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Doing loyalty: defence lawyers' subtle dramas in the courtroom

Abstract

The courtroom work of defence lawyers has received surprisingly little sociological attention. What does a defence lawyer actually do in court? How do defence lawyers represent their client beyond the hard paragraphs of the law? By studying this phenomenon in a context where the scope for expressive gestures is limited, it is possible to gain a greater understanding into the often subtle ways in which legal teamwork is performed. This article draws on ethnographic field notes from courtrooms in Sweden to explore how defence lawyers who have taken an oath to loyally represent clients, do this using (1) little dramatic productions, (2) little dramatic reductions, and (3) directions of teammates. These strategies are found to involve the use of props and the body in order to perform vicarious face saving practices necessary to maintain professional face and teamface and to manage face threats. Each of these strategies reproduce and reinforce the emotional regime of the courtroom. The findings show how defence lawyers not only represent their clients judicially but also interactionally.

Introduction

Most research about defence lawyers is on the juridical or legal representation of one's client (Flower 2014b, Conley and O'Barr 1990). So whilst "[t]he work of lawyers is founded on interaction" (Flood 1991, 69), how a defence is achieved interactionally has gained little

attention. In this article I will address *how* defence lawyers defend clients from a sociological standpoint. That is, how do defence lawyers represent their clients interactionally using emotion management and impression management strategies? How can we discern the emotional regime of the courtroom within such interactions?

I argue that the role of the defence lawyer typically demands teamwork, indeed in popular culture we often talk of the “defence team”. In Sweden defence lawyers have an obligation of loyalty and fidelity, seen here as an affective line of loyalty. By focusing on the “minutiae of interaction”¹ the strategies used for showing such loyalty will be described and contribute to understanding the interactive work behind a trial which is seen to be fundamental to its outcome (Aronsson, Jönsson, and Linell 1987, 114).

Court proceedings in Sweden do not have juries and are interesting to explore as they are relatively informal and less adversarial² or theatrical than their Anglo-Saxon counterpart (Aronsson, Jönsson, and Linell 1987, Dahlberg 2009, Borgström 2011) thereby bringing an inherent subtlety to the performances within. In “the theatre of the courtroom” (Levenson 2007) the prosecution and defence are directors, editing the facts that support their working hypothesis and constructing a convincing story for the court (Dershowitz 1986, xxiii, Ebervall 2002). Defence lawyers present the chosen facts and mould them in the courtroom using interactional techniques, for example using interpretative conversational strategies to collaboratively construct deviancy or normalcy in competency hearings (Holstein 1993, 1988). Whilst the verbal construction and destruction of facts is an interesting area to explore further in the courtroom (cf. Smith 1978, Potter 1996, Conley and O'Barr 1990) the focus in

¹ My thanks to an anonymous reviewer for this formulation

² Here I mean that Sweden is less combative than other systems (see Duck 1986, 165-166 for a discussion). Sweden has a mixed form of legal system with elements of both inquisitorial and adversarial systems (Eser 1996, 343) with two adversaries: prosecution and defence with the judge ensuring fair play, however the judge may also ask supplementary or clarifying questions if required.

this article is on nonverbal, symbolic communication enabling me to explore how nonverbal communication is used when turning a defendant's description into facts (cf. Potter 1996, 7).

The Swedish courtroom: an emotional regime of control and subtlety

Staying within the boundaries of the emotional regime or “normative order of emotions” (Reddy 2001, 124) of the courtroom is important as both verbal and non-verbal communication can be (mis)interpreted by its various actors, this being especially true of subtle aspects such as facial expressions, gestures and alertness (BRÅ 2013). I use the term “emotional regime” to refer to “the rule-bound and controlled set of institutional norms which enable power to be exercised in ordered ways within a framework of civility” (Harris 2011b). The subtlety of Swedish courtroom and its emotional regime has been described (Bergman Blix and Wettergren 2015, Flower 2014a) as viewing “emotion as disruptive of rationality” (Bergman Blix and Wettergren 2015, 3) therefore emotions should remain hidden. As Swedish gestures are typically subtle, for example, facial expressions and gestures and often smaller and less intense compared to other cultures (Allwood 1999, see also Hägg 2004), This means gestures are muted yet conspicuous, even in the courtroom providing a challenging area for ethnographic work.

The use of body language and gestures may also be limited in the Swedish courtroom due to its lay-out, for example defence lawyers tend to sit rather than stand when giving their closing argument as this is considered most appropriate and comfortable (Borgström 2011, 135, see also Duck 1986). However, as the courtroom can constitute a scene for strong emotions even in Sweden (Dahlberg 2009, Adelswärd 1989, Bergman Blix and Wettergren 2014, Törnqvist 2013), defence lawyers are expected to have strategies available for an appropriate performance within the performative and emotional constraints. The guiding rule for defence lawyers, *foriteter in re, suaviter in modo*: resolutely in fashion, gently in manner (Blomkvist 1987) should be adhered, for example, those arguing before a judge considered to

be difficult are advised to react to the judge's peculiarities *only* if it is in the client's interests and indeed then only subtly: "with cool dignity, *perhaps accentuated with raised eyebrows.*" (Blomkvist 1987, 83). Violating these boundaries or using aggressive interrogation techniques may antagonise other legal parties in the courtroom, which may lead to the court being negatively positioned towards the defence lawyer (Blomkvist 1987, Mellqvist 1994, Borgström 2011). Counterparts not conforming to these norms are considered unusual (Mellqvist 1994). Such emotional restraint can be compared to displays of judicial or righteous anger by "angry judges" in the United States, for example in the form of "benchslaps"³. (Maroney 2012) Therefore as Maroney notes, "cultural variability requires cultural competence" (Maroney 2015, 3) in order to see the comparatively subtle emotions in the Swedish courtroom.

Research on interactions and emotions in the courtroom

Studies on the Swedish courtroom have previously focused on linguistic or discursive impression management (Aronsson, Jönsson, and Linell 1987, Adelswärd 1989) and the obligation of duty prosecutors and judges must follow, namely objectivity (Jacobsson 2008, see also Maxwell Atkinson 1992). However more recently the focus has turned to emotional aspects: prosecutors' use of emotions (Törnqvist 2013), the emotional impact of a trial (Elsrud, Lalander, and Staaf 2015) the display and representation of emotions (Dahlberg 2009), judges' use of emotions (Bergman Blix and Wettergren 2015), socio-psychological aspects of the courtroom (BRÅ 2013) and in an earlier article, I describe the emotional regime and presentation of objectivity on a Swedish law program (Flower 2014b). One function of the defence lawyer is to make the defendant seem credible (Duck 1986) achieved in part by giving the impression that the case is a "self-evident gestalt." (Scheffer 2006, 335).

