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The criminal trial as a live event: Exploring how and why live blogs change the professional practices of judges, defence lawyers and prosecutors

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Published in:
Media, Culture and Society

DOI:
[10.1177/01634437211022730](https://doi.org/10.1177/01634437211022730)

2021

Document Version:
Publisher's PDF, also known as Version of record

[Link to publication](#)

Citation for published version (APA):
Flower, L., & Ahlefeldt, M.-S. (2021). The criminal trial as a live event: Exploring how and why live blogs change the professional practices of judges, defence lawyers and prosecutors. *Media, Culture and Society*, 43(8), 1480-1496. <https://doi.org/10.1177/01634437211022730>

Total number of authors:
2

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Media, Culture & Society

1–17

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DOI: 10.1177/01634437211022730

journals.sagepub.com/home/mcs

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Abstract

Live blogging from legal trials has become one of the most accessible ways in which the public can gain direct insight into legal proceedings, particularly in countries where television cameras are denied entry into the courtroom. Whilst live blogging constitutes an important way of ensuring the transparency and openness of legal processes and documents – a principle known as open justice and a key component of many democratic societies – the risks stemming from opening up the courts not only to more immediate and detailed scrutiny, but also to a larger, virtual audience are lesser known. A deeper understanding of how a legal trial's transformation into a live event due to live blogs has impacted on the legal sphere is therefore needed. The aims of this article are thus twofold: to show how live blogs are changing legal professionals' work practices and to discuss what it is about live blogs that leads to these changes in professional practices. The analysis draws on qualitative interviews with legal professionals in Sweden and Denmark and finds that live blogs increase reflection in professional performances stemming from an awareness of performing to a virtual audience. Surveillance thus leads to performance adjustment. Live blogs also lead to changes in professionals practices and transform the audience/participant boundary into a fluid one most notably regarding the Danish respondents in comparison to those in Sweden. The article also suggests a hierarchy of liveness with live blogs considered to be less intrusive than televised trials.

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Keywords

courtroom, criminal trial, virtual audience, legal professionals, live blog, hierarchy of liveness, publicness, surveillance, synopticism

Introduction

Live blogging from legal trials has become one of the most accessible ways in which the public can gain direct insight into legal proceedings, particularly in countries where television cameras are denied entry into the courtroom. Whilst live blogging constitutes an important way of ensuring the transparency and openness of legal processes and documents – a principle known as open justice and a key component of many democratic societies – the risks stemming from opening up the courts not only to more immediate and detailed scrutiny, but also to a larger, virtual audience are lesser known. A deeper understanding of how a legal trial's transformation into a live event due to live blogs has impacted on the legal sphere is therefore needed. The aims of this article are thus two-fold: to show how live blogs are changing legal professionals' work practices and to discuss what it is about live blogs that leads to these changes in professional practices.

The extant research exploring live blogs and legal trials has largely examined Anglo-American contexts, therefore we aim to widen the jurisdictional focus by introducing Scandinavian courts. More worryingly, there is currently a research gap regarding how live blogs impact on legal professionals and their work along with how they actually use them. This is concerning as live blogs are an increasingly popular and widespread component of many contemporary trials thus a more complete understanding of the consequences and implications of this novel digital practice is vital, not least as the findings of this study indicate that live blogs change legal professionals' work in important ways. Furthermore, a comprehension of which characteristics of live blogs are central in driving these new patterns is also vital in order to understand the criminal trial as a live event and how live blogs change professional practices.

In order to explore how this new digital phenomenon impacts on legal professionals, we employ a comparative approach using two countries which already have a high level of open justice namely Denmark and Sweden (Transparency International, 2020). A comparative approach enables generalizations based on identified similarities and differences among the entities being compared, thereby enhancing understanding and supporting policy-making by showing there are unique disparities between the two countries. Furthermore, although a summary, or record of proceedings – also known as the court record – is written during trials in Denmark and Sweden, neither country has a verbatim account of what has taken place thereby contrasting with other jurisdictions, for instance in Federal Courts in the U.S. where proceedings are recorded word-for-word (The Court Reporter Statute, 2010). Moreover, television cameras are not permitted in Danish or Swedish criminal courtrooms (see Moore et al., 2021 for an overview of which countries permit live filming; also Packer, 2013). This means that in Denmark and Sweden a live blog may constitute the most detailed depiction of events making it a pertinent point of academic enquiry regarding how legal professionals interact with such reports.

