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## Loyalty Work

### Emotional interactions of defence lawyers in Swedish courtrooms

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## Loyalty Work



# Loyalty Work:

## Emotional interactions of defence lawyers in Swedish courtrooms

Lisa Flower



**LUND**  
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DOCTORAL DISSERTATION

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<p><b>Abstract</b></p> <p>Defence lawyers' work takes place in emotionally charged, yet emotionally constraining situations. This is particularly evident in criminal trials. Distressed clients, unforeseeable disruptions, disturbing evidence, emotional plaintiffs and even moral suspicions should all be managed in a proper and appropriate manner. Loyalty Work analyses how this is done in the context of Sweden, with specific focus on criminal trials at district courts. Defence lawyers constitute a category of legal professionals that have received relatively little sociological attention and thus warrant deeper theoretical and empirical understanding.</p> <p>By drawing on ethnographic fieldnotes from observations of over 50 criminal trials the strategies for performing loyalty and teamwork are revealed. Interviews with 18 lawyers have also been conducted to explore how defence lawyers talk about emotions and their professional role. This empirical material, along with other sources such as the audio recording of a trial, are analysed using dramaturgical theory and theories on emotion work.</p> <p>The study shows how defence lawyers project a professional impression in line with invisible emotional, interactional and ceremonial expectations. Defence lawyers attempt to represent clients by managing performances in the courtroom— their own, their clients' and others' - and by ensuring they remain within the boundaries of the emotional regime of law. Simultaneously, the defence team should present a united front to the court. These strategies involve using emotion work and facework to build up or undermine facts in the trial, by drawing attention towards or away from information presented or by the use of props.</p> <p>A criminal trial is found to be an inherently emotional and interactional accomplishment with the reproduction of defence lawyers' loyalty to their clients as a crucial component. Defence lawyers are also expected to ensure that the overarching emotional regime of law with its illusionary dichotomy between rationality and emotionality is upheld. The study concludes that loyalty work demands emotion work, facework and teamwork. The Swedish context is particularly interesting as it calls for subtle drama with understated performances.</p>		
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# Loyalty Work:

Emotional interactions of defence lawyers in  
Swedish courtrooms

Lisa Flower



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*To Martin, Daisy and Harriet (and Leif)*



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# Chapter 1: Introduction

The prosecutor asks the defendant how he came to be in possession of the stolen items and the defendant claims that he bumped into an acquaintance who gave them to him. When asked to describe the acquaintance, the defendant claims he does not remember what he 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. The prosecutor points out to the accused that in his police statement he stated that the acquaintance he bumped into was called Danny Diamond<sup>1</sup>, which the arresting police officer has also testified to. 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 and he didn't want to get his fingerprints on them therefore "Erving" gave him his plastic gloves along with the items.

Throughout all of this, the defence lawyer stares, almost without blinking, at the prosecutor. His facial features do not move: 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. (Fieldnote)

The everyday work of criminal defence lawyers in Sweden typically entails scenes such as that depicted above which I have taken from my fieldnotes of a trial for theft. Yet the work of defence lawyers is often more immediately associated by many outside the profession with more emotionally-laden cases, such as rape, murder or paedophilia. Indeed, all of the defence lawyers I interviewed in this dissertation tell me that they have been asked the question "how can you defend a rapist?" My argument is that emotions abound in all criminal trials, even the mundane as depicted above, and that, consequently, the management of emotions is integral to the role of defence lawyer: irritation when a client says something damaging in court, surprise when a witness says something unexpected, disgust towards gruesome evidence, moral outrage at a crime, or even dislike towards an unpleasant client. I am thus interested in showing how defence lawyers accomplish their professional role, irrespective

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<sup>1</sup>This is a fictitious name but the name used in court was equally as fantastic.



of the alleged crime or who the client is. How this is done using their body and emotions is the focal point of this dissertation.

This is made more problematic as, whilst there are explicit guidelines that outline the defence lawyers' professional obligations, how they should actually perform this role is not explicitly set out, rather it is guided by invisible rules - implicit expectations and shared understandings. Consequently, the ways in which defence lawyers accomplish their role is a sociologically interesting, yet currently unexplored, question.

The particular context of Sweden also brings with it interactional and emotional challenges for defence lawyers not least because they work directly with clients, unlike in other countries where an intermediary takes this role. Teamwork is therefore vital in building the defence team. Furthermore, during a trial the defence lawyer and client sit next to each other, thus raising the interactional stakes as the defence lawyer can never be certain what the client will say or do. The relative informality of the Swedish courtroom, devoid of ceremonial robes and gowns, also places greater demands on defence lawyers in order to convey the professionalism integral to their role.

What makes this all the more analytically demanding is that the overarching emotion norms in law are aimed at ensuring that it is "protected from emotion's pernicious influence" (Maroney & Gross, 2014, p. 143, see also Maroney, 2006). This means that emotions are often neglected, distorted, downright ignored or displayed subtly in order to create the appearance of rationality (Bergman Blix & Wettergren, 2015, p. 3). Revealing the emotions in the subtle drama of a criminal trial therefore requires cultural, contextual and interactional knowledge.

In this dissertation I show how defence lawyers accomplish their role in the specific context of the emotionally and interactionally constraining criminal trial. In particular I show how this performance conveys the defence lawyer's role obligations which are centred on the principle of loyalty and which require emotion work, facework and teamwork, that is, loyalty work.

## 1.1 Emotions and law

The law is a peculiar paradox of unemotional emotionality. Whilst the involvement of emotions in law "is so obvious as to make its articulation seem almost banal" (Maroney, 2006, p. 120), the centrality of emotions is often stifled, overlooked or rejected in order to lift the rationality of law. Consequently, although the law solves conflicts, and any conflict, legal or

otherwise, inherently entails some kind of emotional engagement, the role of emotions tends to only be openly accepted with regards to certain aspects of law such as family law (Abrams & Keren, 2010; Collins, 2008; Flower, 2014; Karstedt, 2002).<sup>2</sup> Likewise, legal professionals, are often associated with impartiality, which, in turn, implies the absence of emotion (Bandes, 1999a; Bergman Blix & Wettergren, 2015; Jacobsson, 2008; Maroney, 2011b; Roach Anleu & Mack, 2017).

This predominant reluctance to lift the role of emotions stems from the perceived risk that acknowledging their centrality may lead to the law being viewed as biased - not equal and universal, but partial and particular, especially when it comes to criminal law and criminal trials (Bandes, 1999b; Miller, 1997). We do not want judges making decisions based on their personal emotions, morals or values, rather judgements should be based in the (morals and values communicated through the) law.<sup>3</sup> With regards to trials, we are uncomfortable with “the idea that a victory should go to the party whose lawyer is the more accomplished actor” (Murphy, 2002, p. 112), rather we want the “victory” to be based on evidence.

The contemporary scientific interest in emotions does not mean that emotions should become the focal point or root cause of all interaction, but, their presence and value should be recognised, along with the demands that are placed upon them in order to render them appropriate to the situation (Sieben & Wettergren, 2010). My starting point is thus similar to that of other scholars of emotions in the courtroom, namely that “[e]motion is inherent in all human behavior and is embedded in social interaction, including in the courtroom” (Roach Anleu, Rottman, & Mack, 2016, p. 69).

The current turn towards the global “emotionalization of law” (Karstedt, 2002, p. 299; see also Lange, 2002; Laster & O’Malley, 1996) acknowledges the institutional space of criminal courts and procedures as a central mechanism for emotions in society. This turn has also moved beyond the “cultural pattern” (Karstedt, 2002, p. 305) of the law’s emotional responses, and has begun to explore institutionalised interactional and emotional performances in the courtroom, which are the focus of this dissertation. Maroney’s (2006, p. 126) taxonomy of law and emotion research organises the field into several categories including, for instance, how emotions are reflected

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<sup>2</sup> Emotions are also more readily associated with sentencing, types of punishment or regarding expectations of lay participants (Braithwaite, 1989; Dahl et al., 2007; N. R. Feigenson, 1997; Nussbaum, 2004; Sarat, 1999; Wessel, Drevland, Eilertsen, & Magnussen, 2006).

<sup>3</sup> For a discussion of this read Bandes 1999b (see also Bornstein & Wiener, 2009; Nussbaum & Kahan, 1996; Solomon, 1999).

in law, how theories of emotion are embedded within certain theoretical approaches to law, and, the category which my research largely falls into: “how a particular legal actor’s performance of the assigned legal function is, could be, or should be influenced by emotion.”

My focus in this dissertation is on one particular legal actor, namely the defence lawyer and even more precisely, their performances in the criminal courtroom. Defence lawyers constitute a category of legal professionals that have received relatively little sociological attention, in contrast to judges for instance, and thus warrant deeper theoretical and empirical understanding.

My work thus builds on the relevant research from other countries regarding this professional group (in particular Banes, 2006b; L. C. Harris, 2002; Pierce, 1995; Westaby, 2010) in order to depict the performances of defence lawyers in Sweden. I also draw on dramaturgical studies of courtroom interactions and emotions (notably Bergman Blix & Wettergren, 2015; Maroney, 2011a; Roach Anleu & Mack, 2017) thus developing the dramaturgical and emotional understanding of the Swedish context, where emotions should be muted and interactions are ordered.

In this way my study completes the trinity of legal principle performances in the courtroom by adding to the current literature describing prosecutors and judges in Sweden and thus contributing to the understanding of justice as an interactional accomplishment (Bergman Blix & Wettergren, 2015; Jacobsson, 2008; Törnqvist, 2017; Wettergren & Bergman Blix, 2016). In particular I focus on the fine detail of interactions and provide a unique insight into how the abstract principle of loyalty is accomplished in the legal role of defence lawyer.

## **Why defence lawyers?**

My choice of defence lawyer as my empirical focus stems from a number of factors. As I have already noted, the relative paucity of research regarding defence lawyers, particularly in comparison to the other legal professionals in a trial, makes them a novel group for research. Furthermore, a previous study I conducted on legal education in Sweden showed an academic focus on cultivating objectivity which reproduced the dichotomy between rationality and emotionality (Flower, 2014). This was prevalent in law students’ emotion talk and in their implicitly learned emotion management strategies (Flower, 2014). I was thus interested in finding out more about how emotions are managed, talked about and performed in law.

However, the main motivation for exploring defence lawyers came from Åsa Wettergren and Stina Bergman Blix, who, in 2013, received funding from the Swedish Research Council for a study on “Emotions in Court” (Bergman Blix & Wettergren, 2019). Their project focused on prosecutors and judges, therefore they generously proposed that I explore the emotions of defence lawyers in order to complete the criminal trial triad.

When I began my study, I found that defence lawyers are often talked about with some suspicion, perhaps even contempt. Remarks such as “do defence lawyers have feelings?” and, “how can they defend a rapist?” were common when I told people that I was writing about defence lawyers and emotions. Indeed, defence lawyers often get a raw deal, both in research and in the media (McConville, Hodgson, Bridges, & Pavlovic, 1994; Newman, 2012; Newman & Ugwudike, 2013; Travers, 1997). This is highlighted in a doctoral dissertation on Swedish prosecutors, who talk about defence lawyers as being driven by greed, dishonour and personal gain and who use dirty tricks to win points with their clients (Törnqvist, 2017, pp. 313-319). An article in *Dagens Nyheter*, one of Sweden’s most read daily newspapers, quotes the Director of Public Prosecution, Björn Blomqvist, as saying that defence lawyers in organised crime trials are trying “more frequently to switch the focus of the case to procedural or peripheral questions. They query the police’s work methods and interrupt the prosecutors, who have to constantly answer questions” (Andersson, 2015). Also, in an article in *Aftonbladet*, another of Sweden’s major newspapers, regarding a major drug smuggling case, I read, “lawyers are a type who, not unusually, love big words, so their rhetoric should not always be taken completely seriously” (Cantwell, 2014). Additionally, a study of Swedish police working with youths describes certain defence lawyers as “I-am-always-innocent-lawyers” (Björk, 2011, p. 212) thus constituting a hinder for police work.

These examples show that there can be a distrust of defence lawyers, a perception or bias which is rarely held about prosecutors or judges. Defence lawyers are, on the one hand, seen to be working in a high-status occupation, but on the other hand, they are seen as performing something akin to a form of “dirty work” (R. M. Emerson & Pollner, 1975; Haller, 2003; Hughes, 1962; Tata, 2010) and in this sense, they constitute a sociologically interesting occupational group. In the analytical chapter on the emotion work of defence

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<sup>4</sup> Such a distrust of lawyers is also seen in other countries, for example, Scheffer (2010, p. 96) writes that defence lawyers are often met with reservation in England, the misconception being that lawyers “advise the client ‘what he should not do’, ‘what she should not say’, or ‘that one should give in.’”

lawyers I present, amongst other things, how defence lawyers emotionally explain and justify their work – an approach that is novel for this occupational category.

Additionally, of the various legal actors in the courtroom, defence lawyers can have a great deal of direct contact with clients, unlike judges and prosecutors. I argue that, this service-like role places higher demands on their emotional performances compared to other courtroom actors (cf. Hochschild, 2003). In other countries there may be an intermediary between the defence lawyer and client, for instance, paralegals in the USA protect attorneys from “emotionally draining client contact” (Lively, 2002, p. 215), whilst solicitors perform a similar role in England. Defence lawyers in Sweden, however, must regularly meet clients in emotional crisis leading to demands on interpersonal skills.

Another reason that defence lawyers make for an interesting point of empirical study is linked to their role in relation to their client – the defendant - who may be unfamiliar with a criminal trial and who may not know what is expected of him or her (Jacobson, Hunter, & Kirby, 2016). Furthermore, defendants are free to change their version of events during a trial. All of this places emotional and dramaturgical demands on the defence lawyer in interaction with the client and, in particular, during the trial.

After I began to gather material for this dissertation I also discovered that the overwhelming majority of criminal trials – 93 percent - lead to conviction (Nordén, 2015). Defence lawyers “lose” almost all the time. This sparked my interest as to how they talk about such losses, a theme I discuss in the analytical chapter on emotion work.

The spotlight on defence lawyers also entails a special focus on loyalty as this is the guiding principle for their profession: to loyally defend one’s client which was talked about by all of the lawyers I spoke to as the foundation of their role (Association, 2008). The performance of this principle has also gained little sociological attention thus my study fills a gap in the loyalty-research (Connor, 2007).

Now I hear you cry, isn’t the defence lawyer’s performance irrelevant – isn’t it only the facts that count? As the infamous O. J. Simpson’s defence lawyer, Johnnie Cochran, pointed out to the jury at the highly publicised murder trial of Simpson’s ex-wife and lover – if the glove doesn’t fit, “you must acquit” (see also Shuy, 2005). Whilst exploring any link between performance and acquittal is beyond the scope of this dissertation (although an interesting area for future study), my position is nevertheless that the courtroom performances

of defence lawyers are central to the joint accomplishment of justice and the smooth flow of a criminal trial.

## 1.2 Research questions

In order to show how defence lawyers emotionally and dramaturgically accomplish their role I will answer the following questions:

1. How do defence lawyers present self, other and team?
2. How are loyalty and teamwork accomplished by defence lawyers in the courtroom?
3. How are emotions talked about and performed by defence lawyers?
4. How do defence lawyers manage their own emotions and the emotions of others?

Questions one and two are addressed in chapters five and six, whilst questions three and four are focused upon in chapters six and seven. In the final chapter, I bring all of my findings together in a closing speech, ending with contributions to the field which the reader may jump to now if he or she is of the impatient inclination.

## 1.3 The Swedish study setting

I will now introduce the study setting by giving a short overview of Sweden before presenting the Swedish criminal trial at district court and the official guidelines for defence lawyers in Sweden.

### **Sweden**

Sweden has been presented as a socially-engineered country with a political culture of decentralisation, participation and openness and with a pragmatic and non-ideological approach to societal problems, combined with a tendency for dialogue and negotiation enabling political and social compromise and solutions (Lundgren, 2016; Musial, 1998; Simon & Yaras, 2000). It is portrayed as a country of compromise: *landet lagom* meaning, not too much and not too little. Some even say that conflict may only arise in Sweden in

order to reach a compromise (Simon & Yaras, 2000; Österberg, 1989). There is also a high level of trust in the political system and between citizens (Welzel, 2016).

It has been claimed that body language and emotional displays are seldom used in Sweden (Simon & Yaras, 2000). People in Sweden have been depicted as having a tendency to avoid strong emotional expressions, partly in order to avoid conflict but also because such robust and spontaneous emotional expressions are associated with childish and rash behaviour (Daun, 1998; Simon & Yaras, 2000, pp. 133, 147). However, I claim that body language and emotional displays are used, but that subtlety is called for. These aspects have also been discussed regarding legal professionals as the former State Secretary for the Justice Department in Sweden and judge, Krister Thelin (2001, p. 54) writes that Swedes are generally careful and reticent, factors which may influence courtroom performances.

When I have presented my findings at various conferences, seminars and discussed my dissertation informally, people in Scandinavia often comment that the subtlety of the courtroom performances in Sweden is because of “Jantelagen” (Sandemose, 1934/1968). This is a concept that was first introduced by a Danish novelist in the 1930s, to describe an unwritten rule that one shouldn’t think that one is better than anyone else, a cultural understanding that is widely referenced even today (Sandemose, 1934/1968; S. Scott, 2016; Simon & Yaras, 2000). There is therefore an assumption that defence lawyers in the Swedish courtroom do not give emotionally dramatic, theatrical performances as they do not wish to break the cultural understanding that one must follow “Jantelagen”. My position is that the performances I have observed may partly be in compliance with informal societal conventions, however they are far more nuanced, convoluted and agency-driven, than mere adherence to this cultural understanding.

## **The criminal trial at district court**

The legal system in Sweden has formal requirements regarding standard of proof, presumption of innocence, the right to counsel and the right of confrontation (van Koppen & Penrod, 2003, p. 2).<sup>5</sup> It is classed as a mixed

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<sup>5</sup> Sweden has a civil law system guided by statutory laws, contrasting with common law legal systems where laws are made by judges and precedent (SFS, 1942:740). Although the legal system and justice system are often linked, with civil law tending to have an inquisitorial system (such as in France and the Netherlands) and common law usually having an adversarial system (such as the USA, England and Australia) it is argued that no system is

system with both inquisitorial and adversarial aspects.<sup>6</sup> Whilst inquisitorial trials are like an inquest, “directed at establishing the true facts” (van Koppen & Penrod, 2003, p. 3), the adversarial system (also known as accusatorial), is essentially a contest between equivalent rivals where one is judged by one’s peers.<sup>7</sup> Sweden is considered to be positioned in the middle of the scale of inquisitorial to adversarial systems (van Koppen & Penrod, 2003). The inquisitorial aspects in the Swedish legal system can be seen in the judge holding order in the courtroom, the active role of the defendant, and the role of the prosecutor in preparing the case and representing the state.<sup>8</sup> The adversarial aspects are seen in the impartiality of the judges to whom the prosecutor should present evidence in order to convince them of the case’s credibility.

The adversarial system therefore brings with it a co-ordinated conflict where the truth can be established via contention and it is during the trial that the adversarial aspect of the system is most prevalent (May, 2005; Wong, 2012). I argue that it is by observing this co-ordinated conflict that we can see justice being performed. It is here we can see the principle performances of objectivity, impartiality and loyalty - of legal professionals “doing justice” (Wettergren & Bergman Blix, 2016).

As already noted, the overwhelming majority of criminal trials lead to conviction (Nordén, 2015). This is because of the way the legal system works: prosecutors do not bring a case to trial unless they determine that the evidence they have gathered will most likely lead to a guilty judgement.

Criminal cases are handled in district court<sup>9</sup>, of which there are 48 in Sweden. A trial is the main hearing where the court decides if a person

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wholly adversarial or inquisitorial and that the system itself is unimportant, so long as the outcome is fair (Cainaniello, 2011; J. R. Spencer, 2016).

<sup>6</sup> Sweden had an inquisitorial system until 1948 when a new code of criminal procedure was introduced.

<sup>7</sup> Furthermore, an inquisitorial system is characterized by separate responsibilities for the investigation (pre-trial) phase which is conducted by the prosecution and/or the examining judge. During the actual trial a trial judge or court presides. Any evidence may be presented to the judge who decides on its reliability and weight. A written document of evidence is prepared and presented to the court with witnesses called to investigate the accuracy of the document. In contrast, in an adversarial system, the judge determines which evidence is admissible.

<sup>8</sup> Depending upon the severity of the alleged crime, it is either the prosecutor or police (in minor cases) who decides on whether or not to initiate preliminary investigations and who then leads the investigation.

<sup>9</sup> Such cases are handled in the district court in the first instance but can also be heard at the Court of Appeal and later, the Supreme Court.



suspected of a crime is guilty (Domstolar, 2018). In a criminal trial the main actors are the judge, lay judges, clerk, prosecutor and defence lawyer along with the plaintiff<sup>10</sup>, defendant and witnesses. The plaintiff may have a legal advisor to help (counsel for the plaintiff).

The judges and clerk sit in a row at the front of the courtroom whilst the defence lawyer sits on one side of the room at a table with the defendant sitting next to them.<sup>11</sup> The prosecution sits opposite the defence with the plaintiff (if there is one) sitting next to them. The witness sits in the middle of the courtroom when they give evidence and the public gallery where spectators can sit is at the back of the courtroom.

Witnesses must promise to tell the truth however they are exempt from this if they are related to one of the parties in question, mentally ill or under 15 years of age (SFS, 1942:740 RB 36, 1§, 3§, 5§). The plaintiff and the defendant do not take such an oath.

There is one legally qualified judge (the presiding judge) and usually three lay judges who represent the general public.<sup>12</sup> The presiding judge may be fairly active during proceedings, for instance asking clarifying questions (Aronsson, Jönsson, & Linell, 1987). The lay judges are politically appointed, a process which has led to debate in Sweden.

The defence lawyer can either be appointed and paid for by the court - a public defender - or the defendant can choose to hire a different defence lawyer in which case the defendant must pay the defence lawyer's fees.<sup>13</sup>

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<sup>10</sup> By definition, the plaintiff is the party who initiates a criminal proceeding, a role that is taken by the prosecutor in Sweden. However, in order to make for easier accessibility for the reader, I use the term "plaintiff" rather than the more correct term "injured party". Furthermore, as my interest is not in who brings the case to court, rather on courtroom interactions, I consider it to be an acceptable usage of the term.

<sup>11</sup> The positioning of the prosecutor and defence lawyer opposite each other indicates the adversarial nature of the trial although it should be noted that in other adversarial systems such as England and the USA, lawyers stand next to each other. Barristers in England are regarded as less combative than their American counterparts who stand further away from each other (McMahon, 2006).

<sup>12</sup> The number of lay judges can change, for instance, if one lay judge is unable to attend, it is possible for proceedings to continue with only two. In cases with only minor penalty or a maximum prison sentence of six months the trial may take place without lay judges (Sangborn, 2016; SFS, 1942:740, 1 Kap, 3§).

<sup>13</sup> If the defendant is found guilty when represented by a public defender, the defendant may be required to pay all or part of the state's costs, however if they are found not guilty then they are freed from these fees.

Trials are usually open to the public although spectators are rare. Direct-sent TV is not allowed, although live-reporting in the form of live-blogging and tweets along with radio coverage is permitted.<sup>14</sup>

Trials should follow the principles of immediacy (only evidence presented at trial is considered in the judgement), orality (all evidence should be introduced orally) and concentration (the trial should be concentrated in time) (Dahlberg, 2008; Wong, 2012).

After the presiding judge checks who is present, the trial is divided into four main phases: (1) reading of charges by the prosecution after which the defendant is able to respond guilty or not guilty (usually it is the defence lawyer who responds); (2) the case for the prosecution (presentation of facts); (3) examination and cross-examination (questioning by the opposing counsel)<sup>15</sup>, starting with the plaintiff then defendant and lastly witnesses (the party that has called the witnesses begins); and finally (4) closing speeches. Only the third phase is dialogical (Aronsson et al., 1987, p. 103). Before the closing speeches the defendant's personal circumstances are dealt with (for instance, extracts from criminal records). There are short breaks in proceedings as and when needed. During these breaks, the judges and clerk are the only ones who may remain in the courtroom, all others must leave. Following the hearing the judges deliberate in seclusion - discussing the case and deciding how to rule - and the judgment may either be announced directly or at a later date in a written judgement.

I argue that it is during the cross-examination and final closing speech phases of the trial that the defence lawyer has the opportunity to perform, indeed, the cross-examination is a "dramatized argument (...) putting to the witness facts that can be proven otherwise for the purpose of having a dramatic 'face-to-face' presentation" (Park, 2003, p. 145, fn. 116), the aim being to draw attention to evidence (rather than producing new evidence) or eliciting "non-verbal demeanor" (Park, 2003, p. 145). That is, it is a face-to-face interaction designed to draw attention to evidence. This is what makes the courtroom an interesting site for sociological enquiry. It holds a series of face-to-face encounters in an emotionally-charged yet highly emotionally-constrained situation as will be depicted in my analytical chapters.

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<sup>14</sup> See Thelin (2001, p. 136) for a discussion on the impact that the introduction of courtroom TV could have on the Swedish courtroom. Thelin (2001, p. 142) argues for the increased transparency that can arise from a more open courtroom leading to fewer misconceptions and misunderstandings of the principles of rule of law and criminal procedure.

<sup>15</sup> In inquisitorial systems witnesses may not even be called or cross-examined.

Proceedings are relatively informal and less adversarial than the Anglo-Saxon system (Aronsson et al., 1987). There are no wigs or robes worn, however it should be noted that “the absence of robes and wigs does not mean an absence of formality, but rather that the rituals are less distant from the practices in everyday life” (Dahlberg, 2009). Prosecutors and defence lawyers tend to wear suits - only once have I observed a prosecutor wearing something other than a suit (he was wearing cargo pants), a striking difference in comparison to, for example, the English courtroom. The presiding judge also wears a suit however the lay judges may be more casually dressed.

As I mentioned in the introduction, the informality of the Swedish courtroom, devoid of ceremonial robes and gowns, places interactional demands on defence lawyers in order to perform the professionalism that is one of the goals of their performance. This is explored more fully in the analytical chapters, however, in order to highlight this informality, here is a short excerpt from my fieldnotes of a trial from an English Crown Court:

I am immediately struck by the difference in tone and formality. Robes and wigs are worn by all. The judge enters the courtroom last and all rise upon her entrance. The judge is bowed to by the legal actors when entering and leaving the courtroom and she sits slightly elevated from everyone else. The defendant sits at the back of the courtroom, in the dock. There is thus no interaction between the defendant and his barrister<sup>16</sup>. Once or twice the defendant's barrister turns and gestures or points towards him when arguing the case but the defendant appears more as a prop than an actual actor involved in proceedings. (Fieldnote)

This excerpt also points to the difference in opportunities for teamwork between defence lawyers and their client during proceedings, not least due to the positioning of the defendant in the dock (Rossner, Tait, McKimmie, & Sarre, 2017).

As the courtroom can constitute a scene for strong emotions even in Sweden, defence lawyers are expected to have strategies available for an appropriate performance within the performative and emotional constraints (Adelswärd,

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<sup>16</sup> In England the Bar is divided with two types of lawyer: solicitors and barristers. Solicitors do the legal work done by most lawyers in other countries however when the case comes to trial in Crown Court, it is turned over to a barrister. This is true of both the defence and the prosecution. The barrister is briefed shortly before the trial and may only meet the defendant on the morning of the trial (Pizzi, 1999). This has led to criticism of the English system: the case-file is said to become the inappropriate focus, shielding the lawyer from the client (see Scheffer, 2010, p. 97). Barristers can switch sides, working some trials as the prosecution and others as the defence.

1989; Bergman Blix & Wettergren, 2015; Dahlberg, 2009; Törnqvist, 2017). The guiding rule for defence lawyers is *foriteter in re, suaviter in modo*, “resolutely in fashion, gently in manner” (Blomkvist, 1987). For instance, those appearing 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, p. 83). Violating these boundaries or using aggressive examination techniques may antagonize other legal parties in the courtroom, which may lead to the court being negatively positioned toward the defence lawyer (Blomkvist, 1987; Borgström, 2011; Mellqvist, 1994). This prescribed 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” (Maroney, 2012).

Although, historically, defence lawyers in Sweden are not a close-knit community unlike, for instance, their English counterparts, I suggest that there may still be a fear of being labelled as deviant by one’s colleagues leading lawyers to conform to the ruling norm (McMahon, 2006; Mellqvist, 1994).

Finally, the Swedish criminal trial is often differentiated from other systems with regards to the absence of a jury. For instance, Krister Thelin (2001, p. 86), State Secretary for the Justice Department in Sweden and judge, says that the presence of a jury in the USA leads to legal professionals using “emotional ploys” in the courtroom which is not the case in Sweden. He claims further that “the Anglo-American criminal process offers a dramaturgy, largely due to the role of the jury, that Swedish trials cannot offer” (Thelin, 2001, p. 136). I disagree however and argue that such emotional tactics are also used in the Swedish courtroom, however, in a subtle manner, as is shown in my analysis. Therefore, “cultural variability requires cultural competence” (Maroney, 2015, p. 3) in order to see the comparatively subtle emotions in the Swedish courtroom.

## **Laws, rules and guidelines for defence lawyers**

My focus is on the courtroom performances and emotion talk of defence lawyers which I argue are based on the laws, guidelines and rules they should follow. Even though they do not receive explicit advice regarding *how* these rules should be performed, there are nevertheless similarities and patterns to be revealed.

The official framework for defence lawyers is as follows. Defence lawyers must follow the law: the Swedish Judicial Code of Procedure

(*Rättegångsbalken*) which states that defence lawyers may not be dishonest, imprudent or unsuitable (SFS, 1942:740). In order to call oneself a lawyer (*advokat*)<sup>17</sup> one must be a member of the Swedish Bar Association which requires that the code of conduct is followed (Association, 2008).<sup>18</sup> The code of conduct states that lawyers hold a significant position in society as the protector of freedoms and rights and that,

[t]he principal responsibility of an Advocate is to show fidelity and loyalty<sup>19</sup> 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. The Advocate must not be influenced by possible personal gain or inconvenience or by any other irrelevant circumstances (Association, 2008, p. 4).

Furthermore, a lawyer should not make statements they know to be untrue nor should they scandalise or threaten an opposing party, make degrading comments regarding the opposing party, or introduce disparaging evidence or information regarding the opposing party “unless, in the circumstances, this appears justifiable in order to act in the best interests of the client” (Association, 2008, p. 28). Also, although a lawyer may not suppress or distort evidence, her or she “is not obliged to produce or invoke evidence or adduce facts detrimental to the client unless required to do so at law” (Association, 2008, p. 33).

To these Swedish rules, defence lawyers should also follow the European code of conduct which states that a client should be represented without regard to the defence lawyer's own interests, and that a “lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly” (Europe, 1988, p. 13). They must also follow Article 6 of the European Convention of Human Rights (ECHR, 1950) which states that everyone has the right to a fair trial.

Members of the Swedish Bar Association risk being reported to the disciplinary committee if they are suspected of having broken the Swedish Bar Association's code of conduct (Association, 2008). This may lead to sanctions ranging from reminders, warnings, fines of up to €5300 and, in the most

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<sup>17</sup> Although the correct translation is “advocate”, I have chosen to use the term “defence lawyer” which I believe will be easier for the reader to use.

<sup>18</sup> The main purpose is to protect the public from unqualified practitioners, the secondary purpose is to act as a professional guide for lawyers (Ebervall, 2002, p. 47). Even non-members are permitted to represent clients at a criminal trial.

<sup>19</sup> I use “loyalty” to encompass both fidelity and loyalty.

serious of cases, expulsion from the Bar. A compilation of decisions by the Board of the Swedish Bar Association and the disciplinary committee between 1987-1997 show that disciplinary action tends to target the neglect of official tasks, rather than behaviour in court (Bentelius & Agneklev, 1998; Wenne, 1988).

The role of the defence lawyers is to therefore to look after the client's interests and act accordingly, striving for the best possible result within what is legally and ethically permissible (Munukka, 2007, p. 315; Wiklund, 1973, p. 248; Wägeus, 2014). It entails not having any personal opinion regarding the client's guilt and focusing on critically evaluating the value of the evidence presented by the prosecutor (Borgström, 2011; Vinge, 1944, p. 44).

We therefore see that there are explicit rules given for defence lawyers, but how they should be performatively followed remains implicit.



# Chapter 2: Theories and Concepts

## 2.1 Emotions

I consider emotions to be our societal glue and driving force: “no action can occur in society without emotional involvement” (Barbalet, 2002, p. 2; Burkitt, 2014; Collins, 1981, 2004; Durkheim, 1912/1995; S. J. Williams, 2001).<sup>20</sup> Although there is disagreement as to which emotion it is that binds society together – sympathy (Clark, 1997), shame (Scheff, 2000), trust (Barbalet, 1996), gratitude (Simmel, 1950) or loyalty (Connor, 2007), there is nevertheless agreement regarding the centrality and embeddedness of emotions in social life to which I align myself.

### **Rationality and emotionality**

This entwinement of emotions in our daily lives encompasses reasoning and decision-making, therefore my study is based on the understanding that rationality and emotionality are inseparable (Barbalet, 2001; Fineman, 2006, 2008; Sieben & Wettergren, 2010). Accordingly, emotions are a part of everyday life, even in a court of law. The notion of unemotional legal professionals in an unemotional courtroom is thus misleading: the Weberian ideal-type of rationality, “sine ira ac studio” (without anger and fondness) should instead be seen in terms of a framework that views emotions with suspicion (Sieben & Wettergren, 2010, p. 4; see also Stearns, 1994).

This position finds support in research that questions the division of emotionality and rationality, a dichotomy that is exemplified by Weber’s (1905/2008) forms of social action.<sup>21</sup> For instance, neurological studies have

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<sup>20</sup> The inherent power aspect relating to emotional expressions and experiences is beyond the scope of this dissertation (Ahmed, 2004; Flam, 1990a; Kemper, 1978a).

<sup>21</sup> Weber (1978, p. 4) was interested in the “interpretive understanding of social action” and is often read as considering social actors to be able to exercise self-control over their emotions in order to execute rational conduct. All deviances from rationality are therefore deemed emotional. However, the role of emotions as a driving force can be glimpsed in his



shown that certain brain injuries leave intellect intact but cause impairment to decision-making abilities and emotional responses, thus revealing a link between rationality and emotionality (Barbalet, 2001; Damasio, Everitt, & Bishop, 1996). It is therefore inaccurate to describe emotions as absent in rational decision-making processes, rather emotions are always present, either consciously in the foreground, or unconsciously in the background (Damasio, 2000).

Such neurological findings have been incorporated into sociological theory to explain why we (mistakenly) consider emotions to be disruptive and, consequently, non-rational. For instance, Barbalet (2002) argues that Weber (1905/2008) neglects the role of emotions in motivating us to engage in social action. Barbalet (2002) posits that it is emotions such as confidence that enable us to accomplish an action and trust that others will execute their actions which lead us to act. However, these constitute “backgrounded emotions” (Barbalet, 1992, 2001, 2011; Damasio, 1994, 2003) which are unconscious; they are low-feeling states of a reflective nature which do not lead to a concomitant action. In contrast, “foregrounded emotions” (Barbalet, 2011, p. 39) are linked to high feelings states and associated behaviours, for instance, we consciously feel fear and we flee (see also Jasper, 2011). Foregrounded emotions thus risk being viewed as disruptive, leading to uncontrolled, unexpected or unwanted decisions or behaviour, in other words, “irrational” behaviour (Barbalet, 2001, 2011; Lange, 2002). We therefore associate rationality with the absence of emotions (despite backgrounded emotions such as trust and confidence being unconsciously present) and emotionality with foregrounded emotions that we consciously attend to.

## **What are emotions?**

All this begs the question, what are emotions? Emotions are not ‘things’, rather they are “*patterns of relationships* between self and others, and between self and world” (Burkitt, 2002, p. 2 emphasis in original; Barbalet 2002, 2011). Emotions arise through involvement with the social world, a sociality which means that they are constantly created in interactions and thus are in constant need of management (see Barbalet, 2001, p. 180).

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work as he writes that all sociological investigation should begin with one’s motives, which are inherently emotional (Weber, 1978, p. 18). It should further be noted that he described “ideal types” (Weber, 1978) – constructs that are not a true reflection of reality, rather an extreme version of reality. To therefore claim that he has a strict division of rationality and emotionality is perhaps unjust (Weber, 1905/2008).

I therefore take an interactionist, social constructivist perspective: emotions are “both socially *responsive* and socially *efficacious*” (S. J. Williams, 2001, p. 132 emphasis in original). That is, emotions are created in interactions and form future social interactions (Blumer, 1959; Collins, 1981; Hochschild, 1979, 1983; Katz, 1999).

Emotions may be spontaneously expressed in universally recognisable ways but we are also socialised into culturally and socially acceptable emotional experiences and emotional displays (Ekman, 1992; Ekman & Friesman, 1969).<sup>22</sup> This ensures our emotions are in line with societal and cultural expectations. Emotions thus safeguard not just our biological survival (for instance, fear causes us to flee), but also our “social survival” (Kemper, 1984, p. 373).

Emotions can also be used to communicate meaning and to make sense of situations (Flower, 2016a, 2016b; González, 2012; Katz, 1999; Pugmire, 2005). This means that our emotional expressions, including gestures, are interpreted and defined by others, helping others and ourselves to label emotions, again guiding and forming interactions (Gerth & Wright Mills, 1954; Thoits, 1985). As emotions can be ambiguous, this contextualisation of emotions reduces their ambiguity and guides our interactions and understandings (González, 2012; Scheff, 1990).

An interactional approach to emotions therefore views emotions as,

tradable social resources or commodities: something that can be negotiated, manipulated or pushed aside, engineered by cultural patterning or managerial prerogative; subtly steered or perverted in social encounters; bought and sold (...) [Emotions] are produced through interpersonal work that is conditioned by cultural imperatives: the social rules that sanction what is appropriate to feel and express (Fineman, 2008, p. 1; see also Wright Mills, 1951).

As is discussed in more detail in the section on emotional regimes, our emotional lives are guided by overarching principles or rules. Our emotional experiences and emotional expressions are shaped by social structures, norms and values (Averill, 1994; Fineman, 2008; Hochschild, 1979, 1983; Reddy, 2001). These rules are socially-situated and role-related (Ashforth & Humphrey, 1993; Barbalet, 2001; Coupland, Brown, Daniels, & Humphreys,

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<sup>22</sup> For analytical ease, I make the distinction between emotional engagement and emotional expressions or displays (Ashforth & Humphrey, 1993; Morris & Feldman, 1996; Vince, 2006). An emotional display may therefore be the communication of an emotional experience, however an emotional display may also occur without the concomitant emotional experience (cf. Burkitt, 2002).

2008; Morris & Feldman, 1996; Perera & Kulik, 2015). This means that one should aim the “right” emotion at the “right” person and for the “right” reason, depending on the situation and one’s role within (Maroney, 2011b). There are thus certain rules for specific situations which also pertain to one’s role within that specific situation (Roberts, 2012; see also Hochschild, 1979).

The role-relatedness of emotions also influences how one is perceived. For instance, a display of anger by a physician who is asked to clarify advice does not affect the physician’s perceived competence, however displays of shame make them appear less competent (Hareli, Berkovitch, Livnat, & David, 2013). Emotions thus also have an evaluative element (Averill, 1994; Scheff, 2000). We may feel anger if we assess that a colleague has acted unprofessionally. We may feel shame if we perceive that others who are important to us, our “sacred community” (Katz, 1999, p. 61), have viewed our conduct as wrong or immoral. This evaluative element reveals the “culturally mediated meanings” (González, 2012, p. 3) of an emotion and shows the underlying rules and social structures (Hochschild, 1979, 1983; Pugmire, 2005, p. 16; Wharton, 2009).

Even though emotions should not be viewed as objects, they are nevertheless possible to manage in order to ensure that we follow the appropriate rules (as will also be discussed in more detail regarding emotional regimes) (Averill, 1994). The appropriate management of emotions leads to the emergence of other emotions (Barbalet, 2011). For example, we feel pride in successfully managing anger. It also entails drawing on other emotions, for example, shame for becoming angry in the first place.

The sanitization of emotions from society and, in particular, from organisations, corporations or institutions such as the law, has led to the misguided notion of “corporate actors”, viewed as non-emotional, rational actors and which, it is argued, should be replaced by the more relevant concept of emotional actors (Flam, 1990a, 1990b, 2000, 2002). Similarly, I aim to re-emotionalise legal professionals.

The acceptance and awareness of the presence of emotions in everyday life, both in our private lives and our work lives, has led to a boom in research on the ways in which we are influenced by and in turn, influence emotional displays, expressions, rules and sanctions (Ashkanasy & Härtel, 2002; Bechara, Damasio, & Damasio, 2000; Damasio, 1999; Fineman, 1993; Flam, 1990a, 1990b; Katz, 1999; Sieben & Wettergren, 2010). This research shows that in Western society, there is a suspicion towards strong emotions with coolness and detachment preferred (Stearns, 1994). Emotions are therefore expected to remain under control (Gibson & Schroeder, 2002; Lange, 2002; Leidner, 1993; Wettergren, 2009).

## 2.2 Emotional regimes

Reddy (2001) claims that political regimes not only provide the ground rules for our political participation, they also establish the frame for our emotional participation in society, forming an “emotional regime” aimed at supporting the overarching political regime’s goal (cf. Easton & Dennis, 1967). Reddy (2001) argues that a political regime is upheld by introducing and enforcing rules for emotional experience and expression – emotion rules – which shape our “emotional management styles” (Reddy, 2001, pp. 128, Hochschild, 1983).

An emotional regime is thus defined by Reddy (2001, p. 323) as the “complex of practices that establish a set of emotional norms and that sanction those who break them.” It constitutes a “set of normative emotions and the official rituals, practices, and ‘emotives’<sup>23</sup> that express and inculcate them” (Reddy, 2001, p.129). An emotional regime is learned through socialisation and navigated by constantly ensuring that one is following the appropriate course of emotion rules guiding emotional experience and expression (Reddy, 2001; cf. Easton & Dennis, 1967).

Emotional regimes thus exert power over those within the regime and indicate who has the power to create the rules and sanction rule breaks (Flam, 2013; see also Kemper, 1978b).

The concept of emotional regimes finds parallels in Hochschild’s (1983, p. 53) theory of emotion management (which will be discussed in more detail later on in this chapter), which states that institutions set “limits to the emotional possibilities” of institutional actors, removing certain aspects of acting from the individual and placing it instead on the institution. Institutions thus “control us not simply through their surveillance of our behaviour but through surveillance of our feelings” (Hochschild, 2003, p. 228).

Certain emotions are therefore permitted in an emotional regime, others are not. Prescribed emotions are representative emotions linked to overarching goals and self-image whilst proscribed emotions are non-representative emotions seen as obstacles to the realization of the guiding principles or rules (Flam, 1990a; 1990b, p. 231; 2000).

Adherence to these rules may cause “emotional suffering” (Reddy, 2001, p. 129) when one’s emotional experiences and expressions are not in line with those set out by the emotional regime. This gives rise to the need for “emotional refuges” (Reddy, 2001, p.136) – safe havens where emotions

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<sup>23</sup> “Emotives” are descriptive emotional words that are used to accomplish acts of “self-management or self-exploration” (Reddy, 2010, p. 252).

inappropriate to the emotional regime may be felt, shown and vented (and which can also lead to changes in the overarching emotional regime).

The concept of emotional regimes is used in this dissertation to establish that a set of overarching principles, in this case the law, leads to the construction of an underlying set of interactional and emotion rules which serve to support and uphold it (cf. González, 2012, p. 1; see also Tonkens, 2012; Flam, 2002, p. 92). I use the term “the emotional regime of law” to refer to the overarching framework which pervades in Western law and which continues to reproduce the illusion of a strict division between emotionality and rationality (Bladini, 2013; Wettergren & Bergman Blix, 2016).

My focus is on exploring how the emotional regime of law manifests in the particular context of Sweden, with specific focus on showing how defence lawyers accomplish their role in the criminal trial. As emotional regimes can be used to explain the emotion rules on a societal or organisational level, or regarding a particular social setting, I will use the term to depict the emotional regime of the criminal trial in Sweden and the accomplishment of the role of defence lawyer within (cf. Bergman Blix & Wettergren, 2015). I do this by analysing how interactions and emotions are performed and discussed (cf. A. C. Smith & Kleinman, 1989; see also Wettergren, 2010; Zembylas, 2016).

Whilst a cross-cultural study is beyond the scope of this current dissertation, I position the Swedish regime against others when relevant, focusing on the emotional regime of the criminal trial and exploring similarities and differences with other adversarial systems, not least as this was a theme often talked about by the lawyers I interviewed.

The concept of emotional regimes has previously been used to explore emotional practices and experiences in the courtroom and I continue this line of research by focusing on detailed ethnographic observations of emotions and interactions (Bergman Blix & Wettergren, 2015; Flower, 2016a; Törnqvist, 2017; see also Wettergren, 2010; Wettergren & Bergman Blix, 2016).

## **Emotional communities and emotionology**

There are two concepts which are similar to that of emotional regimes and here I will briefly explain the differences and why I have opted for my chosen concept.

The concept of emotional regimes is similar to that of “emotional communities” (Rosenwein, 2002, 2010, 2015) which are bonded together by shared emotional valuations and emotional expressions: a “system of feeling” (Rosenwein, 2010, p. 252) rather than the social system as is the case with

social communities. A society may have several emotional communities outlining which emotions are considered to be valuable or harmful, how the social bond between community members is affected by said emotion, and the rules for emotional expression (Rosenwein, 2010). The main difference between the concepts of emotional regimes and emotional communities<sup>24</sup> is that emotional communities do not have “a set of overarching emotional norms from which people seek relief” (Rosenwein, 2002, p. 842 fn. 76) but rather are a gathering of similar emotional styles or emotional norms (Rosenwein, 2010, p. 258). This implies that there is no ruling body or community formulating and presiding over sanctions, unlike in Reddy’s (2001) concept of emotional regimes. I argue that the law, and in my particular case, the criminal trial, has a clear sanctioning body, both in the form of the judge but also in the form of disciplinary boards. Reddy’s (2001) concept is therefore more appropriate.

Another related concept is that of “emotionology” (Stearns & Stearns, 1985) which originally referred to the ways in which emotions should be experienced, expressed and directed and the ways in which institutions “reflect and encourage these attitudes in human conduct” (Stearns & Stearns, 1985, p. 813). Emotionology can also include a positioning (morally, prudentially and aesthetically) within social encounters however, similarly to the concept of “emotional communities”, there lacks a sanctioning aspect (see Bamberg, 1997, pp. 311-312).

## 2.3 Emotion work

As we have already seen, we should ensure that our emotions remain in line with cultural, situational and interactional expectations. I will use the term “emotional order” to refer to these expectations, and I present the emotional order as one of the mechanisms upholding the emotional regime of the criminal trial, along with rules for interactions and civility as will be detailed later on in this chapter.

In order to adhere to the emotional order, we should manage our emotions. Hochschild’s (1983, p. 17) theory of emotion management is “a set of

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<sup>24</sup> Rosenwein (2010, p. 255) also distinguishes emotional communities from emotional regimes as she states that the latter “suggests that one set of emotional norms is true for all” - that there is one emotional regime. However, Reddy (2010, p. 243) states that it is possible to talk about emotional regimes in the plural as an emotional style within an overarching emotion norm system that can be enforced and sanctioned, thus constituting an emotional regime within the emotional regime.

illustrated ideas of how society uses feelings” and states that we follow social guidelines which guide our emotional experiences and emotional expressions. By following feeling rules and display rules (also known collectively as emotion rules), we ensure that social interactions flow smoothly (Gerth & Wright Mills, 1954; Hochschild, 1979, 1983). Feeling rules determine the range, intensity, duration and target of emotional experiences whilst display rules regard the regulation of emotional expressions (Thoits, 1989). This means that there are certain emotional experiences and emotional expressions that are appropriate, depending on the context and the associated roles.

We use various strategies to actively manage our emotions in order to ensure that they are in line with expectations, a process which Hochschild (1979, 1983) names “emotion work” or “emotion management”. Hochschild (1983, p. 7) defines this as “the management of feeling to create a publicly observable facial and bodily display” which “requires one to induce or suppress feeling in order to sustain the outward countenance that produces the proper state of mind in others.” When our emotions are bought and sold for a wage, they become commodities and emotion work consequently becomes “emotional labour” (Hochschild, 1983; see also Wright Mills, 1951, pp. 182-183).

We are socialised into display rules and follow them, not to be false, but to ensure that we display the emotion that is expected (Ekman & Friesman, 1969; Hochschild, 1983). Emotion rules may be implicit or explicit, invisible or visible (Flower, 2014; North, 1990). Discrepancies or deviances from emotion rules may be sanctioned by “rule reminders” (Hochschild, 1983) from others, thus reminding one of a rule-breach or revealing an otherwise unknown rule (Barrett Cox, 2016; Flam, 1990b; Thoits, 1985; S. J. Tracy, 2000). These rule reminders can also either be implicit or explicit. As I will show in my analytical chapters, many of the emotion rules for defence lawyers are invisible and can be revealed by analysing how they talk about emotions and expectations, and by observing implicit and explicit rule reminders in the courtroom as I will show in my analytical chapters.

## **Why we do it**

We work with our emotions in order to “render them ‘appropriate’ to a situation” (Hochschild, 1979, p. 551), thereby ensuring that they are in line with the socio-cultural norms at hand (Flam, 1990a, p. 47). The emotional order is followed in order to reduce uncertainty, complexity and contingency that otherwise might arise in social interactions. Emotion work ensures thus that roles are appropriately performed, expectations are met, and emotional and

social order is upheld (Flam, 1990a; Gerth & Wright Mills, 1954; Goffman, 1956c).

Emotion work can also be aimed at creating an emotional climate. For example, in Hochschild's (1983) study, flight attendants were expected to give the appearance of being calm and happy in order to produce the appropriate emotion in passengers in order to entice them to fly with the airline again (Hochschild, 2003, p. 7).

Hochschild (1983) claims the commercialisation of our private emotion system is a product of a capitalistic society and that we do emotional labour to create profit. However, opponents claim that her equation of society with capitalism is misleading as it singly views emotions as having a monetary exchange value, bought for a wage (Addison, 2017; Wouters, 1989). Emotions should instead be viewed as requiring management in many different organisations, institutions and workplaces, without this leading to profit. Consequently, the exchange value of emotions can be seen in other terms than capitalistic gain (see also Callahan & McCollum, 2002). In the case of defence lawyers, their emotions are exchanged for justice although there is also a profit-goal too.

The origins of emotional labour stem from societal, organisational and occupational expectations (Ashforth & Humphrey, 1993). In the legal profession, the occupational origin is seen to be the most pervasive influence on emotional display and is seen to be based on the traditions and customs of the legal culture (L. C. Harris, 2002; see also Rafaeli & Sutton, 1989).

## **How we do it**

Hochschild (1979, p. 562) presents three techniques of emotion work: (1) cognitive, which attempts to change thoughts or ideas in order to change the emotional experience associated with them; (2) expressive, where emotional displays are changed in an attempt to change the emotional experience and; (3) bodily, which is aimed at changing the physical symptoms of an emotion.

Two of the most well-known aspects of Hochschild's (1979, 1983) theory are the concepts of "surface acting" and "deep acting". Surface acting is an expressive technique, where the performer's feelings do not necessarily correspond to the outward countenance - we feign the feeling - putting on an emotional display that does not correspond to our emotional experience. The strain arising from this difference between what we feel and what we feign can lead to "emotive dissonance" (Hochschild, 2003, p. 90). We attempt to reduce this dissonance by bringing the feigning and the feeling closer together, usually



leading to the display being forced to change in order to be in line with situational or organisational expectations or demands. This is accomplished by using deep acting whereby performers actively adjust their emotional experience to correspond to the outward emotional display. The aim is to try and muster forth the feelings “as if” they were in a different situation that has previously led to the emotion currently required. It is a two-step process: drawing forth the memory and then acting upon it. Deep acting may thus draw on all three techniques of emotion work (S. R. Harris, 2015).

My analytical focus will explore the deep acting strategies defence lawyers use, however I will present my findings in terms of cognitive strategies and expressive strategies rather than focusing on the concept of deep acting.

## **Who we do it on**

Emotion work is either done by ourselves on ourselves, or by ourselves on others or by others on ourselves (Flam, 1990a; Hochschild, 1979). Management of one’s own emotions is presented as individual or intrapersonal emotion work whereby one regulates one’s own emotions in order to follow feeling rules and display rules - a “within-person process” (Niven, 2015, p. 2; L. C. Harris, 2002; Hochschild, 1979, p. 568, 1983; Pogrebin & Poole, 1991; A. C. Smith & Kleinman, 1989).

This concept was then developed to include an interpersonal perspective: managing the emotions of *other* in order to produce the appropriate emotion in other (Hochschild, 2003, p. 7; Lively & Weed, 2014; Niven, 2015). It is “an attempt to bring not one’s own emotions but others’ emotion in line with existing feeling or display rules” (Lively & Weed, 2014, p. 203). The focus in interpersonal emotion management is thus on actively managing an emotion in someone else, such as Thoits’ (1996) study on the provocation and comforting of patients in therapeutic situations. However, Thoits’ (1996) work, which has become central in the field of the management of other’s emotions, had a dichotomous approach to emotion management. Her focus was on the emotions of the support group members rather than on *both* the support group member (the other) *and* the support group leader (self). This is similar to other interpersonal emotion work studies which focus on the emotions of others, not on the simultaneous emotions of the emotion manager (see Cahill & Eggleston, 1994; L. Francis, 1997; M. Williams, 2007). I therefore show the ways in which the management of others’ emotions necessarily entails the management of one’s own emotions thereby highlighting the interactional aspect of emotion management.

Furthermore, it is not specified in Hochschild's (1979, 1983, p. 7) theory as to what determines the "proper state of mind" in other, or the rules for other's state of mind. The flight attendant should be friendly and pleasant in order to make the passenger feel relaxed and want to use the airline again, but is there an emotion rule that the passenger *should* feel relaxed on a flight? I explore how this manifests in the courtroom by looking at how defence lawyers manage their client's appropriate emotional performance.

It should also be noted that there is another form of emotion management, namely "reciprocal emotion management" (Lively, 2000, p. 34) which is interpersonal emotion management done to benefit the other and with the expectation of reciprocity. This leads to "communities of coping" (Korczynski, 2003) or buffer groups which provide a space and opportunity for colleagues to support each other and which, in turn, enables them to follow emotion rules.

## **How we learn it**

Emotion work is learned through social processes (Lively & Weed, 2014). In daily interaction with others we learn which emotions we should show and how we should show them in order for our emotions to fit in with the cultural and contextual norm. This means that learning how to follow rules, and, concomitantly, learning how to break rules, are interactional accomplishments (Kirchhoff & Karlsson, 2009). We therefore learn emotion norms and emotional expectations through a process of socialisation, in repeated interactions in a variety of contexts and situations (McClosky & Schaar, 1965). For instance, workers may be explicitly encouraged to "suppress emotions that clash with organizational norms" (R. I. Sutton, 1991, p. 265). Such explicit socialisation has been found with barristers in England, (Boon, 2005; see also Cahill, 1999 for the socialisation of medical students; cf. L. C. Harris, 2002; A. C. Smith & Kleinman, 1989). Socialisation can also be implicit with invisible emotion rules being learned from watching how others emotionally perform and how others react to one's own emotional performance (Flower, 2014).

In this way, tacit knowledge, "cultural capital" (Bourdieu, 1986) and "emotional capital" (Cahill, 1999) are accumulated and enable us to either fit in or fake it, if one is lacking in the appropriate capital (Bloch, 2012; Goffman, 1963a; Granfield, 1991). This process of "emotional socialization" (Cahill, 1999) leads to social reproduction and occupational exclusion as we are socialised into certain occupations by learning, or not learning, how to manage our emotions. When it comes to occupational emotional socialisation, this is a process that may begin before entering professional life, such as has been

found with medical students (A. C. Smith & Kleinman, 1989, p. 67). Similarly, lawyers in England and Wales, undergo a “process of professional socialisation” (Boon, 2005, p. 229) ensuring that the motivations, expectations and values of newly qualified lawyers are in line with occupational expectations.

Following on from a previous study I conducted which showed that emotion management strategies are not learned during the law degree program, in this dissertation I touch upon how emotion work is learned through a process of professional socialization (Flower, 2014).

## **Emotional labour**

According to Hochschild (1983, p. 153), emotion work is used by all of us in everyday life, whilst emotional labour is likely in jobs where there is personal interaction with the public; where workers should produce emotional states in others and; where the emotional labour of workers is monitored by an “emotion supervisor immediately on hand”. Accordingly, the research field focused initially on workers who fulfilled these criteria and sold their emotions for a wage – the “emotional proletariat” (C. L. MacDonald & Sirianni, 1996; R. I. Sutton & Rafaeli, 1988; Van Maanen, 1990; see Wharton, 2009 for an overview). Professionals, according to Hochschild (1983), do not do emotional labour as they are not monitored by an emotion supervisor, rather they “supervise their own emotional labour by considering informal professional norms and client expectations” (Hochschild, 1983, p. 153).

However, others have queried this, arguing that many professionals are expected to monitor their own emotions and should therefore be regarded as “privileged emotion managers” (Orzechowicz, 2008, p. 154). Indeed, the absence of an emotion supervisor may place even greater emotion management demands on the professional (Wouters, 1989). Accordingly, although professionals may have more autonomy and greater access to resources such as training, time to prepare, and emotional buffers, they are still classed as doing emotional labour (Orzechowicz, 2008). The research field has consequently opened up to include professions such as doctors, teachers, members of the clergy, mortuary assistants and, police officers (Cahill, 1999; Kinman, McFall, & Rodriguez, 2011; Pogrebin & Poole, 1991; Rafaeli & Sutton, 1991; A. C. Smith & Kleinman, 1989; Stenross & Kleinman, 1989; Zembylas, 2004).

Research on the emotional labour of professionals shows there are often demands on the suppression of emotions (K. M. Macdonald, 1999). For

example, funeral directors must learn to normalise working with corpses, surrounded by smells and sights that many would find disgusting (Cahill, 1999). Doctors must show “detached concern” (Lief & Fox, 1963) or “affective neutrality” (A. C. Smith & Kleinman, 1989), ensuring that inappropriate emotions remain hidden and appropriate emotions produced. Police officers must remain calm and in control even in the face of tragic events (Pogrebin & Poole, 1991). However, although many professions, particularly status professions such as law, medicine and theology, may have formalised codes of conduct or practice, there are often no explicit rules as to how these codes of conduct should be performed.

I consider that defence lawyers do emotional labour however, analytically, I concentrate on their emotion work, that is, the strategies they use to ensure that their emotions are in line with the relevant expectations along with what these implicit expectations are and how their emotions are supervised or sanctioned.

## 2.4 The dramaturgical approach

I shall consider the way in which the individual in ordinary work situations presents himself and his activity to others, the ways in which he guides and controls the impression they form of him, and the kinds of things he may and may not do while sustaining his performance before them (Goffman, 1956c, p. Preface).

A dramaturgical approach to understanding how we interact with one another sees us all as performers using different strategies to present a specific impression of ourselves. By incorporating ceremonial aspects pertaining to etiquette, with other aspects of interaction, including the strategies we use to present ourselves, Goffman (1956c) produces a dramaturgical approach to studying the social world.

In my analysis, the courtroom will be presented as a theatre of dramaturgical performances which uphold the order of interaction by following ceremonial rules and emotion rules.<sup>25</sup>

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<sup>25</sup> Goffman’s (1956) theory is often read along the same lines of “[a]ll the world’s a stage” (Shakespeare, 1623, pp. Act II, Scene VII). However, he disagreed with this analogy. For Goffman (1974, p. 1), “all the world is not a stage” rather, the “world is *like* a stage” (Goffman, 1974, p. 124 own emphasis added) because, although we play our roles on the frontstage like stage actors, the world also has a backstage region where we prepare our performances and relax. The world is therefore more like a theatre, or as Goffman (1959, p.

## The interaction order

Goffman's (1967, p. 12) dramaturgical theory describes "the traffic rules of social interaction" using the concept of the "interaction order" (Goffman 1983). The interaction order decides why we do what we do based on who we are in relation to others in any given social situation where two or more people are present and able to perceive the other's response (Goffman, 1983, p. 2). The interaction order ensures that we do not bump into each other - not just literally but also metaphorically. It ensures orderliness in all social situations<sup>26</sup> and is achieved by following the rules of the situation designed to enable predictability, reliability and legibility (Misztal, 2001, p. 314). Accordingly, we "actively create the situation while at the same time adapting to it (...) As participants in interactions we are both its prisoners and its creators" (Adelswärd, 1989, pp. 747-748; see also Heritage, 1984, p. 180).

However, unlike pedestrian traffic rules, the traffic rules of interaction are less obvious, more complex, more exacting and more numerous, and include rules regarding social propriety (Burns, 1992). The latter is the part of the interaction order known as the "ceremonial order" (Goffman, 1957).

Most of our daily life is spent in the presence of others, therefore much of what we do is "socially situated" (Goffman, 1961b), occurring in a specific context. Each specific context is governed by "situational properties" (Goffman, 1963a) which are "the rules, norms and expectations of how one ought to behave in order to demonstrate respect and courtesy to others" (S. Scott, 2015, p. 26). It is this social situatedness that determines who we are in relation to others and has consequences for what we do and for how we present ourselves.

Social situations can either be "focused", which are situated interactions where the presence of others is a prerequisite and a focus of attention is sustained, or "unfocused", where the presence of others may be incidental and irrelevant to an individual's activity (Goffman, 1961b). Accordingly, a criminal trial is classified as a unit of social organisation with focused interaction.

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45) writes, a wedding, as performances highlight "the common values of the society in which it occurs."

<sup>26</sup> In order to clarify for the reader, when I use the term "situation" I am referring to what Goffman (1961b) calls focused gatherings, encounters or situated activity system. Each situation is "a world in itself" (Goffman, 1961b, p. 27) which has its own playing rules and is constituted from a certain set of events and a certain set of roles which together produce meaning.

As is now clear, I am interested in the role of the defence lawyer, with a “role” defined as “the set of rights and obligations which governs the behaviour of persons acting in a given social capacity” (Goffman, 1951, p. 294). The defence lawyer’s role is a “situated role” (Goffman, 1961b, p. 96) which has become institutionalised. I therefore describe the performance of this situated role which encompasses “all the activity of a given participant on a given occasion which serves to influence in any way any of the other participants” (Goffman, 1959, p. 26).

I am interested in uncovering the implicit aspects of defence lawyers’ professional role. What is meant by a professional role is a widely invoked but rarely interrogated set of unacknowledged cultural assumptions with communicative and stylistic expectations often involving the suppression of emotionality, individuality and spontaneity (Cheney & Ashcraft, 2007, p. 162). I argue that performances must be navigated across daily interactions, focusing on those in the courtroom, in order to conform to institutionalized and social expectations (Cheney & Ashcraft, 2007; Goffman, 1959).

According to Goffman (1959), it is via a process of shared meanings that we are able to understand and make sense of the actions of others. These shared understandings regarding the definition of the situation - is it a date, a lecture or a criminal trial - including normative assumptions and expectations lead to an almost routine-like way of conducting oneself within the situation.

The definition of the situation is sustained by following rules as to, “what shall be attended and disattended, and through this, to what shall be accepted as the definition of the situation” (Goffman, 1961b, p. 19). In this way the definition of the situation can be seen by focusing on what it is that is being excluded. The process of maintaining the definition of the situation is therefore “socially organized through rules of relevance and irrelevance” (Goffman, 1961b, pp. 80-81). We are keen to uphold the definition of the situation and thus follow these rules of relevance and irrelevance as to what should be paid attention to, and what should be shown “systematic inattention” (Strong, 1988, p. 234). This is done in order to protect against threats to this definition of reality and may include disattending to emotions (Strong, 1988, p. 232).

Goffman (1956c, p. 53) writes further that “the object of a performer is to sustain a particular definition of the situation, this representing, as it were, his claim as to what reality is.” If we take the social situation of a criminal trial, it involves an “institutionalized (...) open discord” (Goffman, 1956c, p. 134) with competing claims to reality: the defendant claims innocence, the prosecutor claims guilt. However, there is agreement on the overarching definition of the situation - a criminal trial. What makes this situation more

interactionally and therefore sociologically interesting, is that not all participants are initiated into the interactional framework of the criminal trial thus leading to possible disruptions (Goffman, 1956c, p. 21).

All parts in an interaction must attempt to keep up “normal appearances” (Goffman, 1969) in order to avoid disrupting the working consensus of the definition of reality they are presenting. This in turn, may mean that the performer has to “respond to alarming signs effectively with a minimum of disturbance to routine” which, with experience, leads to “cool efficiency” so that, “what will then be one man’s alarm will be another’s opportunity to show experience” (Goffman, 1972, pp. 287-288). The performer must therefore make an impression on others with expressions and ensure that they display “expressive coherence” (Goffman, 1956c, p. 34) with the definition of the situation and their role within.

## **The ceremonial order**

Whilst the interaction order refers to everything that occurs in social interactions, the “ceremonial order” (Goffman, 1957; Strong, 2001) specifically refers to rules of conduct or etiquette aimed at sustaining and upholding the interaction order. The ceremonial order includes rules of conduct regarding the obligations we have for how we should conduct ourselves and the expectations regarding how others should act (Goffman, 1967).

Attachment to these rules ensures constancy and “patterning of behaviour” with rule breaks leading to “feelings of uneasiness and to negative social sanction” (Goffman, 1967, pp. 48-49). The ceremonial order comes into play when rules of etiquette are intentionally or unintentionally broken. It involves “interpersonal rituals” being invoked by interaction participants to ensure that “expressive implications” are compatible with the status that the individual possesses, and involves “politeness, courtesy, and retributive responses to others’ slighting of self” (Goffman, 1967, pp. 168-169).

The ceremonial order’s rules are decided by the social occasion and encompass deference (or morality) and demeanour (Burns, 1992; Goffman, 1956c, 1959, 1967; see also A. Persson, 2012). Deference describes how we should treat others in order to ensure that it is appropriate to their social standing. Demeanour regulates what we are expected to do and say when in the presence of others (Burns, 1992, p. 37). Demeanour ensures poise and includes, “that element of the individual’s ceremonial behaviour typically conveyed through deportment, dress, and bearing, which serves to express those in his immediate presence that he is a person of certain desirable or

undesirable qualities” (Goffman, 1956b, p. 489). Demeanour thus refers to performances on the “personal front” (Goffman, 1956c). A performer’s personal front can include “expressive equipment of a standard kind intentionally or unwittingly employed by the individual during his performance” (Goffman, 1956c, p. 13). It includes the “sign equipment of ceremonial paraphernalia” (Goffman, 1956c, p. 61) or “identity equipment” (S. Scott, 2015, p. 17) mentioned above but also encompasses props and facial expressions. Personal front is divided into “appearance” which refers to features identifying the actor’s status or role, and “manner” which conveys his or her attitude towards their status or role, or how this role is being played (Goffman, 1956c; S. Scott, 2015, p. 92).

The ceremonial order remains implicit until routines are blocked and the performance is hampered. Goffman (1967, p. 51) writes that when a rule of conduct is broken there are (at least) two individuals who may risk becoming discredited: the actor (who has the obligation and who should have conducted himself or herself according to the rule), and the recipient (the one with an expectation who should have been treated in a particular way because of this conduct).

The interaction order thus frames what we should do in any given occasion, the ceremonial order gives us the rules for how to do it civilly. The revealment and analysis of the “minor courtesies” (Strong, 1988) of the ceremonial order can thus reveal the underlying structures. I argue that by revealing how interactions are expected to be conducted in a civilised manner in the criminal trial, it is possible to show the overarching emotional regime guiding the performances within.

## **The presentation of self**

Our aim in social interactions is to uphold a specific social impression or “face” in order for the interaction order to flow smoothly (Goffman, 1953, 1956c). Face is the public image of self that one claims for oneself in a certain situation which is in accordance with the norms and values of the group, setting or local culture (Goffman, 1967; S. Scott, 2015). We thus attempt to project an image of ourselves: a presentation of self that is in line with the definition of the situation. Face is therefore an interactional accomplishment, found “in the flow of events in a social encounter” (S. Scott, 2015, p. 96) and is consequently only “on loan (...) from society” (Goffman, 1967, p. 10).

Goffman (1967, p. 5, 1972) shows that in choosing a face to present, the individual will be following a certain “line” or commitment to a certain



position. The line is enacted by using verbal and nonverbal expressions leading to others forming an impression, in this case, of the defence lawyer and, I argue, in extension, others will also form an impression of the defence lawyer's client (Goffman, 1967, p. 5). The loyalty line is thus interlinked with the team line (to be discussed in more detail below).

Goffman (1956, p. 47) writes that all role performances should be aimed at performing "the characteristics of the task [...] not the characteristics of the performer" (Goffman, 1956c, p. 47). In the case of defence lawyers this means that their performance should be enlivened with movements expressing loyalty and professionalism in order to establish a favourable definition of their service.

### *Facework*

Our goal in a social situation is to continue to be "in face", presenting a certain public image throughout, thereby "maintaining face" and avoiding embarrassment during the interaction hence ensuring the interaction flow (Goffman 1956a, 1956b). We follow the line we have chosen by using impression management strategies or "facework" if we feel we have projected an incompatible definition of ourselves in a social interaction (Goffman, 1956c). Facework refers to the symbolic actions people do to keep interactions flowing smoothly - communicative strategies that enact, support, or challenge the socially situated identities or face people claim (K. Tracy, 1990, p. 210).

I will thus use the term facework to refer to the strategies used to stay in face, to threaten the face of others, and those strategies that are used when face is threatened.

In face-to-face interactions, others attempt to glean our "immediate intent and purpose" and "correspondingly, we are constantly in a position to facilitate this revelation, or block it, or even misdirect our viewers" (Goffman, 1983, p. 3). Facework is thus used in an attempt to control the conduct of others, particularly the responsive treatment we receive from them. The individual may wish the other to think something in particular about him or her, he or she may want to instil a sense of harmony in order for the interaction to be sustained, or indeed, he or she may attempt to trick or dupe the other.

Facework involves the individual communicating social information about themselves, done via expressions intentionally given and unintentionally given off (Goffman, 1956c, 1969). We can stop giving a certain impression but we cannot stop giving off social information about ourselves. Even silence can be an expression given off (A. Persson, 2012).

This means that the rules of interaction can be “manipulated to achieve specific interactional effects” (Drew & Wootton, 1988, p. 9; Goffman, 1983). Whatever the objective, the individual controls the conduct of others,

largely by influencing the definition of the situation which the others come to formulate, and he can influence this definition by expressing himself in such a way as to give them the kind of impression that will lead them to act voluntarily in accordance with his own plan. Thus, when an individual appears in the presence of others, there will usually be some reason for him to mobilize his activity so that it will convey an impression to others which it is in his interests to convey (Goffman, 1956c, pp. 2-3).

Goffman uses a range of terms to discuss the ways in which face is maintained, lost, given and saved (Goffman, 1956c, 1967). If we inadvertently present an inconsistent identity to the impression we wish to project, we have given the ‘wrong face’ which may lead to us ‘losing face’ by being discredited, losing dignity and feeling shame. In such episodes, we are ‘out of face’ as we have failed in upholding the intended impression. If we ‘give face’ to someone else in such situations by offering an escape from their embarrassment then we help by ‘saving’ their face (see S. Scott, 2015, p. 96). Here it is possible to see that facework is aimed at managing inappropriate emotions.

Goffman (1967) writes that we perform face-saving strategies in order to save the face of others out of our respect and consideration for them, and ourselves. We do this out of “emotional identification with the others and their feelings”, consequently we should be “disinclined to witness the defacement of others” and if we are witness to such acts, we should respond appropriately to avoid appearing as “heartless” or “shameless” (Goffman, 1967, pp. 10-11). This occurs “whenever persons come into one another’s response presence” (Goffman, 1967, p. 2). If we apply this to the courtroom, we begin to glimpse the importance of maintaining a certain impression and the consequences of achieving this and also the consequences of failing. We also begin to see an explanation for some of the misperceptions of defence lawyers as not having feelings, as mentioned in the introduction of this dissertation. This will be explored in chapter seven.

We are expected to sustain standards of consideration and self-respect, regardless of whether a face threat is unintentional (by accident), intentional (maliciously intending to cause insult) or incidental (the offense caused is an unplanned but sometimes anticipated by-product) (Goffman, 1967, p. 14). Intentional face threats are “perceived by the members of a social community (and often intended by the speakers) to be purposefully offensive” (K. Tracy & Tracy, 1998, p. 227). This means that it is the social community that

determines if an act is deemed malicious or offensive and that there should be intention to “convey complete disrespect and contempt through symbolic means” (Goffman, 1967, p. 14).

Facework is therefore used both to maintain face and to counteract face threats, which are perceived as, and may be intended to be, intentionally offensive (K. Tracy & Tracy, 1998). Such “aggressive facework” is a competitive scramble in which each person attempts to look good at another’s expense, and is recognisable as “bitchiness” (Goffman, 1967, p. 25; K. Tracy & Tracy, 1998, p. 227).

I argue that defence lawyers use facework to respond to face threats with cool efficiency in order to keep up normal appearances and sustain a specific definition of the situation. I explore the various ways in which this facework is done, along with the source and the target of the face threat.

### *Types of facework*

According to Goffman (1956c, p. 222) we attempt to save our own face by using defensive strategies, or we can attempt to save the face of others by using protective strategies. Defensive practices are thus aimed at guiding the impressions that others form of us, which can be accomplished for example by “steering conversations away from topics that might contradict one’s self-presentational line” (Rossing & Scott, 2014, p. 167). Protective practices are used by individuals to protect the face of someone else - it is the audience assisting “performers [to] save their own show” (Goffman, 1956c, p. 146). Protective practices entail tact or discretion which may take the form of “tactful inattention”<sup>27</sup> (Goffman, 1956c, pp. 147, 223). Protective practices are thus a way for the audience to help the performer uphold the line he or she is aiming to uphold. These practices can either be done retroactively after the event in order to “compensate for discrediting occurrences that have not been successfully avoided” (Goffman, 1956c, p. 24), or they may be done beforehand, thus aimed at proactively preventing face threats.

Defensive and protective practices are performed by individuals in order to save face, either their own (defensive) or another’s (protective). There is however, a third category namely “collective facework” (Rossing & Scott, 2014, p. 167) which is used, “when the compromised face belongs not to an individual but to a group [and] occurs where the members of a group perceive

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<sup>27</sup> This concept is similar to “studied non-observance” and “civil inattention” (Goffman, 1963a). It should be noted that Goffman “invented a cornucopia of theoretical terms—but changed them in almost every book” (Strong, 1988, p. 230). However, even if he “changed his terms (...) he rarely changed his tune” (Strong, 1988, p. 228).

a threat to their shared face and use tacitly agreed upon strategies to avert this danger.”

The concept of teams will be introduced in more detail shortly, however, here I will introduce the concept by explaining that each team member has responsibility for upholding the team impression and that the effects of such collective facework will be felt by all in the team (Goffman, 1959; Rossing & Scott, 2014). Collective facework therefore entails saving the group’s “common identity” (S. Scott, 2016, p. 11) thus enforcing one (group) identity whilst denying another (individual) identity. For example, in Rossing and Scott’s (2014) study on group exercise with colleagues, the group identity of “familiar strangers” was enforced whilst simultaneously denying another individual identity. This alternative identity was the stigma of being low ability exercising colleagues leading to the group identity becoming stronger and “highlighting their common dramaturgical fate” (Rossing & Scott, 2014, p. 181).

Collective facework strategies are therefore used to save the face of the group as a whole, rather than just individual members (Rossing & Scott, 2014). I will argue that collective facework strategies are used by the defence lawyer in order to sustain the face of the defence team (client and lawyer) which I refer to as team face.

A similar concept to collective facework is “collateral face-saving” where the audience might “jump in” to “keep the flow going” (Lee, 2009, p. 306). This occurs in situations where the performer enters a potentially embarrassing situation but does it anyway, as in Lee’s (2009) study of rappers. Collateral face-saving is aimed at covering the cracks in a performance and maintaining the dignity of the group, rather than protecting the individual performer’s embarrassment (S. Scott, 2015). Performers in such situations can rely on “canned resources [which] are like interactional life vests which keep people from drowning during embarrassing moments” (Lee, 2009, p. 322). They are formulaic, pre-scripted techniques used to save their own face. Likewise, “indirect face-saving practices” (Lee, 2009, p. 319) are used when there is a shared interest in sustaining a performance or keeping an interaction going.

### *Bodywork*

Facework is used to show alignment to a social position or role, thereby conveying a particular something to a particular other using “dramatic productions” (Goffman, 1972, p. 125) which are dramatic realizations used to “dramatically highlight and portray confirmatory facts that might otherwise remain unapparent or obscure” (Goffman, 1956b, p. 19). In the analytical

chapters I develop this concept to show how defence lawyers use “dramatic reductions” to dramatically reduce different types of facts introduced in court, and I discuss how these are linked to the emotional regime of the criminal trial.

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). I show how the context shapes the response, with defence lawyers at times performing nonverbal responses rather than verbally interrupting proceedings in order for the work flow to proceed and to stay in face. I argue that, in keeping with the ceremonial order of the criminal trial, the defence lawyer must adjust his or her performance accordingly.

These strategies use the body as a tool when verbal communication is not possible, therefore I have termed them as “bodywork.” This builds on Goffman’s (1963, p. 33) discussion on the use of “body idiom” which includes “dress, bearing, movements and position, sound level, physical gestures such as waving or saluting, facial decorations, and broad emotional expressions” and which are used to communicate without spoken words when speech is not permitted. The body idiom can be seen to also include Goffman’s (1972, p. 11) concept of “body gloss” which refers to a process “whereby an individual pointedly uses over-all body gesture to make otherwise unavailable facts about his [or her] situation gleanable”. Bodywork thus incorporates these intentional body gloss gestures as well as body idiom such as clothing and bearing (see also Shilling, 2003). Here we see the basis for Hochschild’s (1983) theory on emotion work: the painted-on smile of the flight attendant can be seen as a body gloss.

The importance of such bodywork should not be understated as when nonverbal and verbal communication are in conflict, the verbal message is virtually ignored and, furthermore, the dissonance between the two forms of communication leads to the performance being perceived as unstable, insincere and confusing (Argyle, 1974; Argyle, Alkema, & Gilmour, 1971; Burns, 1992).

Other nonverbal tools used in facework include props which Goffman (1956b, p. 143) mentions however this line is not fully developed and I therefore explore their usage more fully in my analysis (see also Freund, 1998; Waldron, 2000 for a discussion on emotional props).

### *Frontstage and backstage*

Performances are given in the “front region” – frontstage – and are adjusted in relation to the audience (Goffman, 1963a). There are associated expectations for the performance when one is frontstage, expectations that are based on the interaction order and the identity-values of society (Goffman, 1963a). Performances are prepared in the back region – backstage – away from the audience’s eyes (Goffman, 1963a). This is also where we can relax. The border between frontstage and backstage are determined by the performance and based on the function that the region should have at the time of the performance. If we do not live up to the audience’s expectations as to how we are supposed to be, behave, look, and act when we are performing frontstage, we risk being labelled as deviant and being disqualified from social acceptance (Goffman, 1963b; A. Persson, 2012, p. 22).

By linking Goffman’s (1963a) theory to that of Reddy (2001, p. 324), we can see that the emotional refuges constitutes a “backstage region” (Goffman, 1963a) – a place where the rules of social interaction and, I argue, the rules of emotional interaction, are loosened and where frontstage performances are prepared and subsequently scrutinised and discussed (as will be discussed in more detail later on in this chapter). Accordingly, an emotional regime encompasses both the frontstage where emotion rules should be strictly followed and the backstage where rules are loosened. My focus is on the performances in the courtroom which will be discussed as frontstage performances, contrasting with backstage areas such as the waiting room with regards to the courthouse, but also other areas such as the law office. To these may be added other backstage areas where the lawyer is no longer in his or her role of defence lawyer, such as when they are at home. However, my interest is in the performance when in one’s professional role.

### *Communication out of character*

If a performer happens to fall out of his or her role, then he or she is at risk for “communication out of character”: the performed role momentarily crumbles (Goffman, 1959, p. 167).

Goffman (1959) discusses this as a form of unofficial communication, it reveals an underlying, alternative definition of the situation. It points to an undercurrent which may be communicated surreptitiously as official communication could “contradict and discredit the definition of the situation officially projected by the participant” (Goffman, 1959, p. 168). Falling out of character in this way may reveal that the performer understands that the show he or she is maintaining “is only and merely a show” (Goffman, 1959, p. 168).

It can therefore be used to study team performances and potential interaction disruptions as I show in the section on disloyalty.

### *Over-involvement*

Goffman (1957) writes that a performer risks being labelled as overly-involved and thus incapacitated in an interaction if perceived to be “so swollen with feeling and a readiness to act that he threatens the bounds regarding affect that have been established for him in the interaction” (Goffman, 1957, p. 52). Again, we see the importance of appropriate emotional performances inherent in dramaturgical performances. Having over-stepped such boundaries, the individual is viewed as an “alienating distraction” (Goffman, 1957, p. 53) and may consequently need to express “disinvolvement” (Goffman, 1957, p. 52) in order to regain his or her status as an interactant. The degree to which an individual is deemed to have breached is relative to the standards of the group (Goffman, 1957, p. 53).

Here we have the basis for an interactionist approach to an emotional regime: the individual must conform to the emotional boundaries set out in the interaction. Failure to emotionally perform within these boundaries may lead to the individual being viewed as over-involved and thus lacking self-control, “the interactive world becomes too real for him” (Goffman, 1957, p. 52) leading the other interactants to focus more on who it is talking, rather than what is being said. I will present this regarding how defence lawyers construct their role.

### *Cooling the mark out*

Another aspect of Goffman’s (1952, p. 452) dramaturgical theory describes how a mark (who has been duped) is calmed down or “cooled out” by the conman after the event, in such a way as to make it easy for the mark to “accept the inevitable and quietly go home” (see also G. M. Thomas, 2014). The mark who needs cooling out is therefore someone, “who can no longer sustain one of his social roles and is about to be removed from it; he is a person who is losing one of his social lives and is about to die one of the deaths that are possible for him” (Goffman, 1952, p. 563). The mark is cooled out to avoid “flooding out” (Goffman, 1952, 1961a; 1967, p. 224) (displaying inappropriate emotions). In such instances the mark risks breaking the rules of interaction leading to increased tension. He or she risks being “out of play”, (Goffman, 1956a, 1961b) thereby abdicating his or her “role as someone who sustains encounters” (Goffman, 1956a, p. 267).

The cooler thus uses “reparative strategies” (S. Scott, 2015, p. 220) aimed at reducing the likelihood of the mark’s retaliation arising from feelings of humiliation. It involves deliberately “misframing the definition of the situation” (S. Scott, 2015, p. 220; Goffman, 1974), giving the mark a version of events that is more attractive or appealing.

Goffman’s (1952) term refers to the mark being calmed down *after* the event, yet my analysis shows that defence lawyers may pre-emptively cool their client out by managing their expectations or they may attempt to cool the client out in-the-moment as will be explored in chapter six (Garot, 2004; Goffman, 1952, p. 452; see also Müller & van der Giessen, 2015).

## **The performance team**

Performances can either be individual where the focus is on the individual’s performance and the interaction as a whole, or, perhaps more commonly, a performance may require co-operation between two or more performers in a team. For instance, bathers at a swimming pool uphold a team impression – a joint definition of the situation that it is normal to walk around semi-naked, treating each other as disinterested strangers (S. Scott, 2009). Indeed, Goffman (1956c) writes that within many social establishments there is a form of two-team interplay underway. In the case of the trial it is a three-team interplay: the defence, the prosecution and the judges each working towards sustaining the “working consensus” (Goffman, 1956c, p. 57) that the definition of the situation is a criminal trial. This is a joint accomplishment as Goffman (1956c, p. 47) writes,

the definition of the situation projected by a particular participant is an integral part of a projection that is fostered and sustained by the intimate co-operation of more than one participant, and, moreover, that each member of such a troupe or cast of players may be required to appear in a different light if the team’s overall effect is to be satisfactory.

Individual performances within a team may therefore either be similar or dissimilar but they should nevertheless fit “together into a whole [so that] an emergent team impression arises” (Goffman, 1956c, pp. 48-49). A team performance thus refers to “a set of individuals who co-operate in staging a single routine” (Goffman, 1956c, p. 48, see also Gathings & Parrotta, 2013). My interest is aimed at one specific team within this overarching team performance – namely the defence team (cf. Goffman, 1956c, p. 57). The line



taken is thus the team line and, for the defence lawyer this also entails the loyalty line.

In this team performance, each of the players must present themselves in the associated social definition of the role they are performing. For instance, the client who is a defendant in a trial must direct at himself or herself the associated social definition – client face -whilst the defence lawyer must foster, by appearance and manner, the social definition of someone who will defend the client – lawyer face. Together they make the defence team – team face.

Both need to fulfil their roles in order for the performance to be convincing. This team performance relies on the mutual “good conduct and behaviour” (Goffman, 1956, p. 50) of fellow teammates who are “in the know” (Goffman, 1956, p. 51) thus constituting members before whom a particular front need not be maintained. The client and the lawyer may therefore show themselves in a different light in backstage team interactions than that to be seen on the frontstage of the trial.

The team performance involves uniting behind one version of reality as “[j]uggling two contradictory versions of reality simultaneously demands complex skills of impression management, as well as unwavering dramaturgical loyalty from team-mates” (S. Scott, 2015, p. 134). This is the case with defence lawyers – the client’s version of events becomes the team version of reality.

Teammates thus should agree to uphold the definition of the situation, that is, the picture of reality they wish to project, even if reality is reduced to a “thin party line” (Goffman, 1956c, p. 52) - everyone should still adhere to it, irrespective of private misgivings. Team members openly disagreeing can “undermine the team’s integrity and threaten to disrupt the interaction order” (S. Scott, 2015, p. 113). By staging this definition of the situation based on the client’s version of events, both (or all) parts are agreeing to be unanimous about the position they take yet secretive with regards to how they came to this decision (Goffman, 1956c, p. 54). The goal 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, 1956c, p. 87).

When the team’s cooperation fails or breaks down, reprimands will not be given frontstage, rather they will occur behind the scenes, backstage so as to not disturb the flow of interaction or the definition of the situation (Goffman, 1959, p. 64). One way of avoiding having to administer sanctions is by using “dramaturgical circumspection” - choosing teammates whom one knows will

“behave” (Goffman, 1959, p. 96), a factor which is not always possible for defence lawyers to ensure.

A teammate is therefore someone,

whose dramaturgical co-operation one is dependent upon in fostering a given definition of the situation; if such a person comes to be beyond the pale of informal sanctions and insists on giving the show away or forcing it to take a particular turn, he is none the less part of the team. In fact, it is just because he is part of the team that he can cause this kind of trouble (...) even if his productive activity embarrasses the impressions the other workers are attempting to foster (Goffman, 1956c, p. 51).

As I show in my analysis, the client is often the teammate who “gives the show away”. Regardless of this, the team performance requires “dramaturgical loyalty” (supporting one’s teammates), and as I have already mentioned, “dramaturgical discipline” (staying alert and ready for action) (Goffman, 1956c).

The first of these, dramaturgical loyalty requires two bonds. The first is the “bond of reciprocal dependence” (Goffman, 1956c, p. 50) meaning that either team member has the ability to give the game away, revealing the team secrets and backstage reality that they are aiming to conceal. The second is the bond of “reciprocal familiarity” (Goffman, 1956c) which constitutes “familiarity without warmth (...) a formal relationship that is automatically extended and received as soon as the individual takes a place on the team” (Goffman, 1956c, p. 51). 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.

One of the team members becomes the director of the performance which I present as the defence lawyer. It is the director who allocates the parts and the “personal front that is employed in each part” (Goffman, 1956c, p. 61). The director also assumes responsibility for the performance’s success and has “dramatic dominance” (Goffman, 1956c, p. 62) over the team performance. The director must therefore ensure that inappropriate performances are brought back in to line. This involves stimulating a “show of proper affective involvement” (Goffman, 1956c, p. 61) both in himself or herself, but also in teammates. This may require smothering his or her own improper emotions and those of teammates “in order to give the appearance of sticking to the affective line” (Goffman, 1956c, p. 138). On other occasions, it may require the “suppression of the appearance of sober opposition behind a demonstration of outraged feelings” (Goffman, 1956c, p. 158).

Teamwork is thus an interactional process wherein teammates “claim, support, collude with and undermine each other in their mutually shaped identity performances” (S. Scott, 2015, p. 138).

Part of teamwork involves “staging talk” (Goffman, 1959, p. 173) which refers to the discussions teammate have backstage regarding how they are going to conduct the performance. It is a dress rehearsal aimed at predicting or anticipating possible problems or disruptions and finding ways of managing them in order to reduce the risk of embarrassment arising during the performance.

I argue that the lawyer and client are expected to act as a team “with” each other, as evidenced by “tie-signs” which symbolise a link between them – a relationship (Goffman, 1972). Tie-signs symbolising the lawyer-client team can take the form of objects, acts, or expressions but it is their conduct that reveals evidence about the relationship (Goffman, 1972, p. 194). This is an institutionally “anchored relationship” and a “particular discretionary relationship” (Goffman, 1972, p. 205) which has come into being as a result of external forces. The client needs a lawyer<sup>28</sup>.

In the Swedish courtroom, an obvious tie-sign is the spatial positioning of the defence lawyer and client in the courtroom: sitting next to each other, immediately declaring that they are a team. However, in some courtrooms the lawyer and client sit on the right-hand-side whilst the prosecutor and plaintiff sit opposite but in other courtrooms the seating is mirrored, with the prosecutor and plaintiff sitting on the right-hand side and the lawyer and client sitting across from them on the left-hand side of the courtroom. This means that sometimes when I have entered the courtroom, it is not immediately obvious who is the prosecutor and who is the defence lawyer. I can observe the tie-signs: that there appear to be two opposing relationships in the courtroom but in order to pinpoint which team is which, I have to move beyond the tie-sign to study how the relationship is communicated.

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<sup>28</sup> Goffman (1972) focuses on three types of relationship: the couple, the buddy and the circle. none of which overlap with the lawyer-client relationship. There is thus a fourth relationship type to be seen: the client, for whom the rules of interaction are unclear when the relationship is new.

## 2.5 Loyalty

As loyalty is central to this dissertation I will present a short overview. Loyalty has been described in terms of reciprocities and connections (Connor, 2007), an attachment to a social group (Shklar, 1993), a value (Hurley, 2001), a social form (Simmel, 1950), a source of action, motivation, expectations and a way of making sense of the world, that is, an emotion (Barbalet, 1996; Connor, 2007).

In this dissertation, I use the concept of loyalty as a principle that is actively constructed and performed in interaction with others (cf. Jacobsson, 2008; Tuchman, 1972). Therefore I argue that, just as Swedish prosecutors accomplish objectivity by doing “objectivity work” (Jacobsson, 2008), defence lawyers do loyalty work.<sup>29</sup> I therefore see loyalty as an interactional and emotional accomplishment.

Loyalty can provide an “identity marker” (Connor, 2007, p. 51) motivating and/or justifying action and promoting the identity attached to the “loyalty layer” (Connor, 2007). Loyalty layers refer to the different competing or conflicting loyalties which should be negotiated in order to determine which is the strongest or most prevalent layer (Bauman, 1989; Connor, 2007; Lundquist, 1988; Shapiro, 2003).

Loyalty layers are not static, rather they are mobilised relevant to the social situation at hand. These layers are activated by an “emotional marker that signals the importance of a particular role” (Connor, 2007, p. 49) thereby signalling the importance of a certain loyalty and compelling the individual to act in a particular way (cf. Royce, 1995/1908).<sup>30</sup>

Choosing a loyalty layer can be seen as a form of resistance rather than an act of disloyalty, or as simply choosing one loyalty over another (Arvidson & Axelsson, 2017; Kirchhoff & Karlsson, 2009; Royce, 1995/1908). An example of this can be choosing one’s family over one’s job. However, declaring loyalty to one layer can also mean declaring disloyalty to another, for example, loyalty to one country over another (Grodzins, 1956).

Like civil servants, defence lawyers have a “network of conflicting loyalties” (Lundquist, 1988, pp. 234-235). They may choose to perform “self-

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<sup>29</sup> Whilst I also consider loyalty to be an emotion, for the purpose of this dissertation, I treat it as a principle (Arvidson & Axelsson, 2014, 2017; Barbalet, 1996; Kahneman, 1992; Larsen, McGraw, Mellers, & Cacioppo, 2004; Plutchik, 2001; Simmel, 1950).

<sup>30</sup> The reciprocity of loyalty is not a given – loyalty may be repaid with a sense of (emotional) belonging and identity or even with financial compensation (Barbalet, 1996; cf. Clark, 1987; Clark, 1997; Connor, 2007; G. Fletcher, 1995).

loyalty” (Arvidson & Axelsson, 2017) - following a set of self-imposed rules which are required in order to create a stable identity and continuity (North, 1990; Rosa, 2013; Sennett, 1998). Alternatively, they may choose loyalty to the legal system over loyalty to a client, for instance by declining to represent as innocent a client who has confessed their guilt (see also Kirchhoff & Karlsson, 2009; Lipsky, 1980). I explore shifts in loyalty layers and the associated emotional performances.

### *Legal loyalty*

Loyalty is described as the foremost principal for lawyers in Sweden as supported in my interviews (Heuman, 2013). However, this duty of loyalty must remain appropriate, for instance, the lawyer should not have unnecessary costs which may arise if too much time is spent on the case (meaning that one is overly loyal). Furthermore, the duty of loyalty and the lawyer’s obligation to look after the client’s interests are constrained by law and good lawyering praxis (Association, 2008; Borgström, 2011; Heuman, 2013, p. 74). This means that the duty of loyalty is secondary to the law and ethical guidelines: the lawyer cannot break the law or act unethically even if it is in the client’s best interests (Munukka, 2007). Additionally, in certain instances, other interests, such as consideration to a witness, may take priority over loyalty to one’s client in order to reach a compromise (Heuman, 2013, p. 73, see also Munukka, 2007, p. 315). On other occasions, the client’s interests have priority over “collegial considerations” (Wiklund, 1973, pp. 265-266).

Defence lawyer’s loyalty is also a form of professional loyalty which is a “deliberated choice” based on a “shared professional commitment” to the justice system (Kleinig, 2017 see also Fletcher, 1995; Connor, 2007). Whilst it is debated whether professional loyalty is compulsory or voluntary, it is nonetheless agreed upon that loyalty is an interactional process arising in relation to an “other” in a particular context and in relation to others, whether it be towards other people, a cause or an ideology (Arvidson & Axelsson, 2014, 2017; Boszormenyi-Nagy & Spark, 1984; Hirschman, 1970).

## 2.6 Theory in a nutshell

Emotions are interactional phenomena - therefore, an emotional regime must also encompass interactions. Accordingly, the emotional regime of a criminal trial shapes emotions and simultaneously guides how the roles within are dramaturgically conveyed.

Even if emotions and interactions are intertwined, I attempt to disentangle them for analytical ease. In the analytical chapter on defence lawyers' facework, I emphasise how the smooth flow of a criminal trial is a joint interactional accomplishment, demanding each social position to be dramaturgically performed appropriately, focusing on the defence lawyer's role. In the next analytical chapter, I explore the emotion work of defence lawyers, highlighting how proper and appropriate emotions are professionalised and thus rationalised and then performed. I aim to show that a performance within a specific setting shaped by a specific overarching framework entails ensuring that one's emotions are in line with expectations, but also that one performs one's role appropriately. The latter is not necessarily only about producing an emotion in others, rather it is also about conveying an impression to others which is in one's interests to convey.

I draw on dramaturgical theory and emotion sociological theories as analytical tools using Goffman's (1983) concept of the interaction order to show the rules of interaction and the associated concept of the ceremonial order to highlight the etiquette of a criminal trial. To this I add a new concept of the "emotional order" to capture the appropriate emotions within, drawing on the work of Hochschild (1983). The emotional order shapes what you should feel, how you should show it and who should feel what, whilst the interaction order shapes what you should do, how you should do it and who should do what and, finally, the ceremonial order shapes how this should all be done courteously. These orders are integrated and serve to uphold the emotional regime of a criminal trial and I explore the emotion work and facework within.

My goal is to show that the purpose of the emotional regime of a criminal trial is not only to stifle emotions' influence but also to provide the frame for the smooth flow of interaction.



# Chapter 3: Previous Research

## 3.1 Emotions in the courtroom

The research field of law and emotion began in the late 1990s with the book “The Passions of Law” which gathered essays written by researchers from a range of disciplines<sup>31</sup> and explored the ways in which “emotion pervades the law” (Bandes, 1999a, p. 1). This field shows the illusion of unemotional legal rationality which contributes to upholding the “dangerous myth” (Maroney, 2012, p.1213) that judges are emotionless entities: robots devoid of feelings that might influence decision-making (Maroney, 2006, 2011a, 2011b, 2012, 2015; Maroney & Gross, 2014). My study follows in these footsteps in re-emotionalising legal actors by exploring,

how emotions are used and expressed in a regime that officially denies their influence (...) The subtle exchange of emotions between court professionals is a fundamental element in the joint effort to create the appearance of a rational (unemotional) procedure (Bergman Blix & Wettergren, 2015, p. 5).

As I am interested in defence lawyers’ performances in Swedish criminal trials which are adversarial in nature with regards to the courtroom roles of legal professionals (and indeed, lay participants), the majority of the research I will now present focuses on Anglo-American adversarial systems (Wong, 2012). My focus is on previous research exploring the emotion work of legal professionals, briefly touching upon the emotions of lay participants in trials, before moving on to dramaturgical studies of criminal trials with a final focus on research from Sweden (see Maroney, 2006, for a taxonomy of law and emotion studies).

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<sup>31</sup> Although Maroney (2006) notes that social sciences and life sciences are notably absent in the book.



## **The emotion work of legal professionals**

I begin with an overview of the relevant research regarding judges, prosecutors and defence lawyers.

### *Judges*

Judges are “the embodiment of law” (Mack & Roach Anleu, 2010, p. 112) and accordingly have tended to gain the most academic attention. This is not least due to their central role in proceedings but also, as I have already noted, because the judicial ideal has traditionally depicted judges as objective and impartial, capable of making decisions unaffected by emotions. Research has therefore been aimed at unpicking this persistent “ideal of the dispassionate judge” (Maroney & Gross, 2014, p.142) – an individual able to eliminate emotions in order to make rational judgements based on facts – and replacing it with a new ideal of the “good judge” (Maroney & Gross, 2014, cf. Flam’s, 1990, “emotional man”) – an emotionally aware, emotionally intelligent and emotionally regulated individual (Maroney, 2016).

Maroney’s (2011a, p. 1485) research on the emotion regulation of judges in the USA’s adversarial system presents two strategies for managing emotions: suppression (withdrawing or avoiding an emotion) and engagement (cognitively engaging in an emotion). She concludes that the engagement model is the most compatible with judicial responsibilities and enables judges to “prepare realistically for inevitable emotional challenges, process and respond thoughtfully to any emotions they may have, and integrate those emotions into their decisional processes and professional self-concept” (Maroney, 2011a, pp. 1493-1494). In contrast, suppression strategies can increase cognitive load and may “paradoxically increase emotion’s influence while rendering that influence less transparent” (Maroney, 2011a, p. 1485).

Maroney (2011a) shows further that judicial emotions can be regulated for hedonic reasons (to avoid unpleasant feelings and seek out positive ones), and utilitarian reasons (aimed at achieving specific goals). Utilitarian emotion management may be task-responsive, meaning that emotions may be managed in response to the specific situation (Maroney, 2011a). She identifies one such instrumental goal as impression management which, from a Goffmanian perspective, is about preventing the loss of face that might arise from a deviation from an emotion norm (cf. Goffman, 1956c).

Maroney (2012, p. 1211) has also focused on a specific emotion, namely judicial anger, showing that the “righteously angry judge” is angry for the right reasons and expresses it in the right way – most commonly directing this anger at lawyers due to “incompetence, disrespect, unwarranted harm inflicted on

others, and lies” (Maroney 2012, p. 1213). Judicial anger is thus justified if there is a legitimate basis as to why the judge is angry but it should also be manifested in an acceptable way, that is, it should be experienced and displayed appropriately (Maroney, 2012, p. 1249). This minimises the dangers associated with angry decision-making and maximises the benefits from the appropriate display of anger (Maroney, 2012).

Maroney’s (2012) work draws on a variety of empirical sources to explore how anger is emotionally regulated and finds that anger appears to be the judicial emotion that has the least stigma attached to it, in comparison to, for instance, sorrow or fear (Maroney, 2012, p. 1230).

Moving now to Australia, Roach Anleu and Mack’s (2017) work looks at how judicial legitimacy is based on magistrates’ dramaturgical enactment of the core legal principles of impartiality. Impartiality is thus a legal requirement and its performance ensures certain behaviours and beliefs in others (Roach Anleu & Mack, 2017, p. 9).<sup>32</sup> This judicial performance entails magistrates managing their own emotions and also the emotions of others such as lay participants’ experiences of anger, frustration, sadness and disappointment (Roach Anleu & Mack, 2017).

An integral aspect of this is presented by magistrates as ensuring that their judicial demeanour symbolises the core value they represent. Roach Anleu and Mack (2017, p. 1) conclude that the application of legal rules and procedures requires the performance of judicial authority. This interactional process involves judicial officers adjusting their demeanour based on the audience: business-like to other legal professionals, more patient and courteous towards defendants (Roach Anleu & Mack, 2017). In this way, magistrates’ demeanour, seen in emotional expressions, clothing and facial expressions, connects “formal law and practical everyday courtroom demands” (Mack & Roach Anleu, 2010, p. 112).

Roach Anleu and Mack’s (2017) study also shows that magistrates’ “failure to conform to feelings rules, to express the appropriate emotions, and to elicit appropriate responses in others risks criticism and evaluation” (Roach Anleu & Mack, 2005, p. 614), thus pointing to Maroney’s (2011a) “hedonic” reason for emotion regulation. That is, judges wish to avoid the shame of non-conformation.

This has also been shown in Sweden where judicial impartiality is guided by “situated emotion management and empathy, oriented by emotions of

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<sup>32</sup> Darbyshire’s (2011, p. 43) study of judges in England depicts them as polite, courteous, rarely ill-tempered and keen to avoid pomposity or “judgitis” (Darbyshire, 2011; similar to “robitis”, Scarduzio, 2011).

pride/shame” (Bergman Blix & Wettergren, 2015, p. 1). The appropriate judicial demeanour may lead to feelings of pride in judges whilst shame arises if one perceives oneself or another legal professional to have deviated from one’s professional position (Bergman Blix & Wettergren, 2015; cf. Maroney, 2011a; Roach Anleu & Mack, 2017).

This comparison shows that judges in all three countries follow the same “judicial emotional regime” (Bergman Blix & Wettergren, 2015, p. 5) with its associated “emotive-cognitive judicial frame” (Wettergren & Bergman Blix, 2016). We also see a glimpse of the hierarchy of emotional acceptability for judicial emotions used by judges (and prosecutors as will be discussed shortly) to orient emotional experiences and displays (cf. Schuster & Proven, 2011, p. 39).

In Sweden, deviations from this emotional regime may be sanctioned by judges, however sanctions are subtle, for instance, a judge may drop his or her pen, with disregard for such subtle displays leading to harsher displays by the judge (Bergman Blix & Wettergren, 2015; Westlund & Eriksson, 2013). Wettergren and Bergman Blix (2016) argue that it is the subtlety of emotion that leads to the continued mirage of an unemotional justice system, the emotionality of which is only seen by those in the know (see also Flower, 2014).

Wettergren and Bergman Blix’s (2016, p. 4) study of judges and prosecutors also distinguishes between “professional emotion management” used to ensure that emotions “comply with tacit feeling and display rules at work [and] strategic emotion management [which is the] deliberate use of emotions to reach an intended goal.” Strategic emotion management is thus similar to Maroney’s (2011a) concept of utilitarian emotion management. I expand upon this, showing the ways in which everyday emotions are managed into professional emotions. They conclude that “rational justice [is] a joint accomplishment” (Bergman Blix and Wettergren, 2015, p. 1).

My work leads on from the research described above which has used “interactional moments of courtroom activity” (Roach Anleu & Mack, 2017, p. 6) to connect judicial impartiality with courtroom performances. In turn, I show how loyalty is accomplished in the courtroom (see also R. M. Emerson, 1969; Ptacek, 1999, p. 95; Roach Anleu & Mack, 2005, 2017; Törnqvist, 2017). I also expand the way in which props are used in this performance (see also Waldron, 2000). My approach differs as I have a greater focus on ethnographically depicted gestures, expressions and interactions compared with these other studies.

## *Prosecutors*

Three studies on prosecutors are of particular interest to my study, all of which have been conducted in Sweden.

Jacobsson (2008, p. 47) looked at how prosecutors in the Swedish courtroom engage in “objectivity work” in order to “make and communicatively realise (i.e.) ‘make real’” objectivity. Jacobsson’s (2008, pp. 47-48) study shows how objectivity is “construed and assigned meaning in relation to the concrete particulars of prosecutorial routines”. For example, objectivity is constructed by emphasizing the role of rules and regulations in decision-making (cf. Wettergren, 2010). This can be accomplished partly by utilizing “organizationally embedded vocabulary” (Jacobsson, 2008, p. 54) which neutralises personal involvement, for example, rather than talking about commitment or attachment, prosecutors use terms such as “duty” to explain why and how they conduct their work. Professionalism is linked with the absence of personal involvement which is achieved in part by “demoralization” (Jacobsson, 2008, p. 56) whereby judicial regulation is the benchmark of decisions rather than moral judgements.

I follow Jacobsson’s (2008, p. 63) study showing how “actors realize (...) abstract principle[s] in practice” in order depict how defence lawyers accomplish loyalty however my focus is on how this is accomplished interactionally rather than discursively. I argue that in the same way that prosecutors invoke objectivity as a legal objective, defence lawyers invoke loyalty and practically accomplish this in the courtroom (see also Maxwell Atkinson, 1992; Rogers & Erez, 1999).

The next study of interest is Törnqvist’s (2017) study of prosecutors specialising in relationship violence which builds on Jacobsson’s (2008) work and explores how prosecutors construct and perform “professional respectability” (Törnqvist, 2017). Along the lines of Roach Anleu and Mack’s (2005, 2017) study of magistrates, Törnqvist (2017) explores the ways in which prosecutors perform their role and the symbolic distinction between professional and private roles. The former is associated with a clear framework within which one may manoeuvre thus providing the prosecutor with a sense of security and, indirectly, freedom (Törnqvist, 2017).

Törnqvist (2017, p. 297) also explores the emotion rules of a trial and the “emotional ideals that the professional identity rests on.” These emotional ideals are reflected in the ways in which prosecutors talk about their emotional performances in the courtroom which they discuss in terms of staying in their role and keeping their professional mask in place (Törnqvist, 2017). Similar to the work I have presented on judges, prosecutors also talk about adjusting their

emotional performance depending upon who they are interacting with and using different strategies of emotion work to encourage plaintiffs to participate in a trial (Törnqvist, 2017).

The third study of relevance which has already been mentioned in the previous section, is by Wettergren and Bergman Blix (2016, 2019) which, as part of a larger research project on emotions in court, looks at the role of empathy for Swedish prosecutors. This study shows that it is used as a professional tool ranging from role-taking, where the other's emotions are understood but not felt, to identifying with the other where one experiences the other's emotions. Such identification is presented as an important tool, amongst other things for ensuring that one avoids becoming cynical, providing that this identification is still managed (Wettergren & Bergman Blix, 2016, pp. 11-12). Wettergren and Bergman Blix (2016) also show that prosecutors use empathy prior to a trial in order to identify a crime, prepare a case, and anticipate how others will view it in court whilst during the trial, empathy is used to manage the emotions of self and others (Wettergren & Bergman Blix, 2016). I develop this and, by analysing defence lawyers' empathy talk in our interviews, I depict how they discuss empathy and present a typology of its strategic use.

Bandes' (2006a) article on prosecutors' loyalty is also of special interest here. Bandes (2006a) writes that prosecutors in the USA have divided loyalties which are inherent in the adversary system. The prosecutor may have loyalty to a particular version of events, for example, a defendant's guilt, even when faced with overwhelming evidence to the contrary. This loyalty should be balanced against "institutional loyalty" (Bandes, 2006a, p. 485) – their commitment to justice as well as their commitment to colleagues and to their own beliefs.

Competing loyalties can be dealt with by reframing the conflict, for instance, conduct that might be viewed as detrimental is re-framed as being in social and moral interests (Bandes, 2006a). Bandes (2006a, p. 487) shows further how the "ideal of justice is malleable", indeed the very "notion of truth itself may shift", in order to ensure that loyalties are aligned. I see this in terms of loyalty layers (Connor, 2007) and in my analytical chapters, I show the ways in which defence lawyers in Sweden frame or account for their role and the ways in which disloyalty is seen.

### *Defence lawyers*

There are few sociological studies on defence lawyers therefore this dissertation will provide an important insight into this branch of the legal profession. I will now present the relevant research to date.

Harris' (2002) study on the emotion work of barristers in the English Crown Court finds three categories: (1) private emotion work in interaction with solicitors, barristers, barristers' clerks, court clerks and ushers; (2) public emotion work with clients, witnesses, judges, magistrates and juries; and finally, (3) emotional suppression. My study touches on all three forms of emotion work and re-frames emotional suppression as emotional engagement and transformation (cf. Maroney, 2011a).

Westaby (2010) has researched the emotional labour of asylum law solicitors in England, finding that divergent emotional displays are required in order to develop trust and show empathy. The solicitors in Westaby's (2010) study describes the importance of identifying with the clients, seen in terms of feeling their feelings however this leads to a tension between emotional understanding and becoming too emotionally invested. An "emotional buffer" (Westaby, 2010, p. 162) is thus required between solicitors and clients which is achieved by focusing on the legal aspects of a case in order to present a façade of "detached concern" (Lief & Fox, 1963; Westaby, 2010) thereby enabling efficient task completion and fulfilling the emotional demands of the job.

Westaby (2010, p. 165) also discusses the "occupational acculturation" of solicitors whereby professional demeanour is taught in law school, however the specialist skills required to engage with clients are learned vocationally through a process of socialisation.

The studies by Westaby (2010) and Harris (2002) show that solicitors are presented by barristers as more emotionally engaged, contrasting to the emotional detachment required of barristers. Barristers do not engage in client contact, thus accounting for their emotional detachment (see also Boon, 2005). In Sweden, the role of solicitor and barrister is combined therefore defence lawyers have direct contact with clients which I argue increases emotion management demands.

Moving to the USA, Pierce's (1995) study on the emotion work of litigators is also of interest. Her study highlights that the emotional element of lawyering is a neglected dimension and finds that various methods of emotion work may be used in order to create a "particular impression for the jury" (Pierce, 1995,

p. 72).<sup>33</sup> A criminal trial thus entails not just legal argumentation but also requires the “emotional presentation of self as intimidating or strategically friendly” (Pierce, 1995, p. 8) in order to achieve the desired result of winning. Litigators may therefore perform as “Rambo litigators”<sup>34</sup> (Pierce, 1995) using aggression, anger and intimidation for strategic purposes.<sup>35</sup> Other ploys include “strategic friendliness” (Pierce, 1995) which includes politeness, tact, courteousness, friendliness, and sometimes, playing dumb (see also Levenson, 2007; Maroney, 2012; Turrow, 1987).

In the USA, litigators are presented in research as “professional combatants” (Brazil, 1978, p. 108) who use “ritualized aggression” (Wishman 1981, quoted in McMahon, 2006, p. 845) or “reasonable hostility” (K. Tracy, 2011b, p. 170) based on what is acceptable given the situation. In England and Wales, barristers may use “pyrotechnics” (Mungnam & Thomas, 1979) as a way of dazzling the client with displays of sound and fury whilst concealing the sparseness of actual legal argument or engagement. This is aimed at ensuring the client feels satisfied that his or her lawyer has performed adequately and that any loss is not the fault of the lawyer.

In comparison, a recent doctoral dissertation by Bitsch (2018, p. 118) exploring the emotion work of defence lawyers in (adversarial) Norwegian rape trials shows that defence lawyers’ courtroom performances are adjusted in line with expression rules as well as “changing cultural narratives and political conditions”. Accordingly, defence lawyers may choose an “instrumentally decent” (Bitsch, 2018b, p. 118) style of lawyering, as the “Rambo litigator” (Pierce, 1995) approach in rape trials is deemed inappropriate. The Rambo approach is also eschewed in Sweden with lawyers finding an appropriate way to perform anger and aggression which I depict in the analytical chapter on the emotion work of defence lawyers.

Bitsch (2018) presents a typology of defence lawyering (ideal, dispassionate, paternalistic, and aggressive) with each mode drawing on different styles of emotion management. Aggressive lawyering was observed

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<sup>33</sup> Other research from the USA shows that paralegals use emotional labour with clients and other legal professionals and that paralegals’ performance on the personal front including manner and appearance is important (Lively, 2001, 2002).

<sup>34</sup> The concept of Rambo litigators has been used in legal circles in the USA since the early 1990s (Kanner, 1991).

<sup>35</sup> This is contrasted with the “mothering paralegals” (Pierce, 1995) who were more nurturing and caring. Both roles were strongly linked to gendered expectations and doing gender thereby reproducing gendered hierarchical and occupational structures (Lively, 2000; Pierce, 1995).

in cases with drug users, mentally ill or promiscuous women and was also associated with race and social status with defence lawyers who identified more strongly with their clients adopting a more aggressive approach to complainants (Bitsch 2018).

Moving back to the USA, Waldron (2000) highlights the emotion work employed by defence lawyers to display on-stage, exaggerated concern and compassion for one's client, contrasting with the off-stage banter surrounding clients. Defence lawyers thus,

recognize the emotional cues of judges and defendants and each other. They 'play off', their co-workers' emotional displays, coordinate their use of emotional 'props', signal each other with emotional key words. Emotional teamwork is essential if they are to achieve their jointly desired task goals (Waldron, 2000, p. 80)

My study will follow the same path as Waldron (2000, p. 80) sets out above, showing the "interpersonal emotional savvy" involved in the "collaborative emotional performance" that is a trial. Whilst this emotional teamwork might be easier to discern in the more adversarial American judicial system, such emotional performances are more subtle in the Swedish judicial system (cf. Thelin, 2001, p. 86).

As I noted in the introduction to this dissertation, defence lawyers make for an interesting professional group for study due to the suspicion they are often met with, a suspicion that defence lawyers in other countries also face. For instance the ethics of defence attorneys in the USA tend to be questioned – both the ethics of defending suspects and the tactics employed in doing so (Bandes, 2006b).

Bandes (2006b) explores "the emotional costs of lawyering" in the USA, raising questions as to which emotions should be managed and how, along with the personal cost of such emotion management. She writes that suppressing emotions can be a "healthy adaptation" for defence lawyers, enabling them to "put aside difficult feelings that interfere with professional demands." This suppression tactic can be an essential lawyering tool in the short term, enabling emotional issues to be paused when facing a deadline for instance (cf. Maroney, 2011a).

Bandes (2006b, p. 23) also presents lawyers as "fighting for a principle as well as a client", which is supported in my study and which I discuss in terms of emotionally accounting for one's role and emotions.



## **The emotions of lay participants in a trial**

Before moving on to a presentation of research with a dramaturgical focus, it is of relevance to my study to note that there is also a considerable body of research looking at the role of lay participants' emotions which is a more openly accepted aspect of emotions' presence in law. As already noted in the introduction, research has explored the emotions of lay participants, as well as the credibility and reliability of witnesses, defendants and victims and how they are perceived based on their emotional displays along with the effect of victim impact statements on the production of empathy (Ask, 2010; Bandes, 1996; Bottoms & Roberts, 2010; Porter & ten Brink, 2009; M. R. Rose, Nadler, & Clark, 2006; Tsoudis & Smith-Lovin, 1998). In particular, a study by Schuster and Prosen (2011, p. 39) showed that there is a "hierarchy of acceptability" regarding the display of emotions in trials, with those who express acceptable emotions being given authority and voice (see also A. Francis, 2006; Lively, 2000). This means that different values are placed on different emotions and conclusions drawn regarding a person based on their emotional expressions (see also Ahmed, 2004; Hareli et al., 2013).

## **3.2 Dramaturgical studies of trials**

I will now present the relevant research on the use of facework in the adversarial courtroom before moving on to other studies with a broader dramaturgical perspective. The focus is on studies on the rules of courtroom interactions and the ways in which impressions are conveyed.

### **Courtroom facework**

There are several studies of courtroom trials which explore the multiple uses of facework in adversarial courtrooms (Archer, 2011a, 2011b; S. Harris, 2011b; K. Tracy, 2011b). Archer's (2011a, 2011b) work on im/politeness in legal contexts explores, for instance, lawyers' use of facework during cross-examination. She develops Goffman's (1967) three levels of face threat (intentional, incidental and accidental) to include a new zone of "strategic ambivalence" (Archer, 2011a). This new form of face threat combines intentional impoliteness with incidental face threat. It describes how lawyers may intentionally threaten another's face but that such face threats lack malice,

thus the resulting face damage is incidental, arising as a by-product of the lawyer's quest to bring forth evidence (cf. Goffman 1967).

This instrumental use of facework is also discussed as "part of the strategic process of presenting evidence" (S. Harris, 2011a, p. 150). It may thus involve threatening a witness' face by reacting with disbelief at their testimony in order to protect one's own and one's client's face (Penman, 1990). It may even entail damaging the face of one's own client as a strategic move towards proving his or her innocence (S. Harris, 2011b, p. 104).

While 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, p. 6; cf. Goffman, 1967; S. Harris, 2011b). This is not to say that those on the receiving end of the questioning do not perceive it as impolite or malicious, indeed, "any lack of knowledge on the part of lay participants can serve to exacerbate face damage, even in situations when no intentional face attack can be (easily) determined" (Archer, 2011a, p. 3227). However, unlike non-legal actors, legal professionals may consider such "systematically aggressive" face attacks as "within the remit of their role" (Archer, 2011a, p. 3222; 2011b). The lawyer can therefore claim that he or she is not attacking the witness or plaintiff, rather performing their role of searching for evidence (Lakoff, 1990; K. Tracy & Tracy, 1998).

It is therefore possible to see questioning as a form of facework, simultaneously acting as requests for information, clarification or confirmation, and as a way of making an accusation and controlling the interaction (Archer, 2011b; Penman, 1990).

Herein lies the importance of situation, context and the object of emotions (Averill, 1994; Maroney, 2011b; Roberts, 2012). Behaviour that would otherwise be considered as rude outside the courtroom context may be an acceptable part of the criminal trial's ceremonial order and thus, of the emotional regime of the criminal trial, providing that it remains polite and is aimed at the appropriate target. This supports the argument I am making in this dissertation, that preparing the defendant for what to expect in a trial is an important part of teamwork as it reduces the risk that cross-examination (or questioning) is experienced as a face threat.

Integral in these performances, in particular during cross-examination, is the "controlled use or *performance* of emotion for strategic purposes (i.e. *doing emotion*)" (Archer, 2011a, p. 3225, emphasis in original). This is because cross-examination is not only about deconstructing the opposition's evidence,

it is also a vital opportunity to make impressions and convey emotions (Archer, 2011a).

Facework in the courtroom can also be used to construct or maintain a professional identity or face, which I present as “lawyer face” and which for example, in the US State Supreme Courts involves performing “minimal politeness” (K. Tracy, 2011b, p. 123) in order to follow courtroom norms.

Other studies looking at courtroom facework show how lawyers in jury systems may create a “lawyer persona” (Hobbs, 2003, p. 276) in order to affiliate themselves with the jury. This is achieved by constructing a shared identity with jurors using different rhetorical styles – adjusting speech patterns to more closely identify with jurors. Although Sweden does not have a jury system, Hobbs’ (2003) is of relevance as it discusses situationally adjusted, interactional strategies for presenting oneself in court which I explore from a nonverbal perspective.

Penman (1990) concludes that most research conducted on facework has focused on other-directed rather than self-directed facework, therefore my study fills an empirical gap by looking at both of these aspects of facework and by furthermore lifting the facework required to project the team performance (cf. Waldron, 2000). I show the different strategies that are used depending on which face is being threatened, and also how these strategies are used to build up and undermine the presentation of facts (cf. Penman, 1990).

One final study I would like to mention here shows that facework is used with families who present victim impact statements in Supreme Court in Australia court to cool them out beforehand in order to ensure that their emotional expressions are kept “within socially approved limits rather than flooding out” (Booth, 2012, p. 226; Garot, 2004) during proceedings enabling things to flow smoothly (cf. Goffman, 1959).

## **Dramaturgical trials**

Moving to research with a more overarching dramaturgical approach to the courtroom, rather than focusing on facework, a number of ethnographic studies have been conducted on the “complex social world” (Rock, 1993, p. 2) of the English Crown Court, several of which have either had an explicit dramaturgical perspective or which may be read through a dramaturgical lens as I will now present (see also Carlen, 1976; McBarnet, 1981; Travers, 1997). These studies show that despite the formalised and ritualised nature of a trial, it can still be “structured mayhem” (Jacobson et al., 2016) involving delays,

disruptions and adjournments. The dramaturgical nature of a trial is described by Rock (1993, p. 2) as,

ceremonial, disciplined, and staged, and they unfold in set order. Participants come forward at their proper times to perform their stylised parts. Every appearance must be choreographed precisely and unambiguously. Were that not so, there could be allegations of misconduct and appeals for retrials.

Building on this, Scheffer (2010) presents the interaction order of the English Crown Court showing how it creates predictability and guides performances as well as forming how these performances are received. The court is thus presented as a space governed by “observable traffic rules” (Scheffer, 2010, p. 172) for participants and is a place filled with symbolic meanings (see also Dahlberg, 2009; Rossner et al., 2017; Scheffer, 2010).

Scheffer’s (2010, p. xviii) study shows that solicitors and barristers must maintain an awareness of the Crown Court’s “performative restrictions and possibilities” when building a case. This finds support in Rock’s (1993) study which depicts the “understated acting” (Rock, 1993, p. 56) used by legal professionals which demands displays of formal and controlled “professional emotionality” (Rock, 1993, p. 57) even during the most punishing cross-examinations.

Case-building therefore demands not just the understanding of legal rules and the employment of professional techniques, but also requires social and interactional resources (Scheffer, 2010, p. xix, see also p. 253). Scheffer (2010) touches briefly on the emotion work involved in this process, contrasting the performances of solicitors presenting in Magistrates Court with barristers presenting in Crown Court (Scheffer, 2010, p. 116, see also Harris, 2002, Westaby, 2010). Scheffer (2010, p. 97) notes further that the case-file system “interrupts the otherwise inter-subjective flow of emotions” between client and lawyer. In Sweden, this flow between client and lawyer is uninterrupted by case-files with clients meeting with their defence lawyer and sitting together in court, enabling me to observe said flow directly.

Scheffer (2010, p. 155) also identifies the court’s “ritual order of speech”, describing how questions can be used to ensure that the client does not go astray, become confused or present novel details, but also to minimise the risk “of showing unrestrained emotions” (Scheffer, 2010, p. 155). However, Scheffer (2010) does not discuss why unrestrained emotions might be unwanted, or indeed which emotions are unwanted. As the focus is not on emotions, the emotions of barristers and solicitors are unexplored as are more detailed descriptions of interactions. By linking Scheffer’s (2010) work on the

interaction order of the English Crown Court, with an emotion sociological approach I show the overarching framework that stifles emotions and guides professional emotions.

Scheffer (2010) also describes how barristers may use props such as wigs, white collars and black robes to convey the formalised and ceremonial aspect of a trial and the associated gravity. The use of such props is also described by Jacobson et al. (2016, p. 201) as a “deliberate strategy to sustain the Crown Court’s aura of authority for those who work in court and, especially, those who enter this space as outsiders.” The importance of such a performance on the personal front is summed up by Rock (1993, pp. 58-59), with the following depiction of legal professionals,

theirs was an appearance of self-control and organization that symbolized many things. It was a visible subscription to the decorum and good order of the courtroom, a subscription that was policed by judges and the Bar Council (...) Their appearance was an iconic representation of (...) an orderly world of nearly visible boundaries and distinctions where things could not be ambiguous and relations were clear.

In contrast, defence lawyers in Sweden must find other strategies to present professional lawyer face, without the ceremonial aid of wigs and robes.

Another ethnographic study of Crown Courts in England and Wales shows that the formality of the court can be perceived as intimidating by non-legal actors (Jacobson et al., 2016). The “highly ritualised conflict management process” (Jacobson et al., 2016, p. 201) that is a trial can thus lead to feelings of vulnerability and exposure (cf. Adelswärd, Aronsson, & Linell, 1988). I argue this may stem from a lack of familiarity with the courtroom’s traffic rules – the interaction order.

There are several other courtroom ethnographies that have been conducted in England, such as Fielding’s (2006) study of criminal trials regarding physical violence. His study discusses the emotion management strategies of defence lawyers, judges and non-legal actors (although not in emotion sociological terms), showing, for example, that barristers do not react to crying victims and that lay participants experience anxiety and sadness (Fielding, 2006). There is a dramaturgical approach discernible with lay participants talking about how they appear in court and how they perceive the defence lawyer and judge (Fielding, 2006).

A cross-cultural study with an ethnomethodological approach to “doing law” compares the interaction orders of the English Crown Court, the US-American State Court and the German District Court (Scheffer, Hannken-Illjes, & Kosin, 2010). It focuses on how defence lawyers build, prepare and

defend cases, however there is little or no focus on the feelings or emotions of defence lawyers or indeed, of any of the actors in the courtroom. The study finds differences in the interaction orders regarding spatiality and flexibility. For instance, the American courtroom is presented as less rigid than its English counterpart, whilst the German District Court is even more relaxed and individual, based on the presiding judge (Scheffer et al., 2010).

Another study with a dramaturgical focus, this time in the USA found that jurors paid attention to the backstage performances of legal and non-legal actors and used such “offstage observations” such as that seen in the waiting room, to bolster opinions based on front stage observations, for instance, what had actually been presented in the case (M. R. Rose, Seidman Diamond, & Baker, 2010). This study also showed that jurors were aware when lawyers or defendants were putting on a show or performing by using strong emotions (M. R. Rose et al., 2010).

In my study I show the nonverbal fact-building and fact-undermining strategies used by defence lawyers in the Swedish courtroom. There is a large body of research looking at talk in interaction in the courtroom both from Sweden (Adelswärd, 1989; Adelswärd et al., 1988; Aronsson et al., 1987) and from other countries (Conley & O'Barr, 1990; Conley, O'Barr, & Lind, 1978; Drew, 1997; Holstein, 1988, 1993; Matoesian, 1997; Maxwell Atkinson, 1992; O'Barr, 1982; O'Barr & Conley, 1976; Sacks, 1997). There is also a smaller body of work looking at nonverbal communication in the courtroom, which I contribute to.<sup>36</sup>

## **Other research on criminal trials in Sweden**

I have already presented research regarding judges and prosecutors in Sweden however other research from Sweden has highlighted the adversarial aspects of its mixed system, aspects which are particularly prevalent during a criminal trial.

A criminal trial in Sweden is described as “a social interaction where the perspective of conflict is obvious” constituting “a severe and complex face-threat for the defendant” (Adelswärd, 1989, pp. 743-748; see also Törnqvist, 2017). Indeed defendants interviewed after a trial often spontaneously talk about feelings of loneliness and degradation (Adelswärd et al., 1988). Yet, Adelswärd (1989, p. 742) also highlights the neutrality of a criminal trial in Sweden writing,

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<sup>36</sup> Courtroom proxemics have also been studied (Brodksy, Hooper, Tipper, & Yates, 1999).

one of the most striking things to be observed in petty crime trials in Sweden is the lack of dramatic rhetorical techniques. One seldom hears a raised voice, a direct accusation, an open rebuke or a clear sign of mistrust or disbelief. The atmosphere is seemingly unemotional, the attention very much oriented towards matter-of-fact issues. This kind of trial is in fact characterized by its tone of neutrality.

On the surface, the atmosphere of a Swedish criminal trial is less dramatic than that portrayed on TV and films, portrayals which, even in Sweden, are often of American trials. Expectations of a trial can thus be associated with such medialised depictions (see also Adelswärd, 1989; Fielding, 2006; Greenfield & Osborn, 1995; Machura & Ulbrich, 2001; Thelin, 2001). Connected to this, the general public may receive inaccurate descriptions of trials via the media because mediated descriptions may be misleading, biased or sensationalised (cf. Heider, 1958) (see the introduction for examples of how defence lawyers are discussed in the Swedish media).

Dahlberg's (2009, p.133) dramaturgical presentation of a criminal trial describes the emotions in this seemingly unemotional courtroom, discernible, "in posture, glances, timbre of voice, silences, flushes, crying, outbursts of laughter, and the smell of sweat." Dahlberg (2009, p. 130) also claims to show "how different actors in the law court display and represent affect and emotion and the ways in which affect and emotion are managed and disciplined during the legal process" thus showing "the emotional drama constructed and enacted in the legal courtroom" (Dahlberg, 2009, p. 134, cf. Thelin, 2001). Whilst his study is an interesting insight into the courtroom from a theatrical and ethnographic perspective, it is more of a general overview of courtroom trials. I therefore endeavour to provide a more detailed description of the strategies used to display emotions and the ways in which they are managed.

Dahlberg (2009) agrees with Adelswärd (1989) that emotions should remain controlled and regulated in the Swedish trial system to a greater extent than is the case in the Anglo-American adversarial system which he writes is "based on a dramatic confrontation between prosecution and defence in front of a jury of lay people" (Dahlberg, 2009, p.129). I argue however, that there is still a dramatic confrontation in the Swedish courtroom, but that it is subtly dramatic (cf. Bergman Blix & Wettergren, 2015).

Another study of relevance to my dissertation looked at the construction of meaning and the defendant's social identity in the Swedish courtroom (Adelswärd et al., 1988). This study found that "the same courtroom interaction may be construed and interpreted quite differently from the perspective of the defendant and of the court of law" (Adelswärd et al., 1988,

p. 261; K. Tracy & Tracy, 1998). Defendants' "frames of understanding" (Adelswärd et al., 1988, p. 262) were linked to their level of "courtroom socialization" (Adelswärd et al., 1988, p. 261) meaning that first-time offenders who were uninitiated into the ceremonial order of the criminal trial, as I see it, were more likely to misunderstand the prosecutor's questions and also more likely to experience them as face threats (see also Travers, 1997). Adelswärd et al. (1988, p. 279) present this as arising from defendants using a "social frame rather than a legal one for interpreting the trial" which, they argue, may lead to differences in emotional experience.<sup>37</sup> This study is relevant to mine as it suggests that a lack of familiarity with the interaction order can influence how one perceives various aspects of a trial, for example, face threats during cross-examination as I will explore in my analysis (cf. Jacobson et al., 2016).

Another study of relevance to my dissertation and which can be seen in terms of unfamiliarity with the ceremonial order of the criminal trial, was conducted by the Swedish National Council for Crime Prevention (*Brottsförebyggande rådet - BRÅ*) (Westlund & Eriksson, 2013) and explored how lay participants experience trials in Sweden. The study shows that plaintiffs sometimes perceive defence lawyers to be aggressive, unpleasant and challenging (Westlund & Eriksson, 2013, p. 8). This is an interesting finding as the interviews that I carried out with defence lawyers regarding trial work and how they perceive their trial performances show that they view themselves, and even pride themselves, as being unaggressive and pleasant.

Added to this are the findings from researchers at BRÅ (Westlund & Eriksson, 2013) that both lay participants and other legal actors are very perceptive when it comes to the gestures of other legal actors in the courtroom. For instance, the study shows that a participant's experience of a trial is affected by legal actors' subtle gestures – a judge moving a pen can be perceived as negative by the lay participant (Westlund & Eriksson, 2013; cf. M. R. Rose et al., 2010). Both verbal language and nonverbal or body language are therefore important aspects as everything can be (mis)interpreted by the various actors in the courtroom. The study recommends that these subtle aspects should be discussed by legal actors in order to determine how they are perceived by the participants.<sup>38</sup> This also finds support in other studies showing

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<sup>37</sup> Other research in Sweden has looked at how immigrants self-present in the Swedish courtroom (Elsrud, Lalander, & Staaf, 2015), along with the ways in which an immigrant might be "othered" due to the presence of an interpreter (Elsrud, 2014).

<sup>38</sup> The report by BRÅ (Westlund & Eriksson, 2013) also points to the importance of legal professionals showing respect, engagement and neutrality to those they meet in a trial in



that if plaintiffs, witnesses and defendants perceive themselves to have been treated well by the court then this increases their sense of procedural justice – that rule of law or justice has been served (Thelin, 2001, p. 62). This, in turn, strengthens the legitimacy of legal authorities and legal rules. It also increases their tendency to consent and co-operate with the police and with courts (Tyler, 1988; 2003, p. 286; 2006).

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order to keep confidence in the court, the legal process and the legitimacy of both. The report notes that some lay participants thought that lay judges seemed uninterested, or even asleep (!) during a trial (Westlund & Eriksson, 2013).

# Chapter 4: Method

The empirical material analysed consists of interviews, ethnographic<sup>39</sup> observations and one audio recording from a criminal trial. Other material taken into consideration include media coverage, autobiographies and other documents. I have conducted ethnographic observations at four district courts in southern and western Sweden on more than fifty occasions, each lasting between fifteen minutes and six hours. I have also interviewed 18 lawyers and transcribed the recordings.

## 4.1 Ethnographic observations

When I embarked on gathering empirical material for this dissertation in 2013, I began by sitting in the gallery of district courts, watching criminal trials and writing fieldnotes. I had only once before observed a trial and, as it was in 2004, just after I had arrived in Sweden, I had little memory of it. I therefore had limited background knowledge of Swedish trials. I chose criminal trials as I believed that these would provide the most fruitful (i.e. emotional) material not least because, as already noted, criminal trials are co-ordinated conflicts where face is threatened making them an excellent site for exploration (Adelswärd, 1989; Goffman, 1952, 1956c; May, 2005). My observations took place between September 2013 – April 2017.

In qualitative research, the selection of material is an organic process whereby the researcher lets the material guide him or her (Aspers, 2007, pp. 90-91). I therefore chose which criminal trial to observe randomly whilst maintaining a certain selective focus in order to ensure a wide range of cases. Consequently, the trials I observed range from minor assault to murder.

My initial impression was that a trial was slightly boring, more like a bureaucratic meeting than the emotionally charged, “you-can’t-handle-the-

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<sup>39</sup> I follow Silverman’s (2013, p. 2) use of the term “ethnography” to refer to “highly descriptive writing about particular groups of people” in my case, of defence lawyers.

truth”<sup>40</sup>-like confrontations I had envisioned. But as I gained increasing cultural awareness of the field, I began to see that even Swedish trials are emotionally-charged, but that there are rules for what may be displayed, how it may be displayed, and by whom (Maroney, 2015). I became interested in finding out what these rules were for defence lawyers.

Initially my ethnographic focus remained broad because “good ethnographers do not know what they are looking for until they have found it” (Fine, 1993, p. 274). I therefore endeavoured to keep an open mind and an open notebook, gradually narrowing my ethnographic gaze on the interaction between the defence lawyer and his or her client as well as the interaction between the defence lawyer, prosecutor and judges, whilst simultaneously attempting to maintain the remaining situational context and atmosphere in the courtroom (Wästerfors, 2018).

As I mentioned in the introduction, the public gallery in the Swedish courtroom is often located at the back of the courtroom, affording the public (and the ethnographic researcher) a view of all of the actors involved and in particular, frequently providing an unobstructed view of the interactions between defence lawyer and defendant. This includes not only the interactions in full view of the court, but also those taking place behind and underneath the desk, interactions which are not observable to the other legal professionals in the courtroom. Such hidden interactions will be revealed in my analysis.

I became aware that it was the cross-examination that was the part of the trial where the action was at providing me with a great deal of my empirical material (Goffman, 1967). The closing speech also generated interesting fieldnotes, for example, showing that it was more acceptable to talk about and use emotions in a different way than in the remaining stages of the trial. The reading of charges and presentation of facts, however, often proved to be a relatively uneventful stage - perhaps attempts at stifling a yawn could be observed (which are nevertheless of analytical interest) but rarely anything more. My ethnographic eye thus homed in on certain phases of the trial, certain actors and also, in particular, on emotions: how are they displayed, who displays what, and so on. At the same time as this, my interviews with defence lawyers revealed that they talked about loyalty to the client being the central component of their role. This led me to focus in more detail on those instances where the defence lawyer is defending the client’s version of events, thus

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<sup>40</sup> This is a quote from an emotionally-charged courtroom scene from the film “A Few Good Men” where Tom Cruise is demanding the truth from Jack Nicholson, who gives this line in response.

symbolically communicating loyalty to the client which, as I mentioned above, is most prevalent during cross-examination (Haas & Shaffir, 1982, p. 194).

This involved me writing fieldnotes contemporaneously, endeavouring to capture “the active ‘doing’ of social life” (R. M. Emerson, Fretz, & Shaw, 2011, p. 18), in this case, the active doing of defence work and loyalty work. In order to capture such ethnomethodological “naturally occurring data” (Silverman, 2013, p. 46; Sacks, Schegloff, & Jefferson, 1974) I wrote feverishly, not always looking at what I was writing, in order to maintain focus on what was going on. Writing fieldnotes in real-time made it possible to capture both verbal and nonverbal interactions as and when they occurred and provided the possibility of focusing on the very small, subtle gestures of defence lawyers while maintaining the overall courtroom context, that is, the interaction within which the verbal or non-linguistic response arose. I could thus gather representative occurrences of interactions (Collins, 1983). I noted direct quotes within quotation marks in my fieldnotes, therefore direct quotes from the trials are also presented as part of the ethnographic material.

My original fieldnotes, needless to say, were a mess. But I developed the habit of immediately returning to my office or sitting somewhere quiet and writing out my fieldnotes cleanly, whilst the oftentimes indecipherable scribbles could still be deciphered with the help of a fresh memory. Sometimes I would write reminders, or “headnotes” (R. M. Emerson et al., 2011, p. 24) as a way of remembering things in the field that I could then expand on when writing up my fieldnotes, such as “hand on leg” or “threw glass” as a way of reminding myself of the context.

I also wrote fieldnotes 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’ frontstage work in the courtroom.

As I am interested in finding out local meanings and interactions I have maintained an awareness and openness that 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 such as crying) outside of the courtroom may be a special instance of civil inattention in the courtroom - a way of drawing attention away from the facts that are being presented as will be discussed in the analysis (Goffman, 1956c). Therefore, like Goffman (1964, p. 133), in order for me “to describe the gesture, let alone uncover its

meaning (...) I introduce the human and material setting in which the gesture is made.” To this I would add the emotional setting in which the gesture is made.

Despite this you might still pose the question, is there a risk that I interpret everything I observe as instances of emotion management or performances of loyalty (see Merton, 1968, pp. 476-477)? After all, what I find is linked to how I find it (Gubrium & Holstein, 1997). I counter that the role of researchers is to “look for and recognise underlying assumptions, their own and that of their subjects, and to try and override the former and uncover the latter” (Anderson, 1999, p. 11). I have tried to avoid potential bias by using various sources and materials, thereby not solely drawing on my own notes. Furthermore, by retaining the contextuality of interactions I have tried to avoid the ambiguity that might arise from a more decontextualized approach (Wästerfors, 2016). In this way, I am able to use the meaning conveyed as my starting point, namely loyalty, in order to discover the signs, or the ways in which this is communicated verbally and nonverbally in interaction (cf. Manning, 2001). As loyalty is described by all of the defence lawyers as central to their role I therefore use it as the base for their role performance.

I have also concentrated on avoiding other pitfalls associated with writing and analysing fieldnotes such as over-embellishing, over-interpreting or simply describing a scene in order to fit my expectations (Fine, 1993). On occasions where an alternative interpretation seems possible I have endeavoured to present this, in order for the reader to understand my analytical thinking. For example, certain performances of stoneface could be seen as instances of doing disloyalty however by showing how I have reasoned in drawing my analytical interpretations, and by using other empirical material and cultural awareness, I hope to convince the reader that the picture I am painting is accurate. My goal is for the reader to more or less naturally draw the same conclusion as I have done based on my analytical argument.<sup>41</sup>

The fieldnotes presented are thus a product of my focus as a researcher and my goal is to provide sufficient material and theoretical support to enable the reader to take my ethnographic truth as their own (R. M. Emerson et al., 2011; Gubrium & Holstein, 1997).

For this reason too I have avoided “imposing exogenous meanings” (R. M. Emerson et al., 2011, p. 51) which is a fancy way of saying that I have described what I have seen, rather than directly interpreting it in the fieldnotes.

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<sup>41</sup> I decided against “go-alongs” or “shadowing” involving following the lawyers in their everyday work as this is not my research focus, rather it is on how defence lawyers accomplish their role, focusing on the context of the courtroom (Czarniawska, 2007).

For example, I present an extract from my fieldnotes in which a defence lawyer makes a small comment, sits up and looks around which, with the help of other representative occurrences and interview talk, enables me to suggest the analytical interpretation that he is presenting himself as worked up. The point being that I present what I have seen, free from interpretation, before showing the reader how I have interpreted the actions observed.

Following the suggestion of Emerson, Fretz and Shaw (2011), I have reduced and transformed the rich social life of the courtroom into written descriptions, selecting and framing scenes for the reader to see before them. This process inevitably involves selecting certain aspects and ignoring others ("ethnographic lying", Wacquant, 2002). After observing over 50 trials I am able to select and present those instances of interaction which are representative but also those that deviate markedly from the usual thus showing,

what might have been there but was systematically excluded (...) How does the fish get to notice that it is surrounded by water (since it is all the time)? Only when it is hooked out on to dry land, when it encounters the *deviant case* (Strong, 1988, p. 236, emphasis in original).

These deviant cases are used for example to discuss how the emotional regime can be seen.

My focus when gathering material has been on how emotions are performed in the courtroom and how they are talked about in the interviews (cf. Ashforth & Humphrey, 1993, p. 89; Rafaeli & Sutton, 1989, p. 2). Methodologically, compliance with display rules is easier to observe than emotional experiences as emotional displays refer to visible outer expressions. In the interviews I have nevertheless asked questions about emotional experiences which will be included in the analysis, however, the focus is on the performance of emotions and the conveyance of loyalty.

## 4.2 Interviews and other data

Methodological creativity is required when researching emotions as they are "a moving target" (Briner, 1999; Fineman, 1993; Hopfl & Linstead, 1997; Mesquita, Frijda, & Scherer, 1997; R. E. Sutton & Wheatley, 2003; S. J. Williams, 2001, p. 12). I have therefore combined ethnographic observations with interviews with 18 lawyers. The observations guided my interviews and the interviews guided my observations in an on-going circular process.

Prospective respondents were contacted via email with an introductory letter briefly explaining my interest in emotions in court and asking for an interview. I estimate that I contacted over 40 law firms or lawyers in total, focusing on lawyers working within criminal law. All of the respondents I contacted were members of the Swedish Bar Association.

Once contact had been made with respondents a snowball method was used with interviewees putting me in touch with other lawyers, sometimes at the same law firm, sometimes at a different law firm (Fangen, 2005). I interviewed 18 lawyers in total from 14 law firms. I concentrated my search for respondents to the same geographical area in which I conducted my observations as I reasoned that there may be differences in emotional regimes in different areas of Sweden and therefore I wanted to talk to lawyers working in the courts I was observing. I was then able to ask them about their experiences of other courts or legal districts as a point of comparison.

Interviews were conducted in the lawyers' law offices and lasted between 50 minutes (as a legal emergency arose) and over 150 minutes. All but one of the lawyers I spoke to agreed to the interview being audio-recorded which I did on my mobile phone. During the interview that I was not permitted to record I wrote copious notes which I then wrote up directly after the interview. All other interviews were recorded and transcribed verbatim. One of the interviews was conducted in English after we chatted about how I came from England, however the rest were in Swedish which I first transcribed in Swedish and then translated the excerpts I wanted to use into English.

Semi-structured interviews were used using an interview guide whereby I divided the questions into certain themes such as "work in general", "experience", "emotions and emotion management" and "trials" before finishing with inviting them to ask questions or make any further comments (Kvale, 1997). This final part usually led to questions regarding what I had observed in the courtroom, in particular, could I see when they were surprised or irritated, along with comments regarding the need for greater discussion regarding emotions in the courtroom.

Eight women (Vera, Siri, Sandra, Lydia, Lena, Lo, Kate and Hilda) and ten men (Andrew, Martin, Charles, Peter, Perry, Harry, Daniel, Richard, Edward and George) were interviewed, the ages ranging from early 30s to mid-60s with experience of working as a lawyer ranging between 1.5 years to over 40 years.

I used an "active interviewing" (Holstein & Gubrium, 1995) approach whereby background knowledge garnered from interviews and during observations enabled the contextualization and familiarization of interview talk. I found that this technique has a more interactional approach to

interviewing, meaning that I could be an active participant in the interview process, rather than merely mechanically following the same interview guide throughout. It also enabled the interviewees to reflect, remember and make connections (Wagner & Wodak, 2006). Furthermore, as I conducted interviews and fieldwork over the same timespan this meant that I was able to pose questions in my interviews regarding something I had seen the day before in a trial, or in some cases, something that another defence lawyer had mentioned. For instance, as I will discuss in the analysis, I observed that none of the defence lawyers stood up during a trial and I could then ask about this in the ensuing interviews.

Although, as I mentioned above, an interview guide was used in the first few interviews, after this I discovered that the interviews tended to flow smoothly, more like guided conversations, gliding naturally, or perhaps, steered naturally into my areas of interest whilst ensuring that those areas of interest for the defence lawyers were also explored (see also Rennstam & Wästerfors, 2015). This meant that certain avenues were opened up and developed in later interviews, paths which I did not know would be available prior to the interview process, for example, the way in which defence lawyers talk about defending a person not a crime was not something that was in my interview guide but which I asked about in each interview after one of the respondents talked about it.

During the interview situation, I attempted to find the right balance of “playing dumb” but still establishing rapport and giving the impression that I was comfortable in discussing the work of defence lawyers (see Rapley, 2011). I have only limited experience of studying the law and therefore if there were terms I didn’t understand I would ask for them to be explained. I also used follow-up questions whenever necessary in order to encourage the interviewee to fully expand their answers - I was therefore conscious of not taking anything for granted. This led to surprises at times, for example, some of the lawyers said that they would defend as innocent, a client who has confessed as guilty to the lawyer, thus standing in direct contradiction to the guidelines of the Swedish Bar Association (2008).

In the analysis, I have endeavoured to not single out particular voices which support my preconceptions, but have rather attempted to show contrasts and nuances (Gubrium & Holstein, 1999; see also Wagner & Wodak, 2006).

My approach to the interviews had an almost ethnomethodological touch as in my analysis I highlight the interactive work of asking and answering questions in order to show how lawyers’ identities are negotiated in the interview situation (Baker, 2002). Also, as previously mentioned, I wrote



fieldnotes during the interviews, observing, for instance, gestures and facial expressions which will be included in the analysis.

Linked to this is my position that the interview constitutes a social situation where strategies for presenting one's self are employed, thus qualitative interviews can be seen as a way for respondents to rewrite history or at least "demonstrate their competence in the role in which the interview casts them" (Dingwall, 1997, p. 58; see also Garfinkel, 1984; Silverman, 2013; Wright Mills, 1940, p. 904): drawing attention to certain things and drawing attention away from other aspects they would prefer to remain hidden. This of course, applies to me as well, as I strove to give the impression of a competent interviewer (see also Cicourel, 1964; Dingwall, 1997, p. 56).

I will therefore analyse these "enacted performances" (Wagner & Wodak, 2006) - the ways in which the lawyers are doing self in the interview. This means, in turn, that I am not able to give the "historical truth" (Spence, 1982) or authentic description of the lawyers' everyday life and work, as the lawyers themselves are unable to do this (Silverman, 2013). We are unable and at times, unwilling, to accurately recall what we have done and why we have done it because "we attend only to those things that concern us most" (Strong, 2001, p. 225).

This is not to say that the interviews are pointless, far from it. I am still able to show the stories that the lawyers tell in order to understand or make sense of their own lives and the lives of others: their narratives (Czarniawska, 1997). It is this narrative truth which, "even if not factually accurate, bears symbolic importance" (Pierce, 2012, p. 66; see also Riessman, 1993, p. 2 for a discussion).

Silverman (2013, pp. 31-55) also discusses how the material gathered from interviews should be seen as the result of interactions or sequences of events: the answer to a specific question is formed by the question itself and the questions and answers before that. I would like to add another aspect to this as the interview respondent may have been "primed" to answer in a certain way. Here I am specifically referring to my letter of introduction regarding my study which was sent to respondents when I initially made contact and which I also showed again at the beginning of each interview. In this letter I described my research interest as focusing on "emotions and emotion management in Swedish courts"<sup>42</sup> and that "rational actions and emotionality are intertwined"

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<sup>42</sup> Here is an extract from my letter of introduction to prospective interview respondents (translated from the original Swedish): "The subject is particularly interesting as the legal system's neutrality is based on the court being impartial and factual (*saklig*) which in general means that emotions do not belong. Previous research has, however, shown that we need emotions in order to make rational decisions and that rational actions and

and also, in Sweden, there may be “higher demands on emotion management for all of those involved, in comparison to the American system for example.” It can therefore be argued that I may have inadvertently “primed” the respondents to discuss emotions in a certain way. Indeed, it is the case that the respondents talk about the emotional performances in Swedish courts being far more restrained than those in American courtroom trials. However, I see my letter of introduction as less of a primer and more of an ice-breaker, a way of opening the ensuing conversation and opening up for comparisons, rather than inadvertently influencing the respondents’ presentation of self and ways of talking about emotions in the interview situation.

The importance of combining ethnography with interviews is highlighted by Gubrium and Holstein (1999) as people not only tell stories but they also do distinctive things with them. This has repercussions that may only be detected via comparative ethnography. I have therefore combined “an ethnographic eye for the scenic influences on institutional life with a discourse-analytic ear for situated talk and interaction” (Gubrium & Holstein, 2001, p. 16).

This combination also proved fruitful, because, as I mentioned above, I was able to pose questions in interviews regarding things I had observed, but also, because people act better than they know how (Drew & Wootton, 1988, p. 7). The observations I conducted were therefore vital for uncovering the strategies people use in their face-to-face interactions which would not necessarily come to light in an interview.

I have also had informal discussions with acquaintances who are lawyers and have had conversations during the breaks in trial proceedings, which have also been considered in the analysis.

Further material was collected from newspaper articles, podcasts and autobiographies written by defence lawyers in order to increase my background understanding of the role of the defence lawyer in Sweden. The purpose of the interviews and other background material was to gather another perspective on the context and to gain cultural explanations to events observed in court; however, the main focus of my 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, more than 300 ethnographic fieldnotes from criminal trials in Sweden written by criminology students I have taught on a

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emotionality are intertwined rather than opposites. Previous research on emotions and law in Great Britain, USA and Australia show that the legal system both directly and indirectly incorporate emotions.”

methodology course on observations have also been considered during the coding and analytical process, however they have not been included in my analysis. These fieldnotes written by students nevertheless contribute towards constructing a solid base for my analytical conclusions.

## 4.3 Ethical considerations

As criminal trials are normally open to the public, the ethnographic observations involved “taking no more than what people normally make available of themselves to passersby” (Collins, 1983, p. 200), or in this case, what would be available to spectators in the courtroom. Informed consent was consequently not asked for as the courtroom constitutes a public place and participation in such an open arena does not require consent (Fangen, 2005, p. 207). On many occasions, I was one of only a handful of people sitting in the gallery. The other spectators usually consisted of family members, friends, occasionally school classes or students and even more rarely, journalists, as in the case of murder trials.

Although I cannot say with certainty that I did not influence the interaction between defence lawyer and client, all of the defence lawyers I interviewed say that they do not pay attention to those sitting in the gallery as they are so focused on proceedings when the trial is under way. It is also not possible to say with certainty how my presence affected the lay participants in the trial. One trial in particular is worth noting here. This is one of the few cases where I was the only spectator. The defence lawyer and his client were standing in the waiting room when I arrived, along with a law intern from the same law firm as the lawyer, and a representative from the care home the defendant lived in. The defendant was accused of arson. Here are the fieldnotes I wrote during this trial,

The client’s mobile rings and she reacts quickly to it. The defence lawyer turns to her and says “it’s alright” in a quiet, calming voice and leans over towards her whilst the client gets her phone out of her pocket and turns it off. The client explains that it is an alarm and that the phone was actually turned off. The defence lawyer says again “it’s alright” and has a softer facial expression. The client looks at the prosecutor and says “sorry”. The prosecutor replies, “it’s ok.”

The defence lawyer states that his client would like the proceedings to be behind closed doors, or at least, that she would like the examination and cross-examination to be held behind closed doors. The defendant has looked at me a

couple of times, staring until I break eye contact and then continuing to stare as I look at the judge instead. The defence lawyer also looks over at me. I am the only spectator, apart from the law firm intern and representative from the care home. The judge decides to continue proceedings open to the public and so I may stay.

Later on in proceedings, the phone call to the police is played where the defendant confesses to starting the fire. In the phone call she says that she currently isn't feeling well and wasn't feeling well at the time of the crime. The defendant sheds a few tears and she has her hand to her face. The defence lawyer leans over and places a hand on her back and turns his body towards her slightly, leaning in to her. They both turn around and look at me.

I make very few notes throughout this as I am slightly torn. On the one hand, I have a legal right to be in the courtroom and one could also argue a moral right too as this is all part of the justice system: that your crime should be made public, in a way as part of the punishment or as a deterrent. Then again, she is clearly unhappy by my presence and I consider briefly getting up and leaving but I stay where I am. However, I stop holding my pen above my pad of paper to signal that I am not making notes. When the phone call is played, I move my pen to my left hand to make it very clear that I am not writing. I only write a few keywords on my hand after the defence lawyer requests for proceedings to be behind closed doors, and then as soon as I leave the courtroom I write down as much as possible. (Fieldnote)

This encounter made me aware that, although trials are open to the public in accordance with Swedish law (SFS, 1942:740), my presence could nevertheless be disturbing for the lay participants of a trial. This is understandable: a trial consists of having one's dirty laundry washed in public, so to speak. In the extract above it was evident that my presence was unwelcome, the defendant was clearly nervous as shown in her reaction to her mobile ringing at the beginning, a nervousness that both the defence lawyer and the prosecutor were conscientious of (assuring her that it was ok that her mobile had sounded). I therefore chose to clearly abstain from making notes during the trial.

Ethically speaking, this is perhaps a grey-zone. I have combatted this by maintaining an awareness that criminal trials "are expressly designed to prevent the mark from saving his face" (Goffman, 1952, p. 20) and I have endeavoured to convey neutrality during observations (using the stoneface strategy discussed in detail in the analytical sections).

I have also striven for an "adequate level of anonymity" (Fangen, 2005, p. 211) without detracting from the authenticity of the scenes observed when presenting my fieldnotes. Certain identifying aspects have sometimes been

changed, for example, names, gender, scene of crime, or type of weapon. All names used are fictitious, including the names of the interviewees.

On one other occasion, I also decided to refrain from writing fieldnotes during the trial. This was because, when I had chosen the trial that I wanted to attend, there were five people waiting outside the courtroom, one of whom had a “fuck you” symbol tattooed on the back of his head, all wearing leather jackets with logos emblazoned on them which looked to be showing membership to a motorcycle gang (a suspicion that was confirmed during the trial). When we entered the courtroom these five people smiled and waved at the defendant who was already seated in the courtroom (he had been in custody), and they then sat in the front row. All of this made me somewhat uncomfortable in openly writing notes. In the break of the trial I wrote in my notebook,

I attempt to pluck up the courage to take out my notebook but to no avail (...) I am watched by two of them during the trial and I suspect that a third is watching me out of the corner of his eye (...) In the break, I go and sit around the corner to avoid the head-tattoo so that I can write my notes. I look up just in time to see one of the men coming towards me and I quickly hide my notebook and feel slightly ridiculous. (Fieldnote)

Even though none of them confronted me, I still felt concerned for my safety. I have only been directly confronted on two occasions: once by a family member to the defendant who was curious as to what I was doing and who then proceeded to tell me that salmon was currently on offer at the supermarket (!), and on another occasion by a group of off-duty police officers who had played a part in putting the case together against the defendant. As my presence and open note-taking (barring those trials attended by gang members with head tattoos) did not seem to generate much interest, I concluded that many assumed that I was a reporter or similar.

Whatever the case, my understanding is that my presence and impact on the observed was minimal (Fangen, 2005; Fine, 1993). Indeed, my presence should not be viewed as contaminating what I observed, but rather it has revealed aspects of the social world of the Swedish courtroom (R. M. Emerson et al., 2011; Rock, 1993; Walker, 1998).

## 4.4 Analytical starting point

As an interactionist, my starting point is that we act on the basis of how we define a situation and how we interpret the actions and meanings of others, which are communicated via symbols (Blumer, 1959; Dellwing, 2012; Goffman, 1956c). This is done through a process of role-taking wherein we understand that we exist in the minds of others and that the other has an opinion of us. This, in turn, influences how we act and how we view ourselves and others (Blumer, 1959; Cooley, 1922; Mead, 1934). The process of interpretation is therefore central to the concept of symbolic interaction as how we define a situation influences how we act; if actors define situations as real then “they are real in their consequences” (W. I. Thomas & Thomas, 1928, p. 572). These shared meanings arise out of socialisation and repeated interactions, initiating us into the rules of interaction and making us aware of the shared meanings attached to symbols (Berger & Luckmann, 1966; L. Francis, 1997; Goffman, 1956c; S. Scott, 2015).

It is therefore via a process of shared meanings that we are able to understand and make sense of the actions of others and act in accordance. These shared understandings regarding the situation, including normative assumptions and expectations of what will occur, lead to an almost routine-like way of conducting oneself within the situation, which, as we have already seen, is captured by the interaction order (Goffman, 1956c, 1983). Order is therefore socially constructed in interactions by a “dance of expectations” (Dingwall, 1997, p. 56).

So, when it comes to my study, participants in a trial are in agreement that the social situation they are interacting in is a criminal trial and that there are expectations and obligations associated with this particular situation. However, within this overarching definition of the situation there are competing realities: the prosecutor claims one version of events, the defendant’s stands in contrast to this. Furthermore, the different actors in the trial have different levels of experience of the particular social situation of a criminal trial and the associated interaction order. First time offenders, for example, may be uninitiated into the ritual nature of a trial. My focus is on connecting the symbols with the underlying meanings being communicated and identifying the expectations and obligations associated with the social situation of a criminal trial.

Some of the symbols are easily recognisable. For instance, sitting next to each other in the courtroom is a “tie-sign” (Goffman, 1972) symbolically signifying and communicating that the lawyer and client are a team, however

other symbols of loyalty and teamwork are not as obvious. What is a defence lawyer communicating when he or she frowns, writes notes or shifts in his or her chair?

In order to study this I have made efforts to get as close as possible to an insider perspective in order to interpret the situation in the way that the participants interpret it (Blumer, 1959). It is therefore ethnographic and interview data on the participant's definition of the situation that is the basis of my study, not my definition of their situation (Collins, 1983).

In this way I show how the guiding principle for loyalty is invoked by lawyers to symbolise their performances in the courtroom, much like the way in which other legal professionals invoke claims of objectivity (Bladini, 2013; Jacobsson, 2008; Rogers & Erez, 1999; see also Tuchman, 1972; Wettergren & Bergman Blix, 2016). I argue that it is the position of the legal professional that determines the guiding principle (i.e. loyal lawyer, objective prosecutor or impartial judge) which, in turn, steers what it is the legal practitioner is symbolically representing in courtroom interactions. This in turn shapes the actual performance whilst simultaneously remaining within the boundaries of the emotional regime of the criminal trial.

Following on from the social constructionist approach of symbolic interaction, I am not only interested in how the role of defence lawyer is constructed and performed, but also how facts are constructed in the courtroom. I therefore focus on the interactional aspect of fact construction, and reveal the strategies used by defence lawyers to build up and undermine facts in the courtroom using verbal and nonverbal strategies which are particular to the social setting of the courtroom (cf. Potter, 1996, pp. 13, 102).

## 4.5 Analysis

In line with my perspective described above, I have conducted an analysis of the observational material and the interviews. With this I mean that I have endeavoured to show the strategies used in the dramaturgical performances in the courtroom and the ways in which defence lawyers talk about these performances and emotions. I have thus done an emotion sociological and symbolic interactionist reading of ethnographic fieldnotes as well as interviews, letting the material lead the way.

I should say that when I began this study, I was not a symbolic interactionist, at least, I had not come out as one! My focus was on uncovering the emotion rules related to lawyering, rather than how these emotions are symbolically and

dramaturgically accomplished and communicated. However, during the gathering of empirical material I began to see new theoretical avenues opening up. The “analytical abduction” (Atkinson, 2014, p. 56) that ensued involved both returning to the field to gather more material, but also testing a symbolic interactionist approach to interpreting the material.

The analysis was conducted by reading through fieldnotes and interviews repeatedly over a period of several months. I looked for themes as well as ways in which I could see cross-overs between what was being said in the interviews and what I was seeing in the courtroom. Although I began using the data analysis program NVivo, I discovered that I preferred the old-school approach of listening to the interviews and reading through the transcripts as well as my fieldnotes in order to gain the insider perspective I mentioned previously. In this way, I worked closely with my empirical material, maintaining the interactional contextuality in both the ethnographic observations and in the interviews.

The analysis of the observations became the starting point for the chapter on defence lawyers’ facework, whilst the interview material led to the analytical chapter on the emotion work of defence lawyers. I then started to look at the overlaps between the two and tried to present the material as cleanly as possible. This is a tricky process as it is difficult to unravel impression management from emotion management because, often, conveying a certain social position inherently involves the management of emotions.

With regards to the fieldnotes, I have therefore interpreted verbal and nonverbal behaviour relative to the context in which it occurred in order to show the situational rules of interaction (similar to other courtroom ethnographies, see Mileski, 1971; Searcy, Duck, & Blanck, 2004; see also Strong, 2001).

Pertaining to the interviews, I have analysed them in order to show how lawyers “account” for their role and everyday courtroom work: how they make it “visibly-rational-and-reportable-for-all-purposes” (Garfinkel, 1984, p. vii) and how they talk about their role and emotions. I am interested in the reasons they give and the ways in which they justify or excuse actions that are not in accordance with the expectations of the observer, in this case, me (Rennstam & Wästerfors, 2015; M. B. Scott & Lyman, 1968; K. Tracy, 2011a).<sup>43</sup>

I have used dramaturgical and emotion sociological theories as starting blocks but expanded various concepts during the coding phase. Therefore, concepts from earlier works have been applied in order to build a more solid

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<sup>43</sup> See Dingwall (1997) for a discussion on the distinction between these types of accounts.



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).

Whilst my focus is on defence lawyers, in the conclusion I follow Garfinkel’s (1956, p. 190) approach and use “natural metaphors” to draw parallels to other situations that are “organizationally identical”. I therefore aim to follow in Goffman’s footsteps, who showed that “pedestrian traffic rules can be studied in crowded kitchens as well as crowded streets, interruption rights at breakfast as well as in courtrooms” (Goffman, 1983, p. 2). In this way I hope to avoid the “so what” trap of a great deal of research and show that this study is relevant to a range of professions and situations (Strong, 2001).

Gender or level of experience have not been a major part of my analysis. This is largely because the study’s uniqueness of mapping the performances of a previously sociologically neglected area lends itself more to future studies delving into such factors, rather than including them in the analytical focus at this stage. I have nevertheless seen a tendency for both genders to present and perform in similar ways. The level of experience seems to be associated with a more relaxed attitude towards codes of conduct, however, again, this should be seen as an area for future consideration.

## 4.6 My role as a researcher

The impact that I have had, as a researcher, on the researched has been borne in mind throughout the course of the study (Fangen, 2005). I have already touched upon how my presence may or may not have influenced the observations. With regards to the interviews, I have attempted to maintain awareness that my position as a female researcher of emotions can have led interview respondents to formulate their answers in specific ways (Lumsden, 2009; Walker, 1998). As I am interested in the defence lawyers’ presentation of self I do not see this as problematic, rather I have endeavoured to present and analyse the material based on the premise that I want to know how defence lawyers talk about emotions.

The researcher’s emotions are often relegated to a footnote - traditionally seen as an impediment - however bringing the emotions of the researcher into the forefront is an important step in working towards an ethnographic eye (however, see Bitsch, 2018a, for an interesting and notable exception). I consider the qualitative researcher to be an “emotional agent” (Kleinman & Copp, 1993, p. 54) using emotion work as part of their methodological toolkit thereby increasing sensitivity and reflexivity to the empirical material (see also

Bergman Blix & Wettergren, 2014; Coffey, 1999, p. 57; R. M. Emerson et al., 2011; L. Robinson & Schulz, 2009).

Observing criminal trials was at times quite fun, but on other occasions I found that I had to reflect upon my emotions in order to ensure that my analysis of the material was unimpeded by any personal feelings I might have had towards what I had observed. The following extract from my fieldnotes of a murder trial show how I sometimes wrestled with my personal feelings. There are two defendants at this murder trial, each blaming the other for the murder,

This morning's newspaper had a report from a murder trial which began yesterday. There are two defendants, each blaming the other for the murder. The prosecutor has claimed that one of the defendants pretended to be upset when she made the call to the emergency services to report the crime. This is the defendant who is going to be questioned today so I decide to go and observe this trial. My mind is already made up that she is guilty, but, after hearing her version of events, I am completely convinced that she is innocent and that the other defendant is the guilty culprit (...) I come out of the courtroom feeling absolutely drained and sad. I feel the need to call my husband to talk to him, to tell him that I love him and our kids. It's raining outside. I ring but there is no answer which is lucky as I would have just started crying. I'm not sure why this is: hormones or the sense of injustice that this woman is clearly being framed by the male defendant. It's obvious to me that he committed the crime. Her story was so convincing, so full of details and she held herself with dignity. I felt tears threaten me a couple of times in court but it wasn't until I came out that the enormity hit me. (Fieldnote)

I found that my focus during the trial was on the emotional performances of the two defendants rather than the legal actors and that I made inferences regarding guilt and innocence based on these performances. I centred more on *how* things were being said, rather than *what* was being said. At times then, keeping analytical distance was harder than others thus demanding self-reflection in this process.



# Chapter 5: The Theatre of the Courtroom

When asked by the prosecutor why she asked the defendant if he owned a weapon, the witness replies that she thought the defendant seemed “unstable”. