying the fact from attempted murder to attempted injuries ...'

Int: 'I read in the dossier that it was the defendant himself who called the police to be stopped.'

Luigi: 'Yes, another aspect that might be discussed is the defendant's behaviour, his mental capacity. It's easy to imagine that a similar behaviour ... [hesitates] it's abnormal. I imagine that the defence will try to demonstrate something ... they can invite the judge to order a technical expert. Surely, it's behaviour that raises some doubts. Surely, it might be evaluated for the generic mitigating circumstances. [pondering, looking up into the air] It is as if he had a homicidal impulse, and then a counter-incentive not to commit a crime ...'

(Judge Luigi, 50+, pre-hearing interview)

In the excerpt, judge Luigi immediately points to the legal categorisation of intent as the crucial aspect to decide this case: attempted murder or attempted injuries. There is an emphasis on the 'coherence of facts in relation to their legal categorisation' that is in line with judge Valerio's reflections in the previous example, confirming that doubt can be connected to the importance of accounting for the complexity of the story. Managing doubt entails mapping out alternative interpretations by reflecting on what judge Luigi envisions ('I imagine') as possible defence arguments. In this reflexive process, hypothetical scenarios are contrasted with aspects that the

judge frames as indisputable: the relevance and ambiguity of the phone call made by the defendant and the need to categorise this behaviour (diminished responsibility or generic mitigating circumstances). We see how the judge attempts to bring order to his doubts by focusing on what is problematic in terms of legal encoding. Notably, empathy enters the epistemic process of sense-making since judge Luigi attunes with the defendant's perspective at the time when the events occurred, to decipher his intentions ('It is as if he had a homicidal impulse, and then a counter-incentive not to commit a crime'). Empathy is used here as an interpretive device in the form of instrumental perspective-taking, rather than full-blown empathic immersion.

The following fieldnotes from the deliberation, together with excerpts from the follow-up interview, illustrate how judge Luigi overcomes doubt and arrives at a feeling of certainty regarding the intent:

Luigi: 'Let's say things accurately: the injuries against the former partner have nothing to do with it . . . it is true that he was clearly motivated by a murderous will, but then he called the police . . . and that's *one thing* . . . the *second*: there was only *one* stab, but it did not have any *effect* because then the victim reacted. Is this proper *conduct*? [looks up] We must not rely on the reactions of the victim. Today he told us that the knife was sharp, so it was suitable [to kill].'

Trainee: 'Did the defendant want to kill his former wife's new partner or did he want to wound him?'

Luigi: 'The phone call in which he says "I'll kill him" pleads in favour of the attempted murder [puts his hands in his pocket]. What he says is an admission, however distorted, bad . . . Acceptance of death as a desired consequence, on the one hand . . . against that it can be deemed . . . not even as a sort of will to desist . . . but there is no such will. It is not like he deliberately desisted from the criminal action [. . .] *Surely* the fact that he called shows the awareness, the perception of what he does . . . But having said that . . . "Stop me, stop me" – but there was a stab . . . The defence relies a lot on the failure to repeat the gesture. He only fired once, but in this case it was the victim who ran away: "I pushed him, and I ran away" [reading transcripts from the victim's testimony].'

Judge Luigi and the trainee suddenly start talking about the sentence, implicitly agreeing on convicting for attempted murder.

(Fieldnotes, observation deliberation)

In this extract, judge Luigi assesses intent by purifying the story of details that he deems irrelevant ('the injuries against the former partner have nothing to do with it'; 'We must not rely on the reactions of the victim'). In this way, Luigi is reducing the complexity of the decision-making process, demarcating the narrative and anchoring intent on objective aspects: the sharp knife, the single stab, the fact that the victim ran away. Although the judge seeks to restrict his interest to these elements, considering one piece of evidence after the other, he keeps going back to the phone call made by the defendant in relation to his 'murderous will'. Like in the previous case with the 'unhealthy relationship', we see how complex elements of the narrative keep resurfacing during the reasoning. Even objective evidence like the phone call requires interpretation to link objective facts to subjective intentions. Judge Luigi needs to make sense of the story as a whole, including the phone call: is it indicative of a 'distorted admission' of wanting to kill, of an 'acceptance of death', of 'awareness and perception of what he does'? In this, we see how the empathic effort is triggered by the need to interpret the defendant's thoughts and feelings. Echoing judge Valerio, judge Luigi strives for a feeling of certainty that encompasses a comprehensive understanding of the story,

which is seen from how he ultimately reflects on his decision to convict for attempted murder at the end of the trial:

Int: ‘So, you managed to understand the defendant’s position, considering all the elements?’