³ Benchslaps are expressions of anger ranging from shouting to sarcasm, one instance even describes where a defendant is bound and gagged at the order of an enraged judge Maroney 2012:1240.

Research on impression management in the courtroom has analysed how such strategies influence the jury (Rose, Seidman Diamond, and Baker 2010, Hobbs 2003, Archer 2011a) and the nonverbal communication of judges and attorneys has also been explored (Blanck, Rosenthal, and Hazzard 1985, Blanck 1987a) along with the importance of interpersonal skills in lawyering (Feldman and Wilson 1981). Although Sweden does not have a jury system the research conducted on trials by jury is relevant to this article as it shows the impact nonverbal communication can have on decision-making⁴ as in such trials, “nonverbal communication subtly affects the entire proceedings” (LeVan 1984, 83, see also Brodksy et al. 1999 for an overview), including the juror’s decisions (Levenson 2007, Diamond et al. 1996, Bandes 2015). The effect on the judge is, as yet, unexplored and the role of the defence lawyer on the decision-making process of juries is under debate (O’Barr and Conley 1976, Diamond et al. 1996).

In trials by jury “the parties act out a human drama and the jury provides the conclusion” (Levenson 2007, 3) but I argue that even if the Swedish system does not have a jury, it still runs on “human fuel” (Duck 1986, 166): interactions, emotions and relationships which are largely unexplored and which this article contributes to revealing. For example, even when intense conflicts arise in the Swedish courtroom, courtesy and civility should be maintained therefore personal judgments and feelings may be hidden beneath a calm veneer of controlled and regulated emotions⁵ (Dahlberg 2009, Adelswärd 1989). I argue that this may be explained by the emotional regime⁶ (Reddy 2001, 124, Flam 2000) and the corresponding display rules

⁴ In the recent trial of the Boston Marathon Bomber, the defence lawyer used physical contact towards her client to maintain trust and humanise him to the jury (Keefe 2015, cf. Findley and Sales 2012).

⁵ A similar atmosphere of calm and dignity are also sought after in the American courtroom (Levenson 2007, 35, 43, States 2006), however it would seem that a wider display of emotions is permitted in the United States compared to Sweden (cf. Maroney 2012).

⁶ Emotional regimes in various Swedish contexts have been studied for example, on the Swedish migration board (Wettergren 2010), on a law degree program (Flower 2014b) and in the courtroom (Dahlberg 2009).

(Hochschild 2003) which the defence lawyers must conform to (see also Bergman Blix and Wettergren 2015, Elsrud, Lalander, and Staaf 2015).

Impression management, teamwork and loyalty

These special circumstances warrant ethnographic studies and this article aims to contribute to the field by exploring the subtle interactional impression management strategies used by defence lawyers in order to do team work and follow the affective line of loyalty. My purpose is to explore defence lawyers' strategies for doing teamwork by drawing on ethnographic fieldnotes from Swedish court proceedings. For this, I use a Goffmanian framework combined with an emotion sociological perspective.

According to Goffman we use impression management strategies when we feel we have projected an incompatible definition of ourselves in a social interaction with the goal of such face-work being to avoid embarrassment, maintain face and ensure the interaction flow (Goffman 1956b, a). By following the corresponding "line" (Goffman 1967, 5) we can show commitment to a certain position (Goffman 1972, 280), in the case of defence lawyers it shows a commitment to follow the client's version of events, upon which the defence lawyer must base his or her performance. Face-work or face saving strategies are used to show alignment thereby conveying a particular something to a particular other using "little dramatic productions" (Goffman 1972) which are dramatic realisations used to "dramatically highlight confirmatory facts that might otherwise remain unapparent or obscure" (Goffman 1956b, 19). I add to Goffman's concept of "little dramatic productions" with "little dramatic reductions" and also discuss how these are linked to the emotional regime of the courtroom.

In this article, the defence team is a "performance team" (Goffman 1956b, 48, see Gathings and Parrotta 2013), working to stage a single routine leading to a team impression "which can conveniently be treated as a fact in its own right." (Goffman 1956b, 49). The aim of a team is therefore to control the communication of facts to avoid the audience acquiring

“destructive information about the situation that is being defined for them.” (Goffman 1956b, 87). I will thus show how defence lawyers engage in face work and fact-work⁷ by over-communicating certain facts using little dramatic production and under-communicating others by using little dramatic reductions in order to control the situation being presented by themselves, the prosecution, witnesses and the defendant.

The lawyer and client are expected to act as a unit: “with” each other which may be evidenced by “tie-signs” (Goffman 1972). An obvious tie-sign is the positioning of the defence lawyer and client in the courtroom: sitting next to each other on the right-hand side of the courtroom immediately signally that they are a team. Whilst teamwork entails a degree of social responsibility, mutuality should not be assumed (Goffman 1972). In the case of defence lawyers, there is a unilateral degree of social responsibility as the client has no obligations to the defence lawyer. The defence lawyer is the director of the team performance and thus more responsible for the team’s success or failure (Goffman 1956b, 62). When the team’s co-operation fails or breaks down, reprimands will not be given front stage, rather they will occur behind the scenes.

A disruption in interaction or work flow requires remedial work often as a verbal interchange in order for the flow to be reinstated (Goffman 1953). However, when the scope for verbal interchange is limited, a bodily enactment demonstrating alignment to the situation may be used instead (Goffman 1972). In this article, I will show how the context influences the response, with defence lawyers at times performing non-linguistic responses rather than verbally interrupt proceedings in order for the work flow to proceed and to manage impressions. As Goffman notes, “to describe the gesture, let alone uncover its meaning, we might then have to introduce the human and material setting in which the gesture is made.”

⁷ My thanks for an anonymous reviewer for this term.

(Goffman 1964, 133) To this I would add the emotional setting: the particular emotional norms of the courtroom.

The performer must manage his or her emotions by employing “dramaturgical discipline”, enabling the performer to “suppress his spontaneous feelings in order to give the appearance of sticking to the affective line.” (Goffman 1956b, 137-138) Defence lawyer may thus at times need to hide emotions behind a working consensus. At others times it is appropriate to “suppress even the appearance of sober opposition behind a demonstration of outraged feelings.” (Goffman 1956b, 158) I associate these two performances with little dramatic reductions in the case of emotion suppression in Swedish courtrooms, and little dramatic productions with the demonstration of feelings.