Although the empirical material presented in this article – comprising 24 qualitative interviews – could be considered limited, we argue that it is suitable for our purpose of

mapping a currently unexplored aspect of legal professionals' work life in order to open up for a more developed line of future research.

What are live blogs?

Live blogs of legal trials are currently 'as much a part of mainstream media as traditional newspapers and television broadcasts' (Goehler et al., 2010: 14), enabling readers to read about a trial unfolding before them in real-time with the help of detailed play-by-play accounts capturing specific and comprehensive details, including the relay of exchanges verbatim. The focus of this study is on live blogs of criminal trials written by journalists working for major news websites. A journalist writing a live blog sits in the public gallery during the trial, usually with a laptop, on which they transcribe interrogations and exchanges, and describe people, events and interactions in the courtroom and indeed, the courthouse, all of which is immediately published on the news website. As each description is short, the delay between the live event and the published report may only be a matter of seconds. The journalist is essentially able to capture events in real-time. A live blog typically consists of time-stamped content regarding a single topic which is progressively updated over a period of time, usually up to 24 hours (Thurman & Walters, 2013: 83), however, in the case of legal trials, the live blog can be continued throughout the duration of proceedings over several days. Live blogs are characterized by their 'radical immediacy' (Hall-Coates, 2015: 120) enabling a fast, concise and efficient form of conveying live and unfolding events to the public (Goehler et al., 2010; Tereszkievicz, 2014; Thorsen & Jackson, 2018; Winnick, 2014), however this contemporaneousness has also been presented as problematic as it reduces or removes the possibility for journalists to conduct accuracy-checks before publishing reports (Thurman & Walters, 2013: 88).

Previous research on live blogs and legal trials

The boom in live blogging legal trials has led to a concomitant academic interest which thus far has lifted how the use of social media and twitter impact on open justice with a focus on the transparency, accountability and openness of legal documents (such as the preliminary investigation or judgement) and processes (from law-making, to policework, to legal trials) (Hall-Coates, 2015; Janoski-Haehlen, 2011; Johnston, 2018; Lambert, 2011; Rodrick, 2014; Small & Puddister, 2020; Winnick, 2014); how audiences interact with such reports (Coulling & Johnston, 2018; Marty et al., 2016) and; how live blogs are written (Knight, 2017). A more explicit focus on the legal professionals being depicted – how they perceive the extra scrutiny that live blogging entails – is missing, as is insight into how live blogs are related to and used by legal professionals. This is a gap in the research regarding live blogs in general, which has tended to cover the audience, newsroom, content and sourcing (Thorsen & Jackson, 2018; Thurman & Newman, 2014; Thurman & Walters, 2013) rather than focus on the individuals being depicted as well as their experiences and practices. Moreover, many of these studies which discuss the processual risks and implications of live blogging are not based on qualitative empirical findings. There thus lacks a clear focus on the practices and voices of the legal professionals portrayed – in particular prosecutors and defence lawyers, as well as a wider

jurisdictional application. Relatedly, a deeper analysis of what it is about live blogs that leads to changes in professional practices is also missing.

In the next section we begin with a presentation of our theoretical framework, centering on liveness, publicness, surveillance and synopticism. Before the methodology is detailed, we describe the specific empirical contexts, namely legal trials in Denmark and Sweden. After this we present our analytical findings before ending with a conclusion including implications for due process and suggestions for possible solutions.

Liveness, publicness, surveillance and synopticism

In this article we explore how live blogs, legal trials, legal professionals, and (to a certain extent), the readers of live blogs have become interlaced, drawing on Ytreberg's (2009) work on 'liveness' in the digital age. Liveness refers to the the immediate and public transmission of events (Bourdon, 2000) and is used by Ytreberg (2009) to show how the creation of instantaneous participation in live events, for instance in reality TVs shows such as Big Brother or Pop Idol, facilitated the transformation and expansion of the audience's role to that of active participant in the live event. We use the concept to present the criminal trial as a live event and to discuss the role that live blogs and legal professionals play in this.

Similarly, Baym and boyd (2012: 322) show how technology can re-shape 'publicness' – shifting our perception of private and public, openness and closedness, audience and public. We use this concept to discuss how the lines between legal professionals as audience and legal professionals as participants may become fuzzy. They go on to present how certain forms of online publicness, namely socially mediated publicness, can on the one hand, heighten our awareness and knowledge of certain things, but simultaneously obscure others. Publicness is thus a double-edged sword. We explore this in the context of criminal trials and apply this 'conundrum of visibility' (boyd and Marwich, 2009) in order to highlight the flipside of live blogs, that is, the less desirable consequences.

Our starting point is thus that live blogging is a form of liveness – as Van Es (2017: 10) also notes – and that it changes our perceptions of audiences, participants and openness. To this we add that as live blogging also entails a higher degree of scrutiny on those individuals being depicted – our focus being on legal professionals – it is pertinent to add theories centering on surveillance to our theoretical framework.

Surveillance is defined as 'the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction' (Lyon, 2007: 14). We therefore suggest that surveillance is embedded, not only in our daily lives (Lyon, 2001: 1), but even in the courtroom. This is not to say that we are unaffected by it. We act or feel differently in a given situation or place knowing, or assuming that our behaviour may be monitored, tracked, recorded and watched (Deuze, 2012: 103). Our suggestion is that this may lead to legal professionals' heightened cognizance that their actions are visible to a wider audience and which may lead to a change in conduct as has been shown in studies on the use of body cameras by the police (Ariel et al., 2015). People become more self-aware, they are more likely to follow rules and they are more likely to have reputational concerns if they are being watched (Bateson et al., 2006; Ernest-Jones

et al., 2011). It has thus been suggested that surveillance leads to the reproduction of norms with surveillance practices – strategies for relating to and managing surveillance – reducing people’s agency (Lyon, 2001). However, it is also possible to discern the possibility of such practices being an ‘avenue for individual and collective self-determination’ (Hogue, 2016: 168) and that the presence of live blogging journalists may also be actively used to convey a performance (see Andrejevic, 2004). In the analysis we will therefore discuss how legal professionals relate to the surveillance that live blogging entails.

In order to understand the particular context within which this surveillance takes place and to understand how legal professionals are impacted by live blogging, we also add the concept of ‘synopticism’ – a form of surveillance whereby ‘the many’ watch ‘the few’, a phenomenon which has been amplified by the modern mass media, in particular television and indeed the internet (Doyle, 2011; Mathiesen, 1997). This concept is based on ‘panopticism’ whereby ‘the few’ may watch ‘the many’, but where indeed, no-one may be watching – the uncertainty of whether or not one is being watched leading to self-discipline and acting *as if* one is monitored (Bentham, 1843; Foucault, 1991).

This theoretical framework is aimed at showing the confluence of a particular form of digital media – live blogs – in a particular context – criminal trials – in order to understand how the uniqueness of live blogging has changed legal professionals’ work practices.

Criminal trials in Sweden and Denmark

Criminal trials in Sweden and Denmark consist of an adversarial confrontation between the prosecution who represents the state, and the defence who represents the defendant. This study focuses on cases at district – (Sweden) and city court (Denmark) where a professional judge and a number of lay judges deliberate together, also known as ‘mixed courts’ (Johansen, 2019). A key aspect of open justice is that trials are open to the public – including the media – as is the case in Sweden and Denmark, with the exception of specific trials such as for sexual assault or when minors are involved.

As noted in the introduction, another similarity between Denmark and Sweden is that neither country records a verbatim account of a trial (although all testimonies given in court are usually audio-recorded in Denmark and always video-recorded in Sweden), in contrast to, for instance Federal Courts in the U.S. where all proceedings should be recorded word-for-word (either transcribed by a court reporter or audio-recorded) (see also Louisell & Pirsig, 1953; The Court Reporter Statute, 2010). Live blogging of trials is permitted in both countries however it may be explicitly banned in Denmark if deemed a direct reproduction of events in the courtroom (Court, 2019). In contrast, there is no explicit order banning live blogging in Swedish courtrooms, however as the use of electronic equipment that may be deemed disruptive or which may have filming function – such as laptops – may be prohibited by judges, it is possible to ban the use of such devices used to live blog, thereby in extension, stopping live blogging.

Methodology

The empirical material comprises transcripts from 24 qualitative interviews with legal professionals along with transcripts from 35 live blogs written by journalists and published on news websites. Half of the interview respondents were legal professionals in Sweden (five defence lawyers, four judges, and three prosecutors, totalling three women and nine men) and the other half worked in Denmark (five defence lawyers, five prosecutors, and two judges, totalling seven men and five women). We have included both genders and various levels of experience ranging from a trainee judge to defence lawyers with over 30 years of practice.

Our starting point for data collection was searching for live blogs of trials published on news websites in Sweden and Denmark, between 2018 and 2020. We quickly discovered that the majority of trials with live blogging were for criminal cases, therefore we focused on these. All live blogs we found were included in the initial data collection, totalling around 20 in Sweden and 15 in Denmark. We then randomly selected five of the live blogs in each country and contacted the participating legal professionals regarding the study. Although the material gathered from the live blogs has been considered in the analysis, the material presented centres on the interview transcripts.

Respondents were initially contacted via email with information explaining who we were and our affiliations, the nature of our research, the length of the interview, how the data would be used, the option of withdrawing participation at any point, and where the data would be disseminated. We suggested that interviews would be conducted using video conferencing platforms (Zoom, Skype, Facetime) or telephone. Although non face-to-face interviews have traditionally been viewed as having a negative impact on the quality of data produced with subtle nuances of communication and situational factors lost (May, 2001), comparisons of interviewing approaches have found that telephone interviewing can be successful in collecting quality data, in particular in studies where respondents are otherwise difficult to reach (Sturges & Hanrahan, 2004). This study covered a wide geographic area and was conducted with limited time restraints and pandemic-related travel restrictions in place, thus digital and telephone interviews were deemed appropriate. Furthermore, as legal professionals – in particular judges – can be viewed as an elite group of respondents, flexibility was key in securing an interview (Harvey, 2011). We therefore followed Sturges and Hanrahan's (2004: 108, 116) suggestion that when choosing interview mode, a degree of pragmatism is required.

Semi-structured interviews were conducted enabling us to ask follow-up questions and provide the respondents with the opportunity to talk more freely and include aspects of live blogging they found relevant and/or interesting which were not covered by the interview guide (Kvale, 1997).

The average interview length was around 60 minutes with the same interview guide used in both countries. This guide was also honed during the study to include relevant themes that developed during the initial interviews. An 'active interviewing' (Holstein & Gubrium, 1995) approach was thus used which also included references to specific cases and live blogs in order to bring the interviews to life. All interviews were conducted in Danish or Swedish, transcribed verbatim, and later translated into English.

The initial analysis focused on what the respondents were talking about and what was being reported in the live blogs. In this phase we used the analytical software NVivo in order to draw out the most frequently mentioned themes which we found to be: live blogging journalists' impact on legal professionals and general opinion of live blogs (a third theme was the impact of live blogs on witnesses which will be explored in a later article). We then moved towards how respondents were talking. That is, our focus moved from *what* was talked and written about to *how* these themes were talked about (Gubrium & Holstein, 1997). At this stage we also developed our theoretical framework, centering on key terms in order to sort through the material before categorizing it and coding it – defining what was happening in the data and attempting to understand it (Charmaz, 2006: 46). Codes were then chosen and focused upon more fully such as 'impact on performance' and 'using live blogs'. We then used 'theoretical sampling' (Charmaz, 2006) in order to elaborate and refine our categories and further develop our interpretations.

The data was analysed in an ongoing process with both researchers talking continuously about comments made during interviews and things we read on live blogs, as well as tangential aspects such as other newspaper reports, podcasts and documentaries of the trials we were interested in. This 'invisible "analysis work"' (Eldén & Anving, 2019: 29) played a vital role in comparing and contrasting the material gathered from two countries and from three different types of legal professional.

All of the respondents are anonymized and any details which may reveal their identities have also been either removed or altered whilst retaining contextual accuracy. We are therefore confident that an 'adequate level of anonymity' (Fangen, 2005: 211) has been achieved and that we have followed the ethical requirements regarding consent, confidentiality and, information usage (Council, 2017).

In the following section we present our analysis and begin by showing that live blogging is presented by legal professionals as a normalized aspect of everyday courtroom work. We then move on to show the ways in which it has impacted upon legal professionals leading to an increased awareness, reflexivity and attention to details, and the creation of new practices.

Acceptance and normalization of criminal trials as live events

Our analysis shows that the presence of live blogging journalists and their live reports have largely become normalized aspects of courtroom work. We therefore suggest that trials have become a recognized and accepted live event in the legal sphere, and indeed the non-legal sphere as evidenced by their popularity – thereby constituting the fusion of a contemporary digital practice with an institution steeped in tradition (cf. Kjeldsen, 2016; Ytreberg, 2009). This is reflected in the finding that none of the legal professionals interviewed talk about live blogs of trials as being strange or unusual. This is summed up by Cate, a defence lawyer from Sweden, who, when asked how the presence of live blogging journalists affects her, replies, 'really, not much at all – it's still about doing the absolute best you can for the client and you would do that irrespective of whether the media is there or not.' This response – which was echoed in all of the interviews – was

unsurprising as, whilst it may reflect our respondents' desire to uphold a professional façade in the interview situation (Flower, 2019; Goffman, 1959), it is also likely to be a reflection of the media's established and largely accepted role in Sweden and Denmark where it is considered a state power scrutinizing the remaining pillars ensuring court processes and decisions are transparent. However, more interestingly, this acceptance of live blogging also implies an acceptance for the added level of scrutiny that live blogs warrant – an acknowledgement that being monitored is part of the Western 'surveillance society' (Boyne, 2000; Lyon, 2001). We therefore find support for Andrejevic's (2004: 85) argument that 'being watched is a vital component of the traditional modern workplace' – even if this workplace is a courtroom.

However, our analysis shows that it is not liveness per se that is accepted, rather it is the form of liveness that is critical. Whilst reporting from trials as live events using live blogs is accepted, other forms of liveness are less well-received namely televised trials which, as we noted earlier, are not allowed in Denmark or Sweden (see Ytreberg, 2009). Almost all of the legal professionals interviewed in both countries considered the possibility of allowing filming in courtrooms to be an unwelcome development as it would infringe upon the integrity of those participating in a trial. Given the higher level of detail and immediacy afforded by both television cameras and live blogs we find it surprising that live blogs are perceived as more similar to newspaper reports – not least because of the latter's word limit constraints in comparison to live blogs' ability to report voluminous and intimate descriptions of events. We therefore expected to find a higher degree of reservation towards live blogs than is found in the interview material. This finding is also of interest because it indicates that a visual report is accorded more power to intrude and offend than the written report irrespective of whether the written word is published immediately – in a live blog – or delayed and published in a newspaper report. There thus appears to be a hierarchy regarding the appropriateness of different forms of liveness in the courtroom with live blogs described as less invasive than televised reports.

Live blogs can increase professional reflexivity and change performances

We saw at the start of the previous section that the legal professionals interviewed talk about live blogging as not impacting on what they do in the courtroom, however, our analysis shows that they simultaneously talk about an awareness of being watched which leads them to be more cognizant of their performances. This increased reflexivity is combined with an augmented attention to detail. Thus, although live blogging journalists are, on the one hand presented as a mundane aspect of everyday work life, on the other hand they may lead to changes in one's courtroom work.

For instance, Bo, a Swedish judge, says that the presence of live blogging journalists 'perhaps means that you pull yourself together a bit more, that you are a bit more alert so to speak, and that you are perhaps more careful how you formulate yourself'. Cate also says that it leads to defence lawyers and prosecutors being more 'pedagogic' in their presentations in order to 'avoid misunderstandings'. When Jens, a defence lawyer from Denmark, is asked about this he replies:

You act differently in cases that have massive media coverage because you also have to take into account how you're portrayed in the media, so yeah, but, it's not something that affects the defence - the defence is the same whether there's media coverage or not, but your performance may be linked to it. (Jens, defence lawyer, Denmark)

Like Cate, Jens is saying that the content of his performance does not change if the media is present, however *how* he performs may be affected as he is aware that he is performing in a live event and therefore, performing *to* multiple audiences simultaneously: the courtroom audience(s) *and* a virtual audience. For Jens, it is not so much the live blogging journalist's presence that impacts on his performance but rather the wider audience that a live event entails. The transformation of a trial into a live event thus means that legal professionals become more careful to perform their legal role appropriately. Although it should be noted that not all legal professionals we interviewed shared this perception, for instance, Simon, a Danish prosecutor, says that he always adopts such an instructive approach, the majority of remaining respondents in both countries follow the line of Bo and Cate. This finding therefore contributes to the existing research on legal professionals' recognition that they perform to multiple audiences in a courtroom – judges, lay judges, jurors, defendants, plaintiffs, witnesses, the public gallery and journalists, and that performances are adjusted appropriately (Flower, 2019). We thus expand this list to include those outside of the courtroom walls: a virtual audience.

This virtual audience is also an 'imagined audience' (Marwick & Boyd, 2010; Litt, 2012) consisting of those people legal professionals presume will read the blog. Performances can therefore be adjusted based upon to whom one is performing: colleagues, friends, and, perhaps most importantly for some, prospective clients. Another finding in this study is namely that live blogs are discussed as being utilized as a marketing tool by defence lawyers and prosecutors. For instance, Cate, a Swedish defence lawyer describes the presence of live blogging journalists in a courtroom as:

an excellent opportunity for a lawyer who really wants to distinguish themselves in a certain way, to seize the chance if [the trial] has gained the media's attention, to either start to show that they are really fighting for their client, which is in the nature of our task from the start but we choose to do it in different ways, or that a prosecutor is perhaps extremely particular about really being objective. A prosecutor should always be objective, but perhaps that the prosecutor is really careful in explaining something a bit more pedagogically than if you're sitting in a trial where you know that everyone sitting there, listening knows how a criminal process works. (Cate, defence lawyer, Sweden)

Also, on the other side of the water, Cate's Danish counterpart, Jens, says that some lawyers may,

just yell out loud and complain as much as possible (. . .) they just do that as marketing to the client and to future clients and it's clear that the effect can be amplified by there being live blogging. Uh, because then there may be some other potential clients out there who can read that, hey he has a lawyer who really fights for the case (. . .) So, it can become a way to market yourself for less honest or bad lawyers. (Jens, defence lawyer, Denmark)

In Denmark and Sweden, defence lawyers have a duty of loyalty and it is this performance which may be augmented in conjunction with the presence of live blogging journalists as Jens describes. For prosecutors, the duty of objectivity guides their work and, as Cate says, may lead to this being amplified. Live blogs thus act, not only as a magnifying lens on performances – enabling more detailed description, but they may also change performances – their surveilling presence leading to performance adjustment (cf. Andrejevic, 2004; Foucault, 1991).

We argue therefore that this increased reflexivity stems from an awareness and to some extent, acceptance, that they are in a ‘synopticon’ (Doyle, 2011; Mathiesen, 1997) yet without knowing who this virtual ‘imagined audience’ (Marwick & boyd, 2010; Litt, 2012) consists of: friends, colleagues, strangers or indeed, whether anyone is reading the blog or ‘watching’ them as it were. Thus, the mere presence of the journalist spurs legal professionals to act *as if* they were performing to a larger, imagined and virtual, audience: *as if* they are being watched by ‘the many’. Live blogs can therefore have a surveillance function (cf. Ariel et al., 2015) – it is the uncertainty as to whether or not one is being watched that leads to heightened reflexivity and changes in performances – either pushing one to follow institutional norms (cf. Bateson et al., 2006; Ernst- Jones et al., 2011; Foucault, 1991; Goffman, 1961, Lyon 2001, 2018) or indeed, leading to the opposite – to pushing the envelope of appropriate performances (cf. Flower, 2019). Live blogging has thus re-shaped the previously clear boundaries between participant and audience – even a potential audience can shape how those participating in events act (cf. Baym and boyd, 2012).

We submit that it is the very presence of live blogs that leads to these changes and that this constitutes a new aspect of the ‘conundrum of visibility’ (boyd and Marwick, 2009) – namely that it is the visibility itself that leads to changes in performances. This could be problematic as it means that the performances of legal professionals depicted in live blogs may not necessarily be accurate representations of how legal professionals most commonly work. For instance, the presence of a live blogging journalist may rouse a defence lawyer to perform loyalty to his or her client in an exaggerated and even, aggressive, loud and complaining manner as Jens mentions (cf. Flower, 2019). The public’s legal consciousness may therefore be based on misleading information.

Live blogs can lead to new professional practices

In the previous sections we showed that our respondents simultaneously talk about live blogs as not impacting on how they perform their role but, paradoxically, that live blogs lead them to be more reflexive and aware of performing their role appropriately – thereby leading to modifications in how they perform. The respondents also talked about the lack of impact live blogs have on their work tasks, however our analysis shows that this is not the whole story. We will now delve more deeply into this in order to show how live blogging impacts on what one’s legal professional role encompasses in order to show how live blogging has led to new professional practices.