Luigi: ‘Yes, on the other hand . . . it’s the behaviour of a person who seemed to me more . . . [hesitates] I am not reasoning in a strict juridical way, but to me . . . it seemed more a request for help: “stop me”.’

Int: ‘As if he had had a moment of lucidity?’

Luigi: ‘Yes, when he understood that he had done something *huge*, and . . . even in the moment when he was still doing that, or immediately after . . . he realised . . . how to say . . . [hesitates] in front of . . . also because, otherwise . . . I can’t find any other explanation as to why he did it . . . but, anyway, I think that the facts should be framed within this context.

(Judge Luigi, 50+, follow-up interview)

The judge introduces a friction between the meaning of the story under the judicial and the reality frames (Bergman Blix, 2019) (‘I am not reasoning in a strict juridical way’), which replicates judge Valerio’s reflections in the previous example of intent in the IPV case. Judge Luigi admits this exposition outside the legal frame with hesitation, as a warning to the interviewer that his interpretation is a personal rather than a professional reflection. Here, empathic attuning to the defendant (‘it seemed more a request for help’; ‘he understood that he had done something huge’) reveals reflexive interpretation around the motives underlying the defendant’s actions, not only accounting for intent to stab but also the motive to stop and call for help. As in the previous section, where prosecutor Olga reflected on the motive of the murderer, here, too, we see an urge to understand motives in order to evaluate intent.

In sum, our analysis shows that there is no perfect match between legal prerequisites of intent and credibility and the complexity of everyday life that make up the narratives told in court: what is considered unintentional behaviour, desisting or a sincere story in everyday life might constitute a criminal action, an irrelevant intervention or a non-credible testimony under the judicial frame. The examples discussed in this section demonstrate that legal professionals engage in more or less deliberate empathic attuning to make sense not just of the story but of the situations and individuals that they are dealing with. In contrast to the previous section, we see that empathy is used to overcome doubts. Judge Valerio dwelled on the desire of the defendant to react to an excessive maternal control, whereas judge Luigi referred to the defendant calling the police as a request for help, explicitly accounting for the importance of clarifying ‘some psychological attitudes’ of this man. This adds to previous research showing personality traits matter for credibility assessments in rape cases (Sommer *et al.*, 2016).

7 Concluding discussion

We introduced this article highlighting the ‘indeterminacy’ of intent and credibility due to the lack of clear indications about how intricate human experiences can be translated into legal categories. The dominant ideal of objectivity in law requires a ‘clinical’ approach to cases, disregarding the subjectivity of narratives (Rogers and Erez, 1999, p. 267) and the ‘human’ element embedded in stories (Bandes, 2021). Our analysis of how judges approach this work in situ demonstrates that legal professionals develop diverse emotional practices to cope with the indeterminacy of intent and credibility, the legal demand for objectivity and the emotions arising during the decision-

making process. Emotions are part of the decision-making process that inform doubt as much as certainty and belief (i.e. acquittal as well as guilty verdicts).