Other non-linguistic tools can include props and, whilst Goffman mentions their role in impression management (Goffman 1956b, 143, see also Freund 1998, 276 for discussion on emotional props), this line is not fully developed and will be explored in this article.

Facework refers to the communicative strategies that enact, support or challenge the socially situated identities or face people claim (Tracy 1990, 210). Facework is part of the adversarial process but it is not the primary goal, facework is “primarily aimed at eliciting evidence from witnesses in such a way as to persuade a jury of their guilt or innocence. Attempts to damage or enhance a witness/defendant’s face (or to enhance/avoid damaging one’s own as a prosecutor) are important not in and for themselves but as a part of the strategic process of presenting evidence which will prove the guilt or innocence of the accused...” (Harris 2011a, 150) My aim here is thus to observe the strategic uses of face work by defence lawyers aimed at constructing facts in the courtroom. The multiple uses of facework can including saving the face of other (client), but also saving one’s own face. Facework in the courtroom can also have multiple goals (Penman 1990), for example, threatening the witness’ face by reacting with disbelief at their testimony, in order to protect

one's own or the face of one's client. Another example may involve damaging the face of one's client, this being "a strategic part of the larger goal of proving the defendant's innocence" (Harris 2011b, 104). Whilst outside of the courtroom such strategies might lead to the receiver of the face damage feeling aggrieved, in the courtroom they are "legally sanctioned by courtroom conventions and norms: hence they seem to be incidental" (Archer 2011b, 6, Goffman 1967, 14, see also Harris 2011b) Another goal of facework in the courtroom is to construct and/or maintain a professional identity (Tracy 2011)

Finally, this article considers two other aspects in doing teamwork and doing loyalty, namely emotions and professionalism. It addresses the perspective that teamwork involves emotion management, "the management of feeling to create a publicly observable facial and bodily display" (Hochschild 2003, 7) (Hochschild's work of course leading on from Goffman's concept of dramaturgical discipline). As a defence lawyer, one's own emotions must be managed but also those of the client in order to attain solidarity or behavioural compliance (cf. Thoits 1996, see also Pierce 1995). Emotion management is therefore linked with professionalism and may require disinterestedness (Parsons 1954), detached neutrality and credibility (Shulman 2000), the suppression or expression of emotional expression (Lively 2000) and/or affective neutrality (Smith and Kleinman 1989). In this article I develop the work on the production of emotions as a professional tool (Maroney 2011).

Following previous calls for particularity when studying emotions (Maroney 2012, 1211-1212, Scheff 2000), this study will maintain a narrow focus on one emotion, namely loyalty. I view loyalty as a central emotion in social processes encompassing contractual loyalty, "an explicit act of commitment" (Connor 2007, 14) and natural loyalty both of which "guide action and construct identity" (Connor 2007, 144) Furthermore, I consider that the expression of loyalty entails the expression or lack of expression of other emotions⁸.

⁸ Indeed, Goffman notes the importance of loyalty in teamwork (Goffman 1956b, 52)

Methods, material and setting

Ethnographic fieldwork was conducted at two district courts in southern Sweden on over 40 occasions, each lasting between two and six hours⁹. The courtroom is normally open to the public¹⁰ and the ethnographic fieldwork involved “taking no more than what people normally make available of themselves to passersby” (Collins 1983, 200), or in this case, what would be available to spectators in the courtroom (see Bergman Blix and Wettergren 2014, Paik and Harris 2015, Blanck 1987b, Emerson 1969, Roach Anleu, Bergman Blix, and Mack 2014 for discussions regarding courtroom ethnography).

As the trap of confirming stereotypes and expectations is easy to fall into, an open mind and an open notebook combined with a keen eye are paramount (Fine 1993, Wacquant 2002, Rock 2001) especially due to the subtlety of the gestures observed. I wrote fieldnotes in a “stream of consciousness” (Fangen 2005, 102) thereby enabling as many details as possible to be captured as accurately and specifically as possible. I have in other words observed representative occurrences of interactions (Collins 1983). Fieldnotes were written contemporaneously during court proceedings, making it possible to capture both verbal and non-verbal interactions as and when they occurred. Being able to write fieldnotes in situ lead to the possibility of focusing on the very small, subtle gestures of the defence lawyers whilst still being able to maintain the overall courtroom context, that is, the interaction within which the verbal or non-linguistic reaction arose. In this way I was able to record dialogue through “direct and indirect quotations, through reported speech, and by paraphrasing.” (Emerson, Fretz, and Shaw 2011, 63), with only direct quotations being placed between quotation marks in the fieldnote extracts described here. Focus was maintained largely on the defence lawyer

⁹ The majority of proceedings observed are criminal cases.

¹⁰ Court proceedings are open to the public, however classified data is presented behind closed doors.

and client, not least because this was the subject of interest, but also to avoid feelings of intrusion or discomfort arising in others present in the courtroom, for example the plaintiff. On a handful of occasions family members or other spectators asked me why I was making notes; on other occasions, my presence was less obvious due to the presence of reporters or visiting school children. For those interested, I informed them that I was a researcher interested in defence lawyers. Fieldnotes were also written during the breaks in proceedings as often defence lawyers, prosecutors, plaintiffs and witnesses stand or sit in the areas adjacent to the courtrooms (waiting rooms, hallways) until proceedings begin again. This also provides opportunity to see some of the backstage work involved even though the main focus of this study is the defence lawyers' front stage work in the courtroom.

The fieldnotes were written up directly after proceedings, enabling me to add details later remembered whilst the memories were still fresh and vivid (Emerson, Fretz, and Shaw 2011). The fieldnotes are thus written and presented as episodes where an incident is described as "one continuous action or interaction and thus constructs a more or less unified entry." (Emerson, Fretz, and Shaw 2011, 359) The goal is to form a cohesive series of events reflecting similar actions.

The process of transforming sensory experiences into text (Fine 1993) involves a reliance on the backbones of ethnography: "sympathy, openness and honor" (Fine 1993, 269) to which I would add trust in the researcher, knowledge and reflexivity. Social life is inscribed by a process of reducing, transforming, selecting and framing (Emerson, Fretz, and Shaw 2011, 12-3), a process that inevitably involves selecting certain aspects and ignoring others (cf. Wacquant's "ethnographic lying", 2004). This article is thus a product of my research focus and is a result of intuition and empathy, interpretation and sense-making (Emerson, Fretz, and Shaw 2011, 2001). It is a transformation of the back-stage work of fieldnotes into the front-stage article you now read.

