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From Emotional Labour to Affectual Bodies: Moving Towards an 'Affective Ethnography' of the Criminal Court Space

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Abstract

Participation in, and attendance at, court often positions people amid a charged emotional environment, where the evidence frequently involves distressing accounts and the stakes of decision-making are high. Research has explored the impact of this environment on various court protagonists. What this research has failed to consider in detail, however, are the ways in which such vectors of emotional reaction, containment and contagion interact and flow across the criminal court space: yielding affective environments in which emotion is not a commodity held (or denied) by one person, but a force that permeates and seeps into the spaces of justice. In this article, we set out the case for why such an understanding is necessary and instructive.

Keywords
emotional labour, affects, affective ethnography, criminal justice

Introduction

Participation in, and attendance at, a court – particularly in a criminal trial – often positions people amid a charged emotional environment, where the evidence involves distressing accounts of victimisation and vulnerability, and the stakes of decision-making are high. Potential stress and anxiety, particularly for lay participants, are contributed to by both combative strategies adopted by opposing counsel within an adversarial system and the arid and alienating nature of legal argument and language. All of this is acted out and embodied within affective, human interactions that take place in austere, unwelcoming and often ill-designed buildings (Mulchahy, 2011; Mulchahy & Rowden, 2019). In this article, we draw on examples from a small number of pilot observations to explore the ways in which an 'affective ethnography' (Gherardi, 2019) of

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the criminal court yields urgent and valuable insights across a range of offences, actors and spaces.

Our primary focus in this discussion is the domestic, criminal trial in England, selected due to the expertise of the authors and ease of access for data collection. Though there are, inevitably, distinctive procedural and cultural dimensions that frame this site, we also draw insight from research across Europe, America, New Zealand and Australia, in order to highlight the potential resonance of our analysis to those other jurisdictions. In the context of the UK criminal jurisdiction, previous research has explored the ways in which, despite doctrinal and procedural legal training in which advocates and judges are encouraged (explicitly and implicitly) to detach from emotional reactions, there is an emotional taint that remains (Gunby & Carline, 2020. See also Baillot et al., 2013; Cho, 2018; Levin & Greisberg, 2003; Robertson et al., 2009). So too, previous research has explored the extent to which victim-witnesses, and to a lesser extent accused persons, have recounted the experience of participating in criminal trials as re-traumatising and distressing, and as often involving significant emotional labour (Ellison & Munro, 2017; Martin et al., 2022). However, we will suggest that what this research has typically failed to consider in sufficient detail are the myriad ways in which emotions interact and flow across the criminal court space: yielding affective environments in which emotion is not a commodity held (or denied) by any one person, but rather a force that permeates, floods, and seeps into the spaces of justice (Bens, 2022).

In this article, we investigate the case for why the adoption of affect theory (Clough & Halley, 2007; Gregg & Seigworth, 2010; Massumi, 1995, 2009; Shouse, 2005; Wetherell, 2012), and specifically an 'affective ethnography' (Gherardi, 2019) of the courtroom, is both necessary and instructive. Although a diverse field, broadly, affect theory can be understood as involving an exploration of embodiment, emotions and sensations. The approach we adopt draws upon Spinoza's concept of affect which is concerned with the ability of a body to affect and be affected (Spinoza, 2000). By this, we mean how one body interacts with another and how this interaction brings about a change or a transformation within one or both bodies. We highlight how this turn to affect assists in moving us beyond a focus exclusively on trauma and emotional labour, and thereby attunes us to a wider range of emotions, sensations, affective atmospheres and embodied interactions, all of which illuminate the daily operation of criminal justice. We also highlight the ways in which this approach brings into view a range of actors in the criminal justice process who have hitherto been largely invisible, including court clerks and ushers, interpreters and intermediaries, and members of the public who participate in juries. Drawing on our sample of pilot observations, we provide concrete examples that illustrate the benefits of this more encompassing analysis. Overall, then, we argue that deploying the affect theory is vital in developing a more complex and dynamic understanding of the criminal justice system, its process and impacts on participants; and, in turn, the possibility for generating more bottom-up interventions that can remedy negative impacts.

Emotion and the Experience of Criminal Law

The recognition of emotion – its operation and import – has been relatively rare in the fields of law, criminal justice and criminology: at least until fairly recently. In conventional accounts, emotion has been constructed as problematically subjective, unpredictable, unwelcome and disruptive to 'correct' ways of thinking, reasoning, decision-making and judging (Bandes & Blumenthal, 2012; Blumenthal, 2010; Feigenson, 2010; Grossi, 2015; Wettergen & Blix, 2021). It has also been presumed to be beyond empirical measure (Bandes et al., 2021).

There has, however, been increasing receptivity to the fact that emotion is intimately enmeshed within the design, operation, outcomes and experiences of engaging with criminal justice (Bandes, 1999; Bens, 2018; 2022; De Haan & Loader, 2002; Grossi, 2015; Karstedt, 2002; Roach Anleu & Mack, 2021; Shaw, 2020). Scholars have focused attention on celebrating the productive, powerful and positive effects of emotional modes of reasoning, decision-making and moral judgment (Bandes & Blumenthal, 2012; LeDoux, 1996; Maroney, 2006a; Marsons, 2021). It has, in turn, been suggested as harmful to consider emotions as separate from law and decision-making processes (Abrams & Keren, 2010; Bandes, 2006, 2021a; Maroney, 2011, 2013, 2021; Maroney & Gross, 2014; Phalen et al., 2021).

Furthermore, there has been a dawning recognition of the ways in which responding to the emotional terrain of justice requires more than a formal insistence on abstract rationality or implementing procedures designed to manage its excesses at the margins. It requires a candid appraisal of the human, corporeal and concrete experiences of navigating that emotional terrain amongst criminal justice personnel and trial participants alike. It demands – ethically and practically – consideration of the capacity of such actors to process and cope with these emotions in 'appropriate' ways, a recognition of the role and problems of emotional 'management' by criminal justice professionals (Bergman Blix & Wettergren, 2018), and reflection on the impacts on justice journeys and justice outcomes[1] that may result from a failure to provide such support (Bandes, 2021a; Blumenthal, 2007, 2010; Kerr, 2010; Lloyd, 2016–2017; Maroney, 2013; Maroney & Gross, 2014).

Concerns about the emotional impact of participating in trials have, for example, generated special measures to assist vulnerable and intimidated witnesses in giving testimony across jurisdictions, whilst opportunities for access to clinical supervision have been advocated for various criminal justice professionals (Kim et al., 2023; Zwisohn et al., 2018). Though such provision has been, in many respects,

routinised within criminal justice processes across a diversity of common law jurisdictions, it has not necessarily been normalised. For example, hesitancy remains amongst justice professionals, supported often by organisational or occupational cultures, about acknowledging the effects of emotional labour or being seen to access help where it is provided (Bergman Blix & Wettergren, 2018). Further, the delivery of witness testimony through mediated means such as video links and pre-recorded testimony is also frequently discouraged for fear of it being of lesser impactive quality precisely because of its more managed emotional context (Carline et al., 2021). Nonetheless, there is a clear sense in which the historical pretense that the criminal courtroom is a space governed exclusively by measured rationality, with emotionality neatly contained at its periphery, has become untenable. With that recognition has come increased efforts by researchers across jurisdictions to identify and understand the role of emotion in the criminal court space (Bens, 2022). In the next section, we provide a brief overview of this research, to set the context for our own reflections around the mapping of affective forces and emotionality in pilot observations in two English courtrooms.

Tracing Emotions in the Criminal Trial

Though recognition of the role and impact of emotionality in legal doctrine and practice has continued to meet with some resistance, a growing body of work has explored the emotional labour undertaken by participants within the criminal justice process. Drawing particularly on insights from Hochschild, this work has understood emotional labour as involving the inducement or suppression of feelings to sustain an outward performance that produces the 'proper' state of mind in others (Hochschild, 1983). Emotional labour can thus be employed to help regulate emotions, cope with difficult aspects of the job and enable the work to get done (Gunby & Carline, 2020; Lemmergaard & Muhr, 2012). It can also be used to allow for human agency, to bolster self-esteem and to reinforce individual and collective identity (Barry, 2017; Drew, 2007; Gunby & Carline, 2020; Lemmergaard & Muhr, 2012; Roach Anleu & Mack, 2021). Whilst important, much of this work on emotional labour has clustered around particular protagonists or justice contexts, resulting in a partial and – as we will discuss – stagnant understanding.

Legal Professionals

Research suggests that from as early as the first year of their studies, future generations of lawyers and judges learn to accept the prospect of anxiety, depression and stress as an inevitable feature of their professional lives (Krieger, 2002; Larcombe et al., 2012; Sheldon & Krieger, 2004; Townes O'Brien et al., 2011). Within the field of criminal justice, numerous studies amongst practitioners identify heightened rates of depression, stress, concern about the safety of themselves and others, as well as alcohol (mis)use, compassion fatigue[2] and vicarious trauma[3] (Baillot et al., 2013; Cho, 2018; Krill et al., 2016; Levin et al., 2011, 2012; Levin & Greisberg, 2003; Medlow et al., 2011; Reed, 2020). Research has highlighted how this can often be amplified by the bureaucratic nature of the work and the stress of excessive caseloads (Lipsky, 2010; Sommerlad, 2016), which are matters of acute concern in the UK context of austerity cuts to justice institutions and unprecedented court listing backlogs (Chalkley & Chalkley, 2020).

Commentators have also highlighted a tension between the feelings, affect and emotions that judges, magistrates and lawyers *experience* and the professional requirement to *display* emotional neutrality, rationality and objectivity (Baillot et al., 2013; Carline et al., 2020; Kadowaki, 2015; Leiterdorf-Shkedy & Gal, 2019; Roach Anleu & Mack, 2005; 2021). So-called 'feeling rules' (Hochschild, 1983) govern the expression of emotion in organisations; and in the context of criminal justice professions, those expectations are often stoicism, rationality and resilience (Barry, 2017; Craig, 2016; Kadowaki, 2015; Roach Anleu & Mack, 2021; Sommerlad, 2016). Thus, professionals must use emotional labour to suppress certain feelings, to construct others, to perform neutrality and to allow for human agency (Baillot et al., 2013; Gunby & Carline, 2020; Harris, 2002; Kadowaki, 2015; Lemmergaard & Muhr, 2012; Roach Anleu & Mack, 2005; Sommerlad, 2016; Westaby, 2010). Indeed, research has shown that barristers' (attorneys at law) involvement in socially and morally 'difficult' cases, e.g., representing those accused of child sex offences, can leave an emotional taint. This taint constitutes a courtesy stigma (Goffman, 1963), that stems from representing those defendants. Barristers cope with their uncomfortable responses to this taint by tempering their emotional reactions to it, allowing them to do their job and retain affirmative work identities (Gunby & Carline, 2020).

Evidence shows that police, probation, prison staff, barristers and judicial officers may also use dark, gallows humour to regulate feelings of pain, death, grief and hopelessness. Practitioners use 'a gin and tonic and a laugh' (Gunby & Carline, 2020, p. 356) to cope with the challenging elements of their work, to relieve emotional responses, or reinforce team spirit and identity (Barry, 2017; Drew, 2007; Harris, 2002; Lemmergaard & Muhr, 2012; Roach Anleu & Mack, 2021), perhaps illustrating some of the useful ways that emotional labour can be employed. However, evidence indicates that repeated calibrating and regulating of emotions over time can take its toll, including the hardening of one's emotional state (Crawley, 2002; Petrillo, 2007; Westaby et al., 2016) or an inability to 'feel anything at all' (Gunby & Carline, 2020, p. 358).

It has also been shown to be difficult for legal professionals to leave their criminal justice work at work, even when that boundary is proactively managed (Carline et al., 2020; Crawley, 2004; Morran, 2008; Mawby & Worrall,

2013; Petrillo, 2007; Roach Anleu & Mack, 2021; Westaby et al., 2016; Kim et al., 2023). The Covid-19 pandemic and shift to homeworking, as well as greater use – in England and elsewhere – of online video conferencing platforms to allow courts to hear cases remotely, has more overtly brought work into practitioners' living spaces (O'Doherty et al., 2022). Whilst these new mediums have opened up opportunities for communication that some have found particularly effective (O'Doherty et al., 2022), they have also extended the potential creep of emotional contagion, that is, practitioners' feelings of carrying with them the contaminating sensations and emotions of their clients. The contaminating impact of this work flows from client to practitioners but also spills over into the home (Li et al., 2021; van Emmerik et al., 2016). For example, those who work with high-risk and dangerous offenders have reported an amplified perception of risk, resulting in hyper-vigilance and actions described as overprotective, particularly towards their children (Mawby & Worrall, 2013; Morran, 2008; Petrillo, 2007; Westaby et al., 2016).

Though pandemic restrictions have now been lifted, the temporal efficiencies associated with their use have ensured continued reliance on some remote technologies across many justice systems. In England and Wales, this has coincided with the roll-out of provision for vulnerable or intimidated witnesses in criminal cases to pre-record and complete their evidence ahead of trial, thereby avoiding the need to attend the court at any stage. The effects of continued use of such hybrid forms of virtual justice are yet to be fully evaluated. However, there is certainly a concern that they have aggravated existing challenges in relation to the adequacy of courts' IT and audio-visual infrastructure, and that the use of technology alters the dynamics of interaction between trial participants in ways that could impact justice outcomes (Bandes & Feigenson, 2020; Mulchahy et al., 2020; Rose & Diamond, 2009; Munro et al., 2024). In particular, many barristers and judges in England have questioned whether the absence of a victim-witness from the court will decrease the likelihood of conviction (Carline et al., 2021; Munro et al., 2024), whilst the remote appearance of an accused may restrict their participation (Fairclough & Greenwood, 2023).