Emotional practices are based on the 'striving for a desired feeling as well as the modifying of one that is not desirable' (Scheer, 2012, p. 209). When it comes to intent and credibility, this 'striving' refers both to the need to achieve a specific type of certainty – one that is considered objective – and to the need to understand the overall story of the case and the individuals involved. In other words, professionals express an epistemic need to achieve decisions that are both legally sound and coherent in relation to the social reality under evaluation (Minissale, 2024). Specifically, the first type of emotional practice refers to situations in which reading the documents in the dossier or listening to the testimony of witnesses provide legal decision-makers with a feeling of certainty about credibility or intent. This type of certainty can result from an empathic attuning to the emotional display of the layperson, or from a gut feeling, coming from a commonsensical and/or stereotypical interpretation of the narratives at stake. Decision-makers problematise this type of certainty through a process of doubting, encompassing consideration of alternative explanations and empathic attuning, to dissect different hypotheses under scrutiny. Expanding previous research (Bergman Blix and Minissale, 2022), we show that this type of empathic attuning occurs when credibility and intent are under assessment, allowing judges to overcome stereotypical evaluations – for instance, when perceiving emotional testimonies as more authentic and thus credible (Wallin *et al.*, 2021). In this way, empathy is employed as a strategic tool, ranging from instrumental perspective-taking to a full-blown immersion when participants open up to the broader reality frame of the story, to introduce doubt and reach objectivity in legal decision-making. Our findings thus add to the debate on empathy in law by showing that empathy represents an important resource in legal professionals' toolbox.

In the second type of emotional practice, participants start with doubt about intent and credibility. Hence, doubt can be a spontaneous as well as a deliberate strategy. Empathy returns here as an interpretive tool, requiring calibration in order for legal professionals to overcome their doubts. In line with previous studies, we show that, in legal decision-making, doubt, as an epistemic emotion, motivates reflexivity and further enquiry (Törnqvist and Wettergren, 2023). We find this with regard to intent when professionals do not know how to infer judicial intentionality from messy lay narratives under evaluation, and, with regard credibility when they do not know how to make sense of contradictions in victims' declarations. Doubt signals problematic aspects of the story in terms of legal encoding and the construction of a coherent story, guiding the decision-making process and energising further inquiry. To overcome doubts, participants calibrate their empathic attuning to the reality frame by focusing on demarcated aspects of the stories that are relevant to encode the evidence legally.

This process of doubting echoes the three-step doubting model of Garapon (2016): putting in doubt, putting the evidence to proof and emerging from doubt. The difference is that in our data, this process is inherently emotional. Legal professionals often start with feelings of certainty, implying that 'putting in doubt' is a step strategically made to distance themselves from a temporal mismatch of feeling certain too early in the process. The second step, putting the evidence to proof, emerges as a process requiring empathic attuning and emotional reflexivity. The last step, emerging from doubt, at least in complex cases, often entails a balancing of the legal and the reality frame. Here, doubting ends, often implicitly, as legal professionals express confidence in their judgment, indicating 'information saturation' (Törnqvist and Wettergren, 2023, p. 211). That is, the 'mental' operation depicted by Garapon is foundationally an emotive-cognitive process. This reflexive and empathic work is structured around legal boundaries: the judicial frame with its rules and principles. When legal professionals reflexively problematise their certainty and use empathy, they dissect their knowledge within the institutional constraints of the legal system, primarily that of objectivity. They demarcate objective evidence and legal categories and give meaning to them through emotional reflexive work. In line with previous research, we show that emotional reflexivity and empathy are

tools that legal professionals use to scrutinise and problematise their own emotions as well as the emotions of those involved in the case (Minissale, 2024; Bergman Blix, 2019).

To conclude, we conceive the evaluation of credibility and intent as a process in which legal professionals experience the ‘emotional struggle’ (Minissale, 2024, p. 21) of constructing legally sound and socially coherent stories, striving for confidence that supports the validity of their decisions (de Sousa, 2009). Future studies might elaborate on this emotive-cognitive process in relation to other crime types (fraud, conspiracy) and legal categories (good faith, reasonable person, negligence), and analyse differences and similarities in relation to different justice professionals (police, social workers) and collective settings. Furthermore, our findings could be tested in other legal systems, where different rules of evidence might apply and where jurors or lay judges, instead of professional judges, hold a prominent role in legal decision-making. While we believe that empathy, doubt and certainty are central to legal reasoning in all its forms, there might be differences in the way these emotional processes affect credibility and intent evaluations depending on the way victims’ and defendants’ stories are constructed in court, and on decision-makers’ legal expertise.

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