In this study my focus is on teamwork and loyalty which could influence how I interpret nonverbal communications, because what I find is linked to how I find it (Gubrium and Holstein 1997), this begs the question: is there a risk that I interpret everything I observe as performances of loyalty and teamwork? Will my expectation influence my perception? (Young 1999) I argue here that as my aim is to capture “the active ‘doing’ of social life” (Emerson, Fretz, and Shaw 2011, 14), my observations capture the defence lawyer actively defending the client which, by definition of the defence lawyer’s role, involves the obligation, and therefore performance, of loyalty. My aim is to not to decontextualize situations and consequently, ambiguous interactions which risk being labelled as performances of loyalty (but which are such only in the eyes of the observer) (Wästerfors 2014) retain their context, enabling me to argue that loyalty is performed in response to a preceding attack or a defence (reaction or nonreaction). My aim is then, that by starting with the meaning conveyed, namely loyalty, I can discover the signs (cf. Manning 2001).

Furthermore, what may be viewed as having one meaning outside of the courtroom may actually represent something else within the social context of the courtroom: for example what may be seen as unawareness (unintentionally not observing something) outside of the courtroom may be an instance of civil inattention in the courtroom, (intentionally not observing something). In the courtroom then, “interpretations of verbal and nonverbal behaviour must be considered relative to their social context (Searcy, Duck, and Blanck 2004, 41-42). Rules of communication in interaction will therefore be analysed “in the context of their immediate environment, the court itself” (Mileski 1971, 533) in order to create a contextually-accurate interpretation.

In order to enable an “adequate level of anonymity” (Fangen 2005, 211) without detracting from the authenticity of the text, certain identifying aspects have been changed for example names, sex, scene of crime, or type of weapon.

In addition to ethnographic fieldnotes, I have interviewed five defence lawyers and transcribed the recordings¹¹. Informal discussions have also taken place with defence lawyers and conversations have been held in the breaks in proceedings, which have also been included in the analysis. I used an “active interviewing” (Holstein and Gubrium 1995) approach whereby background knowledge garnered from interviews and during observations enabled the contextualisation and familiarisation of interview talk. This technique also encourages an interactional approach to interviewing.

Material was also gathered from newspaper articles along with autobiographies written by defence lawyers in order to increase background understanding of the role of the defence lawyer in Sweden. The purpose of the interviews and other background material is to gather another perspective on the context and to gain cultural explanations to events observed in court, however the main focus of this study is on the interactions seen in the courtroom. Previous ethnographic fieldwork and interviews that I have conducted with law students and staff on a Swedish university law program have also been drawn upon. Finally over 30 ethnographic fieldnotes from courtrooms written by criminology students I have taught have also been considered during the coding and analytical process.

In this article, an ethnographic approach using participant observation is combined with grounded theory wherein an interpreted understanding of the world is ascertained (Charmaz and Mitchell 2001) in order to develop theory of the presentation of self and an understanding of the intersubjectivity of emotions (Katz 1999). Producing theory involves an on-going process of data collection, coding, theoretical development, memo-making and literature reviews, one begins by finding the data before moving on to answering foundational questions and finally developing theory (Charmaz and Mitchell 2001, 162-163). Such an open-ended approach enables flexibility and receptiveness to the new and the unexpected. Coding is a way

¹¹ Fictitious names have been used.

of finding what the data is all about, enabling the researcher to see the material anew. As writing ethnographic fieldnotes turns a “passing event, which exists only in its own moment of occurrence, into an account, which exists in its inscriptions and can be reconsulted” (Geertz 1973, 19), the process of coding and analysis ensures that theory produced is tightly connected to the field. My idea is to ensure that the text is easily accessible and that the interpretations drawn are immediately and closely anchored in theoretical concepts and developments in order to produce “an engaging text which invites the reader not only to think about the argument, but also vicariously experience the moment.” (Emerson, Fretz, and Shaw 2001, 365) In this study I have used Goffmanian theories as a starting block but expanded his concepts during the coding phase. Therefore concepts from earlier works have been applied in order to build a more solid base upon which to apply novel codes and theoretical development. The goal is thus to “give old theories new life.” (Charmaz and Mitchell 2001, 169) Theoretical sampling has been used in order to fill gaps, elaborate and discover variation until saturation was achieved.

Before I present my analysis, I would like to mention some more details about the courtroom in Sweden. In a criminal trial at the district court level, the main actors are the chairman of the court (the judge) and three (or five) lay judges¹², the prosecutor, the defence lawyer¹³ (not always) and a clerk. The plaintiff, defendant and witnesses are also involved. The judges and clerk sit behind a desk in a row at the front of the courtroom whilst the defence lawyer sits on the right hand side of the room at a table with the defendant to their left. The prosecution sits opposite, on the left hand side with plaintiffs sitting to their right.

¹² The lay judges are not legally qualified. They are politically elected and appointed by the municipal assembly. The role of the lay judges is to represent the people.

¹³ “The principal responsibility of an Advocate is to show fidelity and loyalty towards the client. As an independent adviser, the Advocate is obliged to represent and act in the client’s best interests within the established framework of the law and good professional conduct...” (Association 2008, 4). The defence lawyer should independently judge what the client’s best requires and act thereafter (Wiklund 1973, 248), always remaining within the boundaries of the law.

The witness sits in the middle of the courtroom when they give evidence and spectators sit at the back of the courtroom. Trials are informal with no wigs or gowns and are generally open to the public although spectators in everyday cases are rare. The trial is divided into four phases: reading of charges by the prosecution after which the defence lawyer responds guilty or not guilty; the case for the prosecution (presentation of facts); examination (and cross-examination) starting with the plaintiff then defendant and lastly witnesses, all of whom are questioned by the prosecution and then the defence; and finally, closing speeches. Only the third phase (examination) is dialogical (Aronsson, Jönsson, and Linell 1987, 103). There are also short breaks in proceedings as and when needed.

Doing loyalty in the courtroom

Defence lawyers have an obligation of loyalty to the client and should attain the best legal outcome for him or her. The defence lawyer and client are thus a team which, as mentioned above, is immediately symbolised by the positional tie-sign in the courtroom. I will now describe other ways in which teamwork and thus loyalty are interactionally constructed in the courtroom: little dramatic productions, little dramatic reductions and directions of teammates.

Little dramatic productions

A defence lawyer may do teamwork by aligning to the client via a dramatic realisation of loyalty achieved by rhetorically and gesturally supporting the client's version of events and questioning the claims of the prosecution. Typically, the employment of props and emotional displays are included in this facework using little dramatic productions. This is perhaps what we would expect to see defence lawyers do in a courtroom: represent their client by reacting to the prosecution's evidence which the defence claims to be inaccurate. What is interesting to highlight here however, is how this can be analysed as a performance of impression

management, exemplifying the emotional regime of the courtroom. Such performances can then be used to contrast the other end of the extreme where defence lawyers do not react.

The strategy of dramatic productions will now be introduced by presenting an excerpt taken from the fieldnotes from the closing argument of a murder trial where the defendant denies the crime.

The defence lawyer begins her closing argument. She takes off her glasses and states that “the prosecutor is WRONG in making these claims!” She leans forwards, forearms on desk, hands clasped and asks the judges to experiment themselves at holding the weapon in the way the prosecution claims the defendant was holding the weapon at the time of the murder. She shakes her head and raising her voice and speed of delivery states that it is impossible that the incident transpired as claimed by the prosecutor. She points a finger on the desk, waves it in the air, points at the prosecutor and, raising her voice even more states that there is NO evidence for the accusations. Her voice becomes slightly higher in pitch emphasising her client was in SHOCK after the incident. She states that “I don’t claim that this IS what happened, rather than it COULD be what happened” whilst pointing a finger at the judges. The claims of the prosecution “are pure speculation” said in a tone of voice implying incredulity. Her voice then softens claiming, “my client is not the same person now as she was when taken into custody” which makes the defendant’s mother start to. She states that the charges will never be accepted by the defence and looks to the mother when she says this, before stating in the softest tone of voice yet that her client should be released immediately.

The defence lawyer acts as though an offence has been committed and that the worst possible interpretation of events might occur: that the judges deem the prosecution's evidence to be strong enough to find the client guilty. T

The dramatic production above also involves emotions, stretching from outrage to indignation to incredulity to sympathy all in the space of ten minutes. The defence lawyer's voice builds momentum, becoming louder and louder, faster and faster, with emphasis on certain emotive words: "wrong" and "shock" to build up a sense of emotional outrage at the accusations against the client. It is a way of aligning to the client and producing a team performance by performing emotional expressions (cf Maroney 2011).

The gestures and emotions shown are a given of the courtroom culture (cf Goffman 1972) and must remain within the boundaries of the emotional regime. The givens of a local culture and setting provide opportunities for displays whilst simultaneously constraining the acts permitted therefore the defence lawyer must adjust his or her performance accordingly. What we see above then is a contextual aspect to the emotional regime: in the closing argument it is acceptable to show a wider range of emotions and other impression management tools such as props, the body and rhetoric, in a more explicit or obvious manner, compared to other parts of proceedings. However, frequently the display of loyalty is much more subtle (Blomkvist 1987, 83, Hägg 2004) and may involve a combination of non-linguistic gestures such as head-shaking together with a muted verbal performance in order to fit with the emotional regime of the context. We now move on to an interaction where the prosecutor is presenting the facts of the case at the start of a trial and is reading aloud a report written by an expert witness regarding the extreme temperatures that can be reached inside a car on a warm day and the consequences this may have for leaving an animal inside. The findings of this report are of importance for the defence's case and when the exact temperatures are read out:

The defence lawyer look up sharply and says, very quietly but also very forcibly “what?!?” (*nämen*) The defence lawyer looks sharply at the prosecutor, then the judge and then his client and shakes his head. Later on when it is the defence lawyer’s turn to talk, he sits up straighter in his chair, speaking rapidly and in a loud tone of voice stating that he became quite outraged when hearing the report which the he claims includes details that are incorrect.

Here we see the emotional expression of outrage in order to undermine the presentation of facts by the prosecution. The claims of the prosecution can be seen as a face threat as it implies that the client has been criminally negligent. We see above how the defence lawyer draws attention to this face threat verbally using rhetorical tools and non-verbally with gestures. In this way the defence lawyer performs vicarious face saving via a dramatic production: over-communicating his outrage at the potentially destructive information presented. This production must nevertheless remain appropriate to the emotional regime of the Swedish courtroom: non-confrontational and muted whilst also being appropriate to the context (closing argument). The scope for responding to such face-threats is consequently limited to subtle verbal responses (“what?!?”, in Swedish “*nämen*”) and gestures ensuring also the continuation of work flow. Responses of “what?!?” or similar are recurrent in numerous observations and demonstrate the normative nature of the emotional regime.

Little dramatic reductions

We saw above that little dramatic productions can be used by defence lawyers as an impression management strategy in order to highlight or draw attention to information that otherwise might have remain hidden, but also to draw attention to a face-threat. This can either be subtle or obvious, depending upon the context. At the other end of the extreme are

those occasions where a threat to face or destructive information should remain hidden. In such cases, the defence lawyer can attempt to reduce the dramatic performance by using strategies to reduce or retract attention rather than an obvious reaction or response (as in the above examples). In this way certain statements, behaviours or witness' narratives are under-communicated in order to reduce their appearance as "facts". We see an example of this below where the prosecutor is questioning the defendant regarding theft and the handling of stolen goods. A witness had seen someone entering a property and leaving it with a large bag causing the witness to contact the police who arrive at the scene and catch the defendant leaving the area. The defendant was consequently arrested at the scene of the crime in possession of stolen goods.

The prosecutor asks the defendant how he came to be in possession of the stolen items and he claims that he bumped into an acquaintance who gave it to him. When asked to describe the acquaintance, the defendant claims to not really remember what the acquaintance looked like or what he was wearing. When asked what the acquaintance is called, the defendant thinks a while and says, "Hmmm, Erving." Coincidentally, this also happens to be the (very unusual) name of the defence lawyer. When asked why he was wearing plastic gloves at the time of his arrest, he replies that it was because he thought that the items could possibly be stolen goods and he didn't want to get his fingerprints on them therefore "Erving" gave him his plastic gloves along with the (stolen) items. The prosecutor points out to the accused that in his police statement he stated that the acquaintance he bumped into was called Danny Diamond¹⁴ (which the arresting police officer has also testified to). The defendant has a neutral facial expression

¹⁴ This is a fictitious name but the name used in court was equally as fantastic.

and is unable to explain this discrepancy. Throughout all of this, the defence lawyer stares (almost without blinking) at the prosecutor. There is no movement of facial features: no raised eyebrows, no shake of the head. He is still: glasses in hand, body turned fully towards the prosecutor, not looking at his client.

Here we see how throughout the defendant's testimony, the defence lawyer maintains the affective line of loyalty by not showing any doubt or ridicule regarding his client's testimony. The little dramatic reduction is performed by under-communicating possible doubt or embarrassment in order to uphold "normal appearances" (Goffman 1972), in this case the appearance of loyalty and therefore teamwork. It is a form of non-verbal fact-work, aimed at turning the client's testimony into facts by using face work to project support for the client's version of events thereby making it appear more credible.

The defendant's presentation of self may damage the impression given of him being reliable and credible as his version of events is not very plausible. The defence lawyer responds by not responding, thereby giving face to the client in order to create a better impression of him (Goffman 1967, 9), an impression that implies, "I support my client's version of events" giving it credibility. This performative aspect of maintaining professional face and thus loyalty is described by a criminal defence lawyer, Martin, who presents himself as having to maintain face in the courtroom even when one suspects the client is lying:

You should sit there and look interested. It can be damned tough at times I can tell you, but you should just pull yourself together! (interview)

Such an impression should also be performed if "what the client just said was incredibly stupid" as another criminal defence lawyer states in an interview. Such little dramatic

reductions are another instance of vicarious face-saving. This contrasts to the vicarious face saving in dramatic productions as now the source of the face-threat is the client himself (in earlier examples, the source of the face-threat was external).

In my data there are numerous examples of defence lawyers using dramas of reduction wherein normal appearances are upheld by not responding to destructive information given by the client in order to follow the loyalty line. Another demonstrative example is where the defendant denies being at the scene of a crime:

Prosecutor: Why were you at (the scene of the crime)?

Defendant: I wasn't there!

Prosecutor: But you were arrested there.

The defence shows no reaction, just keeps on making notes.

The defendant states that he was not at the scene of the crime only to be confronted with the fact that this is where he was arrested, thereby blatantly caught out in a potentially face-threatening situation: a lie. Again, the defence lawyer responds with a non-response, a performance aimed at giving face to the client and maintaining his own professional face.

The above examples show how the defence lawyer uses the body as a tool for impression management, by not showing any visible reaction, the lack of response (non-reaction/retraction) is in itself a response. In much the same way that Barbalet (2001) argues that even the absence of emotional expression involves the presence of emotions, I argue that even the absence of a response is a response. Here I consider that the defence lawyer is maintaining professional face by holding back an otherwise expected response. Furthermore, showing surprise or disbelief would have accentuated the facts presented by the prosecutor therefore the defence lawyer's non-response is a way of undermining the facts. It could also

be argued that facework is being performed in order to save own face by creating distance from the client's incriminating testimony which may in turn, reflect badly on the defence lawyer. The defence lawyers is thus "doing distance rather than going teamwork"¹⁵. However the defence lawyers interviewed state when they accept a case, they should represent the client's version of events, therefore, even if the story might appear farfetched, the defence lawyer will adhere to the team line. When an exception to this rule arises and a client wants to drive a case despite the defence lawyer advising that the chances of winning are limited, the defence lawyer can create distance discursively by stating in court "*my client* claims that he was not at the scene of the crime" or instead relying on the evidence. The guiding premise however is that it is unacceptable to "sell your client out" in the courtroom as one defence lawyer interviewed states. Consequently, as dramatic reductions are so common in the courtroom, I interpret them as instances of withdrawing attention and maintaining professional face rather than instances of doing distance.

The following interaction can be used to show how the defence lawyer performs loyalty by holding back the response that would seem appropriate in a different context but is not applicable in the courtroom interaction: the response is thus one of retraction. The below excerpt shows this when destructive information is presented leading to the the client breaking the emotional regime of the courtroom. The defendant is accused of various charges and we join proceedings below as the plaintiff is being questioned by the prosecutor regarding charges of death threats:

When the plaintiff describes the threat to his family, the defence lawyer looks down at his paperwork. The plaintiff goes on to describe the psychological trauma that this has caused him and becomes visibly upset, blushing, his voice

¹⁵ My thanks to an anonymous reviewer for raising this interpretation.

becoming shaky. The defence lawyer checks his nails again. When the plaintiff goes on to describe the threats in detail, the defendant starts speaking louder, his arms become even more animated, pointing at the plaintiff, waving them up and down in the air making big gestures rapidly, arms flailing. His voice gets much louder the gestures even bigger. He pushes back in his chair and his whole body is now involved in responding. Three prison wardens who are sitting behind him are quick to react and are standing next to him within seconds. Guards stand on each side restraining him, whilst a third stands next to him and says loudly: “Calm down!” The outbreak lasts around 20-30 seconds. There is adrenaline in the courtroom, there is a different feeling: one of danger and excitement. Everyone is sitting a little straighter, a little more upright. The judge tells the defendant that he will get a chance to speak soon. The defence lawyer has turned his body to face his client but does not say anything. He sits more stiffly, more upright, like the rest of us. His right hand and lower arm are still resting on the desk. The defendant calms down again and the guards sit back in their places. The plaintiff goes on to state again that the threat was difficult for him to cope with and that he has not told his family about it. The defendant puts his head on the desk. The defence lawyer does not look. He sits making notes in the papers in front of him. He then glances at his client but does not visibly react. The defendant then starts to cry, still the defence lawyer does not react.

The defendant’s reaction breaks the emotional regime of the courtroom and deviates from the affective line of the performance team. The emotional regime requires the defendant to be silenced for “not obeying the rules of legal procedure” (McBarnet 1981, 183), with the power of silencing falling on the judge. The retraction of the defence lawyer can be seen as a

dramatic reduction attempting to reduce attention towards this outbreak. It can also be seen as a strategy for the defence lawyer to maintain professional face and thus loyalty to the client as, according to one defence lawyer interviewed, attempts to calm or restrain the client may lead the client to question the lawyer's loyalty to him/her. By not engaging with the client and instead leaving the outburst to be managed by other actors, the defence lawyer is able to uphold not only the impression of loyalty but also the image of teamwork. Reprimanding the client may lead to the client questioning his defence lawyer's loyalty: it might imply that the defence lawyer does not think that the client's outburst is justified however letting the client vent is another method of fact construction via non-direction (the strategy of directing teammates will be discussed in more detail below). It may therefore be seen as a special case of civil inattention: if civil inattention is a way of recognising "the other's right to his own, separate, line of action" (Kendon 1988, 25), then the lawyer's non-reaction is a way of recognising the client's emotional-regime-breaking line of action. Comforting the client could be interpreted by the judges as encouraging such regime-breaking behaviour or indeed a sign of crossing a professional barrier. So whilst such a reaction would be considered norm-breaking outside of the courtroom, here it is sanctioned and shows the emotional regime behind. I have observed many occasions where defence lawyers do not comfort a crying client, on one occasion the client asked for a tissue but the defence lawyer handed him a pen.

It should also be remembered that a wider audience than just the client sees the performance of the defence lawyer and therefore the defence lawyer must ensure that displays of loyalty remain within the appropriate zones. This extended audience includes the judges, prosecution, spectators including perhaps prospective clients.¹⁶

The use of props in little dramatic productions and reductions

¹⁶ My thanks to an anonymous reviewer for this final point.

In the first excerpt in this article (from the closing argument of a murder trial), we see dramatic production using body being used as a tool of impression management in the form of non-verbal gestures such as finger pointing and other gesticulation in order to dramatically realise the client's version of events. Props are also seen in the closing argument when the defence lawyer takes off her glasses in a performative gesture. The use of glasses as an impression management prop has been discussed, for example, during the trial of O.J. Simpson (Hägg 2004, 182), but props have received little attention in sociological literature on courtroom interaction and will be discussed in more detail below where most illustrations will focus on little dramatic reductions..

In situations where destructive information is presented constituting a face-threat, the defence lawyer sometimes uses props to tone down or under-communicate the potentially damaging impact therefore props are used to dramatically reduce. In the trial below, the defendant denies the crimes he is accused of and we join proceedings as the arresting police officer recounts what the defendant said when he was taken into custody:

The police officer testifies that the defendant stated he wanted “to kill the man” that he stabbed in the neck. When the police officer says this the defence takes his mobile phone out of his trouser pocket and checks it holding it on the desk in front. The policeman goes on to state that the defendant said “they screamed when he assaulted them”, the defence keeps looking at his mobile phone. The policeman then states that the defendant said “they screamed and screamed.” The defence lawyer checks his fingernails: he holds up his left hand in front of his face palm facing him, fingers curled over and bites the edge of one of his nails. The gesture of moving his hand to check the nails is very sudden, almost

reflex-like and jerky. Straight up. He then goes straight back to sitting leaning forwards with hand on chin and cheek.

In all instances in the above extract, when destructive information is presented, the defence lawyer either looks at his mobile phone or fingernails. Looking at mobile phones is a recurrent occurrence in many trials and does not garner any reaction from the judges, which may point towards it being viewed as acceptable. Indeed, in interviews, defence lawyers state that they may need to check email during proceedings. However, it should be noted that the ringing of a mobile phone in the courtroom is a breach of norms. On the rare occasion the mobile phone of either the judge or lay judge rang, they responded with visible embarrassment: blushing, shaking of head, rapid movements to turn it off and statements of apology.

The inspection of fingernails is a method used by many defence lawyers at times when testimony is being given which could be perceived to be damaging to the defence. Once again, there is a reaction here, but the response is not outwards, performing outrage or frustration, rather it would appear to be a performance designed to reduce the impact of statements. It may therefore be seen as a little dramatic reduction with the use of props. In the majority of trials I observed, there is at least one instance of this kind of strategy ranging from the inspection of fingernails to the use of toothpicks to polishing glasses.

Another example is seen below where we meet a witness giving evidence regarding the abuse and assault committed against the plaintiff. The witness is describing one such incident recounted by the plaintiff to the witness after the event:

The witness details one instance where the defendant attempted to smother the plaintiff by placing a pillow over her head. Halfway through the witness's

testimony the defence lawyer takes out some throat sweets, offers one to her client who declines by a very small shake of the head, and then takes one for herself and replaces the packet back in her pocket. The defence lawyer has not shown any signs that her throat might have been causing her discomfort and this is the first and only time she takes out a throat sweet.

The defence lawyer takes out throat sweets when the witness is describing an attempted murder. The timing of this action, at the most delicate moment in proceedings would appear to indicate that it is designed to achieve a goal, namely to reduce the impact of the witness's statement. Rather than showing sympathy or openly objecting to a witness's testimony which should only be done delicately, the defence lawyer performs in a way aimed at neutralising the emotional impact of the statements given: she is doing something very mundane, as if trying to counterbalance or deconstruct the facts in the witness' dramatic statements. The defence lawyer is "figuratively erasing¹⁷" herself from the scene by not showing the emotion that would be expected in such a situation. In producing such invisibility by using the body to simultaneously guide attention away and towards it (Katz 1999, 320-321), she deviates from the emotional norm of showing compassion when hearing a tragic story, thereby doing teamwork as her client has claimed that the plaintiff is lying, therefore reacting in a more sympathetic manner might jeopardise the defence lawyer's loyalty to the client. Such deviations from the norm are thus sanctioned by the emotional regime of the courtroom (cf. Archer 2011b). This is explained by criminal case defence lawyer Maria in an interview who describes that, as a client in such moments:

¹⁷ My thanks to an anonymous reviewer for this analysis.

I wouldn't have wanted my defence lawyer to begin to well up with tears when [the plaintiff] describes what they have been subjected to. I would have preferred my lawyer to sit completely neutral and take it all in. (interview)

Writing notes is also another impression management tool used to distract attention from a potential face-threat and was observed on numerous occasions in the courtroom. Whilst the defence lawyer interviewed state that writing notes is also a form of staying focused and awake, it is also mentioned as being a way of covering up face-threats. Chairs may be used as a prop in little dramatic productions with defence lawyers observed on several occasions holding on to the bottom of their chairs and lifting them up and down slightly to reiterate a point without disrupting the work flow.

The testimony of witnesses and plaintiffs can be unpredictable and whilst it is possible to prepare with a client, this is not possible with witnesses of plaintiffs. Once again, as when one's own client is the source of the face threat, the defence lawyers must engage in "a form of crisis management in that moment" as described by Erik, a civil law defence lawyer. This article interprets such crisis management as another way of saying "face-saving practices". After all, it is about saving face, about redeeming the damage done or reducing its impact. It is a form of emotion management or "poise" (Goffman 1967) designed to uphold teamface.

Directing team mates in dramatic productions and reductions

Even if one has prepared with one's client, there may still arise occasions where maintaining a team performance involves one team member directing the other in order to bring him or her back into line (Goffman 1963, 34-35). In this study it is the defence lawyer who is the director. Direction occurs mainly behind the scenes as interview respondents talk about reminding clients to remain "poker-faced", with one defence lawyer, even writing this on a

note to be shown to the client at pertinent points in proceedings. One defence lawyer discretely tapped his client on the leg every time the client started to shake his legs back and forth when being questioned by the prosecution. The client ceased the shaking only to begin again shortly after. There were over 10 taps during the thirty minute questioning.

Another example of direction that is aimed to be backstage but may accidentally become front stage is kicking the client in the shins. Martin explains in an interview that such strategies should be agreed on beforehand as “once, the client asked me why I kicked him on the leg!” So whilst a subtle shin-kicking under the desk is aimed to being a back-stage method of direction, unless it has been agreed upon in advance, it risks becoming front-stage.

Intentional front-stage direction ensuring that the team member follows the line can be seen in the following excerpt where the defence lawyer is questioning his client regarding a charge of drink driving.

The defence lawyer angles his chair slightly towards his client and says “of course you regret that you drove?” to which the client replies that he does. The defence lawyer then states “you were in a spiral of drinking too much.” Later on in proceedings the defence lawyer is questioning his client about the assault he is accused of and asks “do you mean that the plaintiff is making it up?” As he says this he looks at the defendant and nods. It is a large, single nod of the head. The client replies “yeees, yes.”

This is an interesting performance as it shows the defence lawyer quite clearly leading the responses of the client. Although this is the point in proceedings where the defence lawyer is supposed to be questioning his client, the questions are more statements aimed at forming the client’s answers in order to produce a performance of regret with a tinge of sympathy (“a

spiral of drinking too much”). This is an impression management strategy where the defence lawyer gives the client “an opportunity for repair” (Scheffer 2006, 329) by intentionally damaging the face of the client whilst simultaneously maintaining the face of the defence lawyer (Penman 1990). When the defence lawyer asks his client if he meant that the plaintiff has fabricated the assault, the client has previously not mentioned anything that would indicate that he thinks the plaintiff is lying, only that the plaintiff’s version is not the same as his own. It is the defence lawyer who plants the idea that the plaintiff is lying, thereby threatening the face of the plaintiff. The client is clearly directed as to how to answer to this question as the defence lawyer gives a large affirmative nod. Again, the defence lawyer is steering the impression management by producing a performance, by pulling forth details that otherwise would have remained hidden, in this case, the client’s regret, and by showing the “proper” response. In this way the defence lawyer is managing and partly performing the client’s emotions (cf Thoits 1996). In much the same way that competency can be interactionally achieved in collaboration between a patient and defence lawyer (Holstein 1993), the above episodes are ways of “teaming up” to construct facts.

Conclusion

It is hardly surprising that lawyers draw attention to certain facts and draw attention away from others (Scheffer 2006), this is what we would expect. But what is surprising is that how this is done is relatively unexplored. The Swedish context is sociologically interesting because of the subtlety of the gestures and the controlled, understated nature of the emotional regime.

I have shown that defence lawyers represent their clients by using fact work and facework to construct and to undermine facts. This study thus fills a theoretical gap indicated by Potter who called for more work regarding how factual discourse is built by adding components of nonverbal communication to the mix and by exemplifying the subtlety and skill involved in

“fact construction and destruction.” (Potter 1996, 230) It therefore combines fact work with face work and also contributes a non-verbal aspect to the face-work of lawyers, which has previously focused on discursive strategies (Archer 2011a, Penman 1990)

The main contribution however is to show how the Goffmanian performance must remain within the emotional regime of the courtroom. Various impression management strategies are used to manage face threats and I have found a complement to Goffman’s little dramatic productions, namely little dramatic reductions: whilst dramatic productions are used to save face and involve over-communicating certain facts or threats to face thereby drawing attention to them (Goffman 1972), dramatic reductions are used to under-communicate or downplay destructive information or face-threats in order for them to remain unapparent or obscure. In this way, professional face, the affective line and teamface are upheld by using dramatic reductions as a form of tactful blindness (Goffman 1967) or civil inattention as the defence lawyer is “not seeing”, and thus attempting for the audience to also be blind to the face-threatening act either performed by the client or by another (the plaintiff, prosecution or witness). Facework strategies have thus multiple uses aimed at saving, maintaining, giving and threatening face. Emotional props may be used in these strategies. Such performances must remain within the emotional regime of the courtroom of civility meaning that gestures and facial expressions are subtle and appropriate to the local culture of the courtroom (Goffman 1956b). Strategies may be habituated into the professional role (Bergman Blix 2010, Bergman Blix and Wettergren 2015) thereby making them mundane and normative.

By linking a Goffmanian framework to the emotional regime of the courtroom I have tried to show the boundaries of what is permitted within the given social context leading defence lawyers to direct clients or use vicarious face-saving practices when necessary. The study also shows that defence lawyers use emotion management and impression management strategies in a series of complex combinations, a finding that can be used to further explore the

emotional labour conducted by defence lawyers in Sweden. That these strategies are attached to the special characteristics and demands of the profession and the emotional regime of the courtroom can be illustrated by comparing how they differ to those used by the prosecution (see Törnqvist 2014 and coming publications by Wettergren and Bergman-Blix). In a nutshell, when the defence lawyer dramatically reduces, the prosecution dramatically produces. This seems obvious: a defendant denying being at the scene of the crime where he or she was arrested is likely to be met with incredulity by the prosecution which should then be highlighted. The dramatic productions of the prosecution follow the same lines as the defence's: headshaking, hand gestures or, most frequently, the expression "really?!?" (in Swedish *nähej*). I have not observed many dramatic reductions and I would claim that this is because as prosecutors have the burden of evidence, they present the "facts", therefore claims made by the defendant contrary to the prosecution can be met with disbelief.

Whilst analogies to the theatre may detract from the seriousness of proceedings, it should be said that "the theatre of the courtroom matters [...] (trials) should not become so regimented that the natural dynamic of the courtroom is lost" (Levenson 2007, 49). The courtroom is an emotional place, recognising and accepting the role emotions play and the strategies used to manage them is an important step in understanding courtroom.

We have seen in international research that juries might be influenced by defence lawyers, and we see in this article that there are strategies used by defence lawyers when representing their clients. This prompts the question, does the defence lawyer's emotional and dramaturgical performance influence the judges' deliberations? This is an area for future study.

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