While much of this existing research has lingered on the potentially damaging or unpleasant effects of professionals' emotional labour, it is also important to note that work has revealed more pleasant emotional impacts for this cohort, and others. As such, while trauma and stress are aspects of the court experience, they by no means exhaust the range of emotions and affects encountered by participants. Barristers, police, probation and prison officers have been shown in previous research to use emotional labour to cultivate more productive feelings of pride and to generate self-esteem and a sense of community from their work (Cohen & Collens, 2012; Flower, 2020; Gunby & Carline, 2020). For example, barristers actively employ mechanisms of reframing (infusing tainted work with value) and refocusing (focusing on the rewards of the work while overlooking its challenging aspects) (Ashforth & Kreiner, 1999). In the context of defence work, this can include focusing on an accused's right to a fair trial and on winning a case as opposed to whether the defendant is guilty (Gunby & Carline, 2020). The process of performing in court in front of an audience of peers and lay observers also can be experienced as thrilling and exhilarating, with prestige and capital being bound up in the ability to present cases that 'others would struggle to handle' (Gunby & Carline, 2020, p. 354; see also Drew, 2007). In addition, previous research has shown that a professional expectation to express empathy with clients – which can be understood as a form of emotional labour – may assist lawyers more generally in case preparation and task effectiveness (King et al., 2024; Westaby, 2010).

Victim-Witnesses

Existing research – in the UK and elsewhere – has also explored the experiences of victim-witnesses within the criminal justice system. It has documented the potential cathartic benefits in pursuing a prosecution (Orth, 2002; Parsons & Bergin, 2010), as well as the traumatic and distressing impacts of adversarial proceedings, particularly for those who have experienced violent crime (Herman, 2003; Parsons & Bergin, 2010). A primary focus of the literature has been on the experiences of rape complainants, where a high incidence of PTSD is well-documented (Kilpatrick et al., 1985; Wemmers, 2013). Notwithstanding reforms – for example, to enable the use of screens, live-links and pre-recorded testimony, and formal restrictions on the types of questioning that can be put – research has illustrated the ways in which criminal justice processes are still apt to compound that trauma (Brooks-Hay et al., 2019; Molina & Poppleton, 2020).

In particular, that a survivor's confidence and emotional well-being will be significantly affected by the reaction of others to whom they disclose has been well-established. Despite changes to police culture and the improved provision of support services, which have generated more appropriate responses (Brooks & Buman, 2017; Martin, 2005; McMillan & Thomas, 2009; Rich, 2019; Patterson et al., 2009; Wemmers, 2013), reporting to police can still exacerbate the experience of a traumatic event (Adler, 1987; Gregory & Lees, 2002; Jordan, 2001; Payne, 2009; Temkin, 1997; Temkin & Krahé, 2008). For those complainants who see their case proceed to trial, the anticipation and process of giving testimony can involve challenging emotional repercussions (Campbell & Raja, 2005; Pitman et al., 1996; Renck & Svensson, 1997). Victims may be subjected to confrontational and hostile questioning, which often intrudes on highly intimate matters pertaining not only to

the crime but to their personal lives (Bell, 2007; Herman, 2003; Orth, 2002). Complainants often report the feeling that they were depicted by counsel as untruthful and malicious or to blame for an attack (Campbell et al., 2001; Koss, 2000; Orth, 2002). Further, giving testimony requires the employment of emotional labour, as research demonstrates the persistence of expectations regarding the levels and kinds of emotions rape victims should display in the court – e.g., that they should appear distressed (Konradi, 1996, 1999; Orth, 2002). Subsequently, witnesses may often endeavour to manage their nerves and emotional performances, ultimately increasing the psychological toll of giving evidence (Ellison, 2007; Konradi, 1997).

While court familiarisation visits can mitigate pre-trial apprehension, the sort of pre-trial preparation which can have a more pronounced effect, such as guidance relating to cross-examination processes and tactics (Konradi, 1996, 1997; Wheatcraft & Ellison, 2012) is rarely undertaken – in the UK at least. This is due to a lack of resourcing and concerns that witnesses might be coached by their lawyer to provide certain answers (Ellison, 2007; Konradi, 1996, 1997). During the trial, distress can be increased further by delays, inadequate introductions to prosecution counsel and last-minute problems with live-link technology (Payne, 2009; Smith, 2018). Despite alterations to court buildings and their usage, many survivors risk encountering their accused coming in and out of premises, or in shared waiting areas, smoking zones or toilets (Hamlyn et al., 2004; Payne, 2009; Smith, 2018).

More recently, the ways in which criminal justice procedures risk embedding the trauma experienced by victims in a range of crimes – beyond those involving sexual violence – has begun to be better recognised (Ellison & Munro, 2017). Though the implications of this have yet to be adequately explored beyond the rape trial context, research has documented a prevalence of PTSD amongst more diverse groups of crime victims (Boudreaux et al., 1998; Breslau et al., 1991; Kilpatrick & Acierno, 2003; Rothbaum et al., 1992), along with depressive and anxiety disorders, or substance and alcohol abuse (e.g., Boudreaux et al., 1998; Breslau et al., 1991; Kilpatrick & Acierno, 2003; Orth & Maercker, 2004; Salomon et al., 2004).

Again, notwithstanding the unpleasant emotional risks and ramifications for victim-witnesses documented in previous research, it is important to note that more pleasant emotional consequences associated with criminal justice participation have also been identified, often irrespective of verdict outcome (Dobash et al., 1999; Ford & Regoli, 1993). It has been suggested that giving testimony can help victims feel an increased sense of self-determination which is associated with feelings of (self) satisfaction and pride (Cluss et al., 1983; Kilpatrick & Otto, 1987; Orth, 2002), and that the experience may prove less difficult than feared (Kebbell et al., 2007). Voice and participation have been shown to be important components of survivors' justice interests (McGlynn et al., 2017) and research has highlighted therapeutic benefits from the use of victim impact statements, for example, as a mechanism by which to communicate to others, including the accused, the harms that victims experienced (Edwards et al., 2009; Lens et al., 2015; Pemberton & Reynaers, 2011; Karremans & Van Lange, 2005; Meredith & Paquette, 2006; Miller, 2007; Tripp et al., 2007). Indeed, it has been suggested that the extent of such therapeutic benefits is linked to the way judges or juries respond to victim impact statements (Bandes, 2021b), and to whether survivors are afforded a regained sense of control (Armour & Umbreit, 2012).

Defendants

A third key constituency in the criminal court is, of course, the accused. However, while there has been some research to date exploring the emotionality of people charged with a criminal offence, including the emotional impacts of being wrongfully accused (Brooks & Greenberg, 2021; Konvisser, 2012), this has been primarily set in the context of incarceration rather than amongst those awaiting trial in the community (Crewe et al., 2014; Jewkes & Laws, 2021; Konecky & Lynch, 2019; Laws, 2019; Laws & Crewe, 2016; Umamaheswar, 2021; Wooff & Skinns, 2018).

In the trial context itself, studies have explored the accused's expressions of remorse or other emotions. However, this has tended to focus on how such performances affect other courtroom actors, such as the judge and jury (Bandes, 2016; Eisenberg et al., 1997–1998; Johansen, 2019; Roach Anleu & Mack, 2021; Weisman, 2014; Zhong, 2015; Zhong et al., 2014). In addition, another strand of work has focused on accused persons' vulnerability and trauma, including, for example, the ability of defendants with disabilities and other vulnerabilities to participate effectively in pre-trial and trial processes (Equality and Human Rights Commission, 2020a, 2020b; Gormley & Watson, 2021; Maroney, 2006b;); the importance of adopting trauma-informed practices (Gohara, 2018; Javier et al., 2020; McLachlan, 2022); and the development of mental health and other specialists, and problem-solving courts (Edwards et al., 2020; Martin et al., 2022; PRT, 2017).

A somewhat broader exploration of the experiences of accused persons, focused specifically on England and Wales, can be found in the work of Jacobson et al. (2015) and Newman and Dehaghani (2022). Both have commented on the perceived difference between those who are first-timers and those who are regulars. With the former, levels of anxiety and stress were found to be similar to those suffered by victims (Jacobson et al., 2015, p. 142). As with victims and witnesses, delays in the justice system are a significant cause of stress and anxiety for accused persons (Jacobson et al., 2015, p. 146; McKay, 2018). Further, the use of prison transport, for those held in custody pre-trial, has been described as 'inflicting a distressing sensorial

experience' (McKay, 2018; p. 96. See also Asma, n.d.; Plotnikoff & Woolfson, 2015). Other factors which impact an accused's experience of the system include a sense of confusion with the process, which can lead to a feeling of alienation (Newman & Dehaghani, 2022) and perpetuate inequalities for those who cannot afford legal representation (Needham et al., 2020). These discussions link to broader concerns regarding the limited role of the accused person in the criminal trial. Frequently, they will not give evidence and if a guilty plea is entered, their involvement is reduced further (Carlen, 1976a, 1976b). Feelings of having a marginal role in one's case have been shown to lead to anger and frustration with the justice process (Newman & Dehaghani, 2022). As noted, this may be heightened in the post-pandemic landscape by the use of digital technologies to facilitate pre-trial legal conferences and court appearances. Indeed, research suggests this can reduce defendants' sense of connection, trust and confidentiality with counsel, and can compromise the prospects for clear communication and effective sighting of documents (Gibbs, 2017; McKay, 2018).

Casting the Emotional 'Extras'

As we alluded to at the outset, missing from the picture painted by this body of existing research are several other players in the criminal trial process, many of whom perform more peripheral or supportive roles. These personnel can come too easily to be cast as interchangeable extras in the court scene, but they in fact perform crucial functions in orchestrating the flows of this space, managing its atmosphere and setting the tone for the myriad, interpersonal interactions that are contained within it. Court ushers, for example, choreograph the daily functioning of the court, traversing the boundaries of the inside trial space and outside waiting areas, and becoming the key liaison point between legal professionals, trial parties, witnesses and jury members. Waiting areas are liminal spaces – not inside the courtroom but not fully outside the trial (Mulcahy, 2008; Smith, 2018). They hold the possibility of surprise and danger, but they can feel quiet and solemn (Dahlberg, 2009). Court ushers – along with security guards, cleaners and catering staff – perform a key role in setting the atmospheric tone within and between these liminal spaces, and it is a tone that resonates through interactions with differently positioned actors. This also requires emotional management and careful embodiment of appropriate feeling rules (Hochschild, 1983).

Interpreters and intermediaries too have often been overlooked, or inappropriately perceived as neutral conduits of information. Research indicates that they are routinely required to lend their voice to distressing narratives of abuse, sometimes recounting incidents alleged to have occurred in communities and cultures of resonance to them and their families. In the context of asylum and immigration tribunals, Baillot et al. (2013) highlight the substantial emotional challenges experienced by interpreters, who reported breaking down after hearings and avoiding certain distressing terminology, despite potential ramifications for claimants. Other cohorts worthy of further attention are victim support workers. Some (limited) research has revealed, for example, that volunteer rape crisis workers experience spill over emotions that require management through social support networks (Gunby et al., 2020; Thornton & Novak, 2010). Meanwhile, Molloy's (2019), and Munro and Aitken's (2019), research with workers in women's refuges highlight the risk of vicarious trauma and burnout, requiring redress by sustainable mechanisms of self-awareness and supervision. Transposing this to the context of interpreters and intermediaries also highlights the potential for compassion satisfaction[4] by those who see themselves making a difference to people's lives (Figley & Stamm, 1996; Hernandez-Wolfe et al., 2015), and for vicarious resilience[5] to be learned through modified approaches to self-care and connection to traumatised clients (Edelkott et al., 2016). However, such affirmative consequences – which are already difficult to achieve within collective settings – may be even more difficult for interpreters or intermediaries, as a result of their often-isolated modes of working.

One final constituency to consider is the jury. While little research has examined the impact of emotion on juror decision-making in England and Wales, in the US in particular there has been a steady – and growing – literature on the way juror emotion is elicited by trial and sentencing evidence, and how these emotions affect decision-making, moral reasoning and impartiality (Salerno & Bottoms, 2009). Within this, it has been argued that sadness and fear encourage more careful, detail-oriented processing of evidence, whereas anger and disgust encourage heuristic and attention-narrowing information-processing (Tiedens & Linton, 2001; Estrada-Reynolds et al., 2016). A common focus of research in this area has also been to use stimuli – such as victim impact statements or crime scene photographs – to evoke emotion and measure its effect on decision-making by mock jurors (Salerno & Bottoms, 2009; Nuñez et al., 2015; Bright & Goodman-Delahunty, 2006; Georges et al., 2013). Victim impact statements have been found to increase empathy and compassion for victims and their families, while increasing negative views about defendants and their ability to be rehabilitated (Paternoster & Deise, 2011; Butler, 2008; Boppre & Miller, 2014). Meanwhile, studies have found that mock jurors watching the sentencing phase of a capital trial experience anger and sadness (Nuñez et al., 2015; Patermoster & Deise, 2011), with anger increasing the weight accorded to prosecution evidence (Bright & Goodman-Delahunty, 2004) and promoting greater support of death sentences (Nuñez et al., 2015). The role afforded to, and the transparency and accountability that surrounds, jury decision-making will vary across jurisdictions and justice systems. However, this research underscores the

importance of recognising the jury, and individual jurors within it, as involved in a process of navigating emotional and affective impulses – during the trial, the verdict deliberation and the aftermath of proceedings.

Indeed, in addition to impacts on decision-making, research has illustrated the scale of stress often experienced by jurors in the immediate- and longer-term (Lonergan et al., 2016; Miller, 2008). Having interviewed 40 jurors after their participation in a criminal trial, Kaplan & Winget (1992) concluded, for example, that more than two-thirds displayed symptoms consistent with PTSD and depression, whilst studies focusing particularly on jurors in US death penalty trials report even higher rates (Antonio, 2008; Bowers, 1995). There is also evidence in the UK which suggests that female jurors, and in particular those sitting on a trial that is relevant to a prior traumatic experience they have undergone (e.g., sexual victimisation), are significantly more likely to suffer persistent post-traumatic symptoms as a result of their jury duty (see Robertson et al., 2009).

Until recently, these stressors experienced by jurors have been barely recognised or accounted for. In some jurisdictions, however, steps have now been taken to mitigate these effects, for example, by the introduction of post-verdict debriefs (Bornstein et al., 2005). Sometimes these are led by clinicians; more commonly, they are led by trial judges who lack the requisite expertise and training. As such, unsurprisingly, they often have limited impact (Bertrand et al., 2008). Meanwhile, other jurisdictions – including England – have continued to operate without even such limited forms of response to the risk of jurors' post-traumatic stress: at the end of the jury service, jurors are typically informed that – for fear of being in contempt of court – they must not speak to others about their experience. This excludes them from what, for many, would be the most immediate route to processing distress and anxiety – speaking with trusted confidants – or seeking professional counselling. It thus raises questions about the ethical responsibilities owed to those who, in the performance of their civic duty, are harmed by engagement with the criminal justice process.

Expanding the Scene: Holding Trauma, Managing Emotion, Exchanging Affect

Though this existing research on emotion, and emotional labour, in the criminal trial has brought valuable insight, by tending to focus only on particular protagonists, and a relatively restricted cast of protagonists at that, it has tended to envisage emotion primarily as something 'held' by one person, rather than as a dynamic force that flows, refracts, absorbs and reverberates across bodies and atmospheres. Capturing this alternative understanding of the 'life force' of emotion, we argue, requires a more holistic approach to criminal justice environments. Such an analysis is important to any effective reform of the system and requires us to adopt a more embodied and sensation-based approach to research (Ferrell, 2018). In this section, we explore further how this might be achieved by drawing on the affect theory (Clough & Halley, 2007; Gregg & Seigworth, 2010; Massumi, 1995, 2009; Shouse, 2005; Wetherell, 2012). We find affect theory particularly instructive because it supports a more expansive account of the court space and processes, by encompassing a broader range of interactions, sensations and feelings, beyond that of trauma and emotional labour. This also requires being attentive to the diverse array of court protagonists and places emphasis on the existence, role, curation and shifts in atmospheres that are central to the expression and execution of criminal justice (Bens, 2022). Overall, affect theory supports a holistic consideration of the court space, as we explore.

Affects are intensities and sensations that infuse our lives (and our bodies), either fleetingly or for a more sustained duration, either negatively or positively (Sointu, 2016, p. 312). They are profoundly relational and potentially transformative (Burkitt, 2014; Wetherell, 2012), but also unpredictable and uncontrollable due to being bound up with the lived experience of the body (Massumi, 2009). A distinction between affect and emotion can be drawn, whereby emotions are understood as a consciously felt subset of a broader range of ineffable and fundamentally embodied sensations (Clough & Halley, 2007; Massumi, 1995, 2009; Gregg & Seigworth, 2010; Shouse, 2005; Wetherell, 2012). While affects, in contrast, can remain unconscious, they nonetheless play a critical role in interactions in court and therefore necessitate investigation. Moreover, affects intertwine with discourse and practice in tangible ways (Sointu, 2016), whereby discursive exchanges can produce embodied affects: with testimony-giving in a criminal trial perhaps being a particularly poignant illustration for witnesses, interlocutors and observers alike.

Exploring the affects of the court space will, therefore, assist us in developing a more holistic analysis of the intensities that flow between and amongst the various bodies in situ (Bens, 2022; Carline et al., 2020). Affective capacities are not limited to human bodies but can be implicated in 'a host of other materialities, affects, elements, things and objects' (Fairchild & Mikuska, 2021, p. 1178): the dock, the judicial bench, the placement of protective witness screens and TVs used for remote links, the lighting and temperature of the courtroom, for example. All of these interact to produce affects amongst actors, with criminal courts being designed to evoke sensations, emotions and intensities (Bens, 2022), Hence, a turn to affects also helps us to understand the importance of the interactions between a wider and more diverse array of (not always human) bodies and court environments – a relational dynamic, as argued, that is too frequently overlooked.

Affects also permeate other associated criminal justice spaces beyond the walls of the courtroom, including waiting rooms and threshold spaces (e.g., the vestibule to the courtroom). Adopting a more expansive notion of court space, and of the emotional flows and affective performances

that inhabit it will also enable an exploration of the management of the flow of people in and out of the courtroom, which can itself be an emotionally challenging task.

In a previous work set within the prison context, Crewe et al. (2014) adopted a reminiscent approach. They identified and analysed 'emotion zones' in which the range and conditions of feelings possibly expressed and experienced could be differentiated. Meanwhile, Moran (2016) considered the ways in which prison spaces elicit, facilitate or limit different emotional expressions, as well as the embodied strategies that prisoners use to resist. Using an International Criminal Court trial as his testing ground, Bens (2018) has similarly highlighted that participants experience the atmosphere of the courtroom as an integrated whole, as opposed to the sum of the individualised, emotional components. To fully understand the emotional and affective labour that is undertaken in this context, Bens (2018) argues that researchers need to explore the relationships and interactions between bodies and the atmospheres which flow from these dynamics (see also Bens, 2022). This also involves being attentive to 'affective contagion' (Hansen, 2004), a dynamic frequently overlooked in research, whereby bodies are – consciously or otherwise – imbued with not only the emotions but also the sensations of others.

In this work, we take up this call, and in particular we consider the potential for applying it to proceedings within domestic criminal courts. Though this is, of course, only one site for such analysis, it is – we believe – a particularly instructive one since within these spaces the more mundane justice work of engineering diversions and managing recidivism for low-level offending co-exists alongside confrontations and punishment of violent criminality. In the wings of the domestic criminal courtroom, moreover, are liminal spaces such as waiting areas and public galleries fraught with the prospect and potentialities of out-of-place or uncontained emotions. Indeed, as we discuss further below, in our observational fieldwork, this gave rise to a particularly uneasy co-existence, where the emotionalities associated with these different modes of engagements often required the performance of rapid atmospheric and affective shifts.

Exploring the Affective Contours of the Criminal Justice Space

To explore the feasibility of any enterprise designed to better trace and understand the affective and emotional contours of the domestic criminal justice space, two of the authors engaged in a small pilot, comprising ethnographic observations of courtrooms, waiting rooms and other liminal court spaces in two large English cities over four days in December 2019. In drawing upon those observations here, our aim is not to make generalisable claims – the scale and spread of data collected is limited, and there are specificities associated with the cultural and procedural context that mean that uncritical translation to other jurisdictions would not be fitting. However, we would suggest that it is likely that, in other criminal contexts, and across jurisdictions, there will be points of resonance regarding the dynamics, interactions and affective forces that we observed as being in play, which merit wider reporting and reflection. Indeed, within our short period of observation, it was possible to locate numerous moments that could be identified as having significant affectual impact. These moments stayed with the observers for some time after leaving the court space and offer insight into what could be captured by a more holistic, grounded and dynamic analysis of the affective flows and spaces of criminal justice.

In what follows, we draw on those reflections, utilising the lens of Gherardi's (2019, p. 741) concept of 'affective ethnography'. This is a methodological style that recognises that 'texts, actors, materialities, language, agencies' are intertwined and should be understood in relation to one another. The approach also takes seriously the capacity of researchers to affect and be affected by the spaces they interact with, understanding how these interactions will not only inform the interpretation of that which is observed, but also potentially transform the phenomena under observation. Below, we have mapped the affective moments and movements that flowed in and through the court spaces, and the bodies that inhabited and interacted within them, to correspond to three key themes – mundanity, atmospheric integrity and threshold/liminal spaces. These themes, we argue, provide particularly instructive levers for further reflection based on more detailed research.

Attending to Mundanity

There is a mundanity to many of the procedures that take place in domestic criminal justice spaces, an everydayness embodied by many of the regular court actors that sit in tension with the high-stakes and stressful reality for many of the lay population involved in court proceedings. During our observations, this was reflected in trial participants' experiencing long and unpredictable periods of waiting in what were generally inappropriate spaces, with little option for privacy and restrictions on one's capacity to leave and return. Mundane conversations about people's pastimes floated around the large communal areas, while parties waited for their case to be called. The reality of disruption and delay is a well-known feature of criminal (and other) trials, and one which has become of increasing concern in the UK (Chalkley & Chalkley, 2020). In our observations, delays also stemmed from other, more mundane factors, including the need for the judge to check the law pertaining to the sentencing of youths in a case involving two young male offenders, or having to postpone proceedings following the non-appearance of a defendant who claimed to have suffered a panic attack: the veracity of which was disputed by the judge.

Within the courtroom, the mundane everydayness of proceedings, for some participants, was also abundantly evidenced through performative acts – including, a court usher visibly yawning during the accused's testimony, and another placing a pen in his mouth as he was finding a way of managing the flow of people (and their spontaneous interactions) into and out of the courtroom. In another case, during a protracted legal conversation between the judge and diversion officer regarding what powers were open to alter a sentence, the offender who had testified over videolink from prison remained, with their image beaming down from the TV screen whilst he sat in the CCTV room playing nervously with his cross necklace. These examples illustrate how affects stem from interactions with the various materialities of the court space: the law, the people and the passage of time. Sometimes, this mundanity crossed over into direct interactions with defendants, including, for example, the Monday morning query by a dock officer of co-defendants in a drug supply case as to whether they had a good weekend as he led them from the public gallery.

In another case that we observed, which involved a drink-driving charge, there was a dulled emotional response amongst the legal professionals in court – marked by an absence of facial/bodily reaction – when it was noted in evidence that the accused had previously been found with a machete in the rear of his car. This absence of reaction to the possession of a serious weapon, or surprise at the juxtaposition of this machete owner now claiming mitigation to the current charge on the grounds of needing to look after an elderly and housebound mother, maybe a consequence of the legal actors' abilities to manage professional distance, their de-sensitivity to serious criminality, or the routinised nature of surprising disclosures from trial protagonists. Such moments move beyond outward displays of emotion and tell a story about the everydayness of the court space. They communicate the numerous ways in which the affective environment is felt, and the attempts at management by participants, where differently situated bodies interact with the multifarious materialities of the court space and are affected in a myriad of ways.

Manufacturing and Maintaining Atmospheric Integrity

This mundanity co-existed alongside the more serious and ceremonial atmosphere of the courtroom, although this ebbed and flowed as trials and processes came in and out of being, shifting from more relaxed and jovial to an atmosphere of serious business. For example, during our observations, opposing barristers – often well-known to each other – frequently talked, laughed and joked before the commencement of proceedings; sometimes in front of family members who were there to support those involved in a case. These interactions between advocates may have felt out of place to on-lookers; yet this is the (mundane) reality of their workplace. The entrance of the judge and jury typically announced a change in atmosphere to one of somberness and ceremony. This was an atmosphere that court actors and bodies worked together to produce and maintain through a combination of performances and utterances. These served to produce (and reinforce) the expectations and feeling rules of the courtroom, and in turn, constitute a collective (as opposed to individualised) form of emotional labour (Watson et al., 2021). This reinforces how atmospheres are productive of, and impacted by, feelings, sensations and changes within bodies (human and otherwise) (Anderson, 2009; Brennan, 2004; Gherardi, 2019; Leff, 2021) and are neither static and permanent, but rather shift and change, as they are dynamic, malleable and unpredictable (Anderson, 2009; McCormack, 2008; Watson et al., 2021).

We can also link these observations on atmospheres to understandings of the courtroom as a dramaturgical space, where performances are played out, sometimes consciously (Bergman Blix & Wettergren, 2018). For example, in one courtroom, the usher declared himself to be 'the director of the play'. Ushers do indeed perform a vital role in the management of court space, both in terms of its operations and the curating of appropriate atmospheres. We observed this usher manage interactions with numerous protagonists. This included not only the advocates and the parties involved, but the press, friends and family members of the parties, as well as those wanting to observe cases, which – in addition to the authors – included (on one occasion) three University students attending in fulfilment of coursework requirements.

This interactional management by the usher became particularly acute in one case, involving the sentencing of two young male offenders. Upon entering the courtroom, the friends and families of whom were in high spirits – loud, laughing, joking and communicating with the defendants. Throughout, there was an apparent lack of sensitivity amongst this delegation to the affective expectations of the place, space and seriousness of the issue. Appearing exasperated by this, the usher queried loudly, and in the direction of the advocates, whether security was required. Here, we see the effects of unauthorised displays, or overflows of emotions, that challenged atmospheric norms and the ways in which the usher, as director of the performance, struggled to contain and restore 'order'.

In this case, the entrance of the judge (which, as noted, often signals a tonal change) did not provoke a shift in the behaviour that had exercised the usher. Friends and family continued to be boisterous and communicate with the defendants, who likewise had a performance and demeanor out of kilter with the ceremonious norms of the courtroom. Both were dressed in a manner that many would consider ill-fitting for the setting (including tracksuit bottoms that sat low). They talked during and over the prosecution's opening speech, vocally disputing the version of events presented.

Unable to rely purely on his presence to produce the expected transformative affect in the parties, the judge was required to interject and warn them that they would be removed from the courtroom if they continued in this manner. Later, when the judge commented on an element of 'boasting' in the pre-sentence report, the defendants smirked, seemingly finding amusement in the comment. However, over the course of the trial the sense of seriousness appeared to incrementally dawn on the defendants, observed in the shift from an initial appearance of arrogance, to one of nervousness, evidenced in tapping feet, a lowered gaze, quietened tones and the wringing of hands. The judge in this case deliberately curated the atmosphere change by managing his interactions with the parties and declaring frequently how serious the offence was and how, if they were adults, they would receive a significantly longer sentence. This 'affective interpellation' involved the judge working to bring the protagonists into line with the expectations of the courtroom environment, through adopting and reasserting a process of looks, tones and utterances (Roach Anleu & Mack, 2021).

In other trials, by contrast, nervousness was palpable from the outset, permeating the atmosphere and particularly evident amongst family members awaiting outcomes. For example, through the anxiety-ridden faces of the girlfriends of co-defendants in a drug trial when they were called back into the courtroom for the jury to ask a question. In other cases, apprehension was displayed through an incessant chattering to other courtroom protagonists (e.g., between a defendant and a security guard), emphasising that affects are – or can be – preconscious: arising and impacting the body without awareness, producing autonomic responses or a 'non-conscious experience of intensity' (Shouse, 2005, p. 2). One observed case concerned an attempted murder to which the defendant had pled not guilty, although he had previously admitted guilt in respect of a lesser charge of assault causing grievous bodily harm. The victim, a largely built white man in his 30s, struggled to contain his emotions throughout, frequently emitting sighs, sounds and shaking. The challenge of waiting for the verdict, an inevitable aspect of the jury trial, almost proved unbearable for the victim. When the jury returned with a verdict of not guilty to the attempted murder charge, a pronouncement of powerful discursive impact, this brought about a shift in the victim who whilst still visibly shaken, gained some degree of composure. The seriousness of the case and the victim's distress were felt acutely by the researcher sat observing, due in part to the small public gallery, composed of only two rows of approximately 10 seats.

As noted, atmospheres are not completely controllable and abrupt shifts and contradictory ruptures frequently – and sometimes unexpectedly – occurred. Some of these could have been anticipated and more effectively managed. For example, an incongruous 'Life is Good LG' logo, which acted as the default landing image on the TV screen in the courtroom used for live-links to the prison remand suites. Others were more spontaneous, such as the smirks shared between court clerks when an accused referred to the judge as 'your majesty'. Similarly, the coming in and out of the courtroom en masse by a group of children from a local religious school, as part of their 'Modern Studies' syllabus observation, had a disruptive effect on the courtroom and atmospheric flow. Affective shifts could also be seen in unusual displays of emotions, including fist-bumps amongst people in the public gallery to support their friend on trial for attempted murder and the thumbs-up they gave him through the glass as he was brought up to the dock. In the same case, one jury member tried to catch the eye of the accused and give him a smile as the not-guilty verdict was delivered. Here, we can also include the case discussed above involving the two young male defendants and their boisterous supporters, who impacted the atmosphere of the court and required concerted interactional management by the usher and the judge.

Expanding Scenes and Liminal Spaces

These shifts and anxiety-filled moments were not contained to the courtroom and public gallery but, importantly, also flowed out in various ways into the waiting areas and beyond. Examples from our observations included a huddled conversation between clients and counsel in the communal areas, often involving them sitting on fixed seats that could not be moved to create more intimacy or confidentiality; a police officer wishing another good luck for the trial ahead when passing in the corridor; or a young male barrister nervously fixing his hair and wig in the lift on the way to the courtrooms. Through these moments and interactions, we see how affects and affective atmospheres slip and slide between intentionality, cognition and autonomic response.

Affective interactions also occurred between the observing researchers and court protagonists. In one instance, for example, a white middle-aged man who could be described as disheveled in appearance approached one of the researchers to ask – in an uneasy manner – where he could find the information for the time and place of his hearing. When directed to the screens outside the individual courtrooms, he replied – again awkwardly – that he could not read. After helping him to find the time and place of his case, it prompted reflection on the numerous tensions at play within the court environment. For example, the assumption is that everyone attending will be able to read and access vital information. There were also wider factors at play pertaining to privilege and education, including the stark contrast between those well-dressed advocates and some (but not all) of the lay courtroom participants. There is also a division that is consistently enacted and enforced between those who are of – and at ease, within that space – and those who are at once a central protagonist (as victim/witness/defendant) and yet out of place. In this encounter an assumption also appeared to have been made that the researcher held

an official role in the court, likely based on their dress and demeanor. The researcher, however, occupies a more liminal position in that space, both at home within it (as an academic criminal lawyer) but also as a visitor and not quite of that world. Their observational role also brought with it feelings of unease, intrusion and voyeurism, stemming from observing what were frequently crucial, intense and life-changing moments for those attending court.

As within the courtroom, unexpected events occurred in these liminal areas which felt out of place with the somberness embodied and transmitted by others. This included, for example, four young men who arrived early to the court in high spirits. On seeing one of the researchers in the waiting room they 'shushed' each other in what might be thought to be some form of attempt to regulate their activity. However, they then proceeded to place one of their mobile phones on the windowsill in the waiting area to take timed selfies. They were later joined by friends and/or family members who brought with them a hamper of food. Together, this group dominated the waiting area, imposing an almost jovial atmosphere that again jarred against expected conventions. The feel in that moment was more of a family day out as opposed to a potentially life-changing criminal justice event, and this was left to co-exist alongside – yet sit in tension with – the more anxious and worried performances of other court attendees. In another trial, not dissimilarly, family members returned to court after lunch with an array of shopping bags and asked the usher to keep them in the vestibule of the court, to which he refused. The parties here appeared to have capitalised on the proximity of the court to the main shopping centre in the city. Bringing the commercial 'outside' into the court space – with visible representation through the shopping bags – created a disconnect between the solemnity and function of the space and the associated formal and informal rules and etiquette.

All of these events tell a unique story of an array of differently situated players in the criminal justice space and shed light on the various processes and intensities which inform their experiences of the criminal justice system. Taking affects seriously in the court environment requires attending to these interactions, what they express and contain, and how they infuse and inform the emotional labour and legacies that are intimately constructed by, and constitutive of, the criminal trial process. It also involves exploring the dynamic nature of those interactions: how they iterate, shift and shape in relation to others' emotional cues and performative interventions, rituals and conventions, and extant physical and atmospheric conditions. The affects that frame the courtroom experience are not restricted to the headline actors and are not solely commodities held and managed in static form by any given individual. In contrast, they are dynamic forces, which in their flow and fluctuation give rise to unexpected points of rupture and excess and can be set in motion most prominently by the actions and attitudes of formally peripheral protagonists.

Conclusion

This article has set out how existing research, in the UK and elsewhere, has typically explored the ways in which emotion infiltrates and informs the actions of protagonists in criminal proceedings. In particular, we have seen that this has tended to focus on certain cohorts – legal professionals, victim-witnesses and defendants, with other participants receiving less attention. It has also tended to consider emotion as a commodity, which is held – and felt – by one person, often within a framework of trauma, emotional labour and – to some extent – emotional taint and contagion. Without jettisoning the importance of these insights, we have argued that a move away from individualised models towards more inter-relational approaches, and in particular to an understanding of atmosphere, sensation and feeling within the frame of affect theory, will bring to light new and deeper understanding.

A turn-to-affect theory enables a wider range of emotions, sensations, reactions, atmospheres and interactions to be discerned and responded to by researchers. We argue that using the tools of 'affective ethnography' will facilitate a mapping of the varied dynamics of the criminal court and thereby reveal a more holistic and grounded understanding. As part of this, we have also advocated for a widening of our frame. This will allow us to look beyond the courtroom itself to include liminal areas and neglected actors. Affect theory requires that we pay attention to the diversity of bodies and participants within the court space. With the growing use of technology to facilitate hybrid or virtual trials, this approach is also likely to provide valuable analytical tools for understanding how the dynamic nature of interactions may be felt, and read, differently in this context.

Developing projects which explore the 'affective ethnography' of the criminal court space is not an easy task. The law has not traditionally been thought of as a place in which affect or emotion bears an influence. More recent critical scholarship has challenged law's unemotional self-image. Such scholarship highlights the impact that politics and personality can have on legal outcomes and thereby illustrates the precarity of legal fixity. However, taking affect seriously involves a different – and potentially more threatening – type of critique of prevailing legal ideology. It may also be a relatively easy critique to dismiss: strategies that refract law's emotionality back on itself might be deployed, for example, to suggest that affective analyses rely on impression and intuition rather than robust, replicable and measurable data. This itself poses challenging questions about positivistic knowledge claims and the distortions that can arise when we see visceral, embodied and affective exchanges solely through that lens.

There are further challenges which arise from an exploration of affects in the court space that can similarly be linked to their subjectivity and process-based nature. As Gherardi (2019) argues, affect is less an object to be observed, but rather a dynamic and embodied process. It is not necessarily easily witnessed and may trouble our

understanding of how systems operate. Exploring affects requires time and patience to get under the surface of a space, to supplement – though not supplant – one's immediate and visceral responses to atmospheres, personnel and practices with a diversity of experiences and a plurality of observations in both heightened and more mundane situations. This requires being cognisant of the relationship between emotions and affects, and the development of research questions focused on specific bodies situated in specific spaces (Knudsen & Stage, 2015, p. 5). Additional challenges can certainly arise from questions around how to empirically denote affects (Knudsen & Stage, 2015, p. 7): as discussed, there is a messiness to their ebbs and flows which involve moments of rupture and unpredictability. There are also moments which are more intuitively felt or sensed, as opposed to directly observed. This requires the development of inventive concepts and mixed methodologies including embodied data (Blackman & Venn, 2010; Knudsen & Stage, 2015), detailed fieldnotes and the capturing of the routine as well as the spectacular (Roach Anleu et al., 2015). It requires researchers' attentiveness and a shift in focus to what is done, and how it is done, in addition to observing interactions and noting sensed intensities. Thought also needs to be given to the position of the researcher, who is one of the affectual bodies within the process, as opposed to an objective observer. These elements can render the research process difficult to replicate across sites because differently situated (researcher) bodies may experience different reactions to similar events. This also points to broader logistical and practical challenges, as resources for such slow research have diminished in the social sciences, where accelerated trajectories for impact that capitalise on momentum and address imminent problems have been privileged.

Nevertheless, we have argued that, despite these challenges, affect is able to be examined empirically and that a wider exploration of affect in the criminal courts could yield benefits. The turn to affects can enable important insights into a wider and complex reality of the court experience. Understanding the inevitably relational and unpredictable nature of affects can help to make sense of research that highlights the limitations of personal and policy-based strategies of emotional containment amongst protagonists in the criminal trial, since the contagious nature of affective engagement leaves it liable to unsolicited resurfacing and seepage. Such unique insights provide the starting point to develop bottom-up interventions in the system, which – while never quite controllable – may augment people's experiences, or at least ameliorate some of the more negative aspects.

Some of the changes that this points us toward may be small in nature, though far from inconsequential: for example, removing a 'Life is Good' logo on the court's television screen or increasing professionals' mindfulness of body and facial expressions when lay participants misuse language in court. Larger interventions may include ensuring more appropriate spaces for pre-trial conversations with counsel or assisting all parties to navigate the environment more equitably by ensuring court signage that does not require literacy. They may involve clearer recognition of the role, and associated needs, of less visible court players (e.g., ushers and court clerks) tasked with managing the affective atmospheres of the courtroom and the emotions of others on a regular basis, as well as improved – and clinically lead – support for jurors post-trial.

Even more ambitious interventions might extend to change in the way that courts are designed and how legal professionals within them communicate with defendants, complainants and their families. Judicially led, and drawing on partnerships with indigenous communities, an initiative called Te Ao Mārama in the New Zealand courts, for example, seeks to ensure that defendants, complanaints and witnesses 'can be seen, heard, understood and meaningfully participate'. This is achieved by tailoring how cases are heard to the needs of those participants, including through the provision of on-site access to social support services and mainstreaming of solution-focused courts (District Courts New Zealand, n.d.). Likewise, the Neighborhood Justice Centre in Melbourne, Australia, has taken radical steps to foster engagement amongst all those who attend court (including practitioners and lay participants) through, amongst other things, the design of the court environment. The focus there has been on designing in natural light to encourage alertness, using glass paneling to enhance transparency and the ability to see into the courtroom (and out into the waiting area), as well as the use of single-glazed walls to allow the sounds of the neighbouring primary school to enter the court space (Henderson & Duncanson, 2018).

In the context of a criminal justice system that, in the UK at least, has suffered substantial resourcing cuts in recent decades, it is easy for such affective concerns to be overlooked, or dismissed as too trivial to merit attention. However, we argue, that attending to the 'affective ethnography' of the courtroom, and the affective forces that both create and are created by the interaction and operation of its myriad participants, may be key to ensuring more effective pursuit of procedural and substantive justice outcomes, and to an ethical and attentive justice process.

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Notes

1. "Justice journey" refers to sexual violence victim-survivors' journeys through the criminal justice system from the point of police report through to outcome. The focus is on those aspects that impact a victim's experience and engagement (see Brooks-Hey et al. 2019, p. 1). While the phrase was developed in relation to sexual violence cases, it could be applied to other offences, and is used in that manner here.
2. Compassion fatigue refers to feelings of exhaustion caused by the requirement to show compassion, empathy and provide support to those who are suffering or who have been harmed (Figley & Roop, 2006).
3. Vicarious trauma refers to the accumulative mental health impacts that can stem from exposure to someone else's trauma (McCann & Pearlman, 1990).
4. Compassion satisfaction refers to the feelings that flow from helping others (Dehlin & Lundh, 2018).
5. Vicarious resilience can be defined as the effects on therapists resulting from exposure to their clients' resilience (Hernández et al., 2007).

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