As we saw in the previous section, there is agreement amongst the Danish and Swedish respondents regarding the risk of live blogs being used to market oneself. However, as we will now show, there are other clear differences regarding how live blogs have impacted on the professional practices of the legal professionals interviewed in the

two jurisdictions as reflected in their talk about using live blogs as a professional lawyering tool. For instance, Minna – a Danish defence lawyer – says:

It might sound a little crazy, but I've actually used it, um, if I've been a bit uncertain about what the hell did my client actually just say? Or what did the witness say, because I don't always have the court records, they don't always get written before having to proceed. I actually remember a case where I just went in to see what the journalist had actually written about [the trial] - is it how I remember it? So I've actually used it a few times as a tool for me just to compare notes. (Minna, defence lawyer, Denmark)

Gunnar, another Danish defence lawyer, also talks about reading live blogs 'to see if there is anything I missed' and to check 'what the hell was said?'. Gunnar says that he can then discuss this with his client, check the court records – which is the written summary of proceedings and which is available to parties of the case after a certain period of time has passed – and, if necessary, say to the judge “‘hey, something else was said” or “can't we just clarify a few things in this witness' testimony?””, he goes on to say that he has 'actually done that a few times.' Like Minna, Gunnar also uses live blogs as a source, something that is openly discussed in the Danish interviews, not only by defence lawyers, but also by the prosecutorial respondents. For instance, Kent recounts a time when he worked on a trial and the court records were unavailable for several days. He says:

I simply couldn't remember [what was said], it was regarding what a witness had said right? Uh, and I hadn't received the court record yet, then I thought, “I wonder if you could go in and get details on the live blog about what exactly was said” and funnily enough, I mean, the journalists, now they don't write verbatim what is said right, but I could still get the answer to my question from the live blog and then, of course, it was also in the record of proceedings when I got it later on, but it also shows that you can find relevant information. (Kent, prosecutor, Denmark)

Gunnar goes on to talk about the possibility of comparing what has been written in the court record with what has been published on various live blogs and using the discrepancy to his advantage in cases that he is going to appeal. He says,

As a defence lawyer, you could maybe use it in some way, when you're summarizing the case [for appeal]: “I can see that the court record states that this and that are explained. I slightly disagree with this - with the court - that this is the whole truth. I base this on the fact that [on news websites] it says - it's live-blogged - this impression of what happened.” (Gunnar, defence lawyer, Denmark).

A live blog is therefore talked about by Danish prosecutors and defence lawyers in this study as a credible source and thus a legitimate lawyering tool. This supports Thurman and Walter's (2013) study finding that live blogs are often deemed to be more objective and thus credible than traditional reports. Indeed, Gunnar sees it as 'a back-up – it could well end up in an acquittal or in a different understanding of events, which could lead to a lower sentence.' In contrast, none of the Swedish respondents talked about using live

blogs in this way, indeed one of them laughed when I suggested this – more about this shortly.

This inclusion of live blogs into work practices reveals a blurring of lines between audience and participant and new ‘layers of publicness’ (Baym and boyd, 2012: 312). We see that the role of some legal professionals changes from being an active participant in a trial, to becoming a member of the audience reading the reports, and then using these reports to give face to their claims when an active participant in the trial again – for instance, on appeal. We can therefore see new patterns of interacting with, and incorporating, digital media in professional practices emerging in Denmark however this is not as well established in Sweden. Indeed, if we turn our attention to Sweden, we find that legal professionals’ relationships to live blogs are not as clear cut, particularly for judges.

Judges and live blogs

Before we focus on this last aspect, it is of relevance to note that all of the Danish judges, prosecutors and defence lawyers interviewed say they read live blogs of trials. In Sweden all of the defence lawyers interviewed read such reports as did most of the prosecutors and half of the judges, however one prosecutor (Hampus), one trainee judge (Ruben) and one judge (Bo) deny reading such blogs, indeed Bo laughs and says ‘no I don’t’ when he is asked if he reads them and continues to laugh as he explains that ‘when you adjudicate it’s the immediacy principle which applies – we should judge the material that is presented in the courtroom and try and stay away from other side-information so to speak.’ Bo is saying that, for him as a judge, reading a live blog of a trial upon which he is presiding risks breaking one of the central principles of the Swedish criminal trial, that of immediacy – that only evidence presented in court should be considered in the judgement. Thus, for Bo, live blogs may constitute a threat to due process, therefore his judicial role entails avoiding them (and, as he also says, other media reports). In contrast, Gustav, another Swedish judge, begins the interview by stating that he doesn’t usually read live blogs, however he goes on to say, ‘when I’ve known that there have been live reports from “my trials” so to speak, then on a couple of occasions I have gone in and read what they have written, afterwards.’ When he is asked why he did this, he replies,

It was probably because, I mean, firstly, this is quite a new phenomenon and it was, I suppose, just that I wanted to see if this is something that I think can be problematic and damaging, and that I ought to find out if I should raise the question as to whether it should be allowed. (Gustav, judge, Sweden)

Gustav is referring to the rules which empower him to ban the use of electronic equipment that is disruptive – which he reasons includes reports published on live blogs. Thus, in order to make this decision, he needs to see what is being written there. For him, the novelty of live blogging is presented as tipping the balance from the risk of exposing himself to material not presented at trial towards the need for ensuring that a trial will not be disrupted. We see that according to Gustav, live blogs should be included in the judicial remit, standing in contrast with Bo’s stance that reading live blogs controverts the judicial role.

We suggest that such a divergence may stem from the relative novelty of live blogs, combined with the newness of the regulations pertaining to electronic equipment which increased judicial powers (introduced in 2019). We can therefore see that there are differences between judges regarding how live blogs are related to in Sweden (cf. Gohler et al., 2010).

Gustav not only considers it to lie within his judicial remit to read live blogs when appropriate, but also to actively initiate a ban if he deems the reports published to be disruptive. This differs to Gitte – his Danish counterpart who, although she discusses banning live blogs, says that she would not do so unless the prosecutor or defence lawyer requests it. For Gitte then, live blogs are only included in her judicial remit and thus incorporated in her professional practices – when instigated by another party.

The entry of live blogs into the legal sphere can therefore be seen to have different consequences on judicial practices, with some judges actively including them, others actively precluding them, and still others including them when called for by another party.

This final focus on the judicial use of live blogs shows that although they have become a staple in the Danish and Swedish courtroom – the patterns of how to interact with live blogs are still being shaped, with different legal professionals relating to them in different ways.

Conclusion

We find that whilst live blogging is perceived by legal professionals as supporting open justice in a positive way, the increased level of surveillance of legal trials that live blogs enable also entails more problematic ramifications pertaining to rule of law and impacts in various ways on the legal professionals being depicted. Thus, although the media plays a central role in ‘shaping public knowledge and facilitating public scrutiny of the justice system’ (Moran, 2014: 143; Resnick, 2013) there are risks relating to the transformation of the criminal trial into a live event using live blogging that warrant further attention in order to more fully understand the negative consequences of visibility.

Our analysis finds that despite live blogging constituting a relatively new phenomenon, it has already become an accepted part of courtroom life, but concomitantly there is ambiguity amongst the legal professionals interviewed in this study surrounding live blogs. On the one hand live blogs are presented as a normalized, everyday aspect of courtroom work with no impact on one’s professional role performance, yet at the same time the presence of journalists writing live blogs also causes many of our respondents to reflect over their role to a larger extent than when such journalists are absent. Furthermore, although live blogs are talked about as not impacting on what legal professionals do, they are simultaneously talked about as creating new professional practices, thereby changing them. Live blogs also re-shape the boundaries between audience and participant making these roles more fluid for some legal professionals. This is particularly prevalent amongst our Danish respondents, compared to our Swedish respondents. Linked to this, live blogs are currently being used as a professional legal tool by many of our respondents in Denmark, however not in Sweden. Although this study has a limited number of


participants, we nevertheless suggest that these findings provide a strong basis for future research.

We argue that live blogs, much like televised trials, extend ‘the public gallery into a virtual realm’ (Moore et al., 2021: 1). Live blogs therefore widen or dematerialize the courtroom meaning that physical presence can be replaced by virtual presence. The lines of participation become blurred and the scope of surveillance can be extended with legal professionals performing to a virtual audience beyond the courtroom. Live blogs are perceived as an accepted form in the hierarchy of liveness: a ‘light’ version of televised trials despite both providing direct insight into legal proceedings due to their detail and immediacy. Whilst live blogs can be seen as increasing open justice, the impact on legal professionals, and the creation of new practices should not be ignored. Future policy-making regarding the continued acceptance of live blogging and the possible entrance of television cameras into the courtroom should pay heed to the voices of those being surveilled. Warning flags have been raised in this study that live blogs may be used as marketing tools, which in extension risk conveying an inaccurate portrayal of legal processes and the legal professionals involved to a general public which have been found in many countries to be woefully uninformed (Fox & Rose, 2014). These are areas in need of further research.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: Lisa Flower received funding from the Nordic Research Council for Criminology for this research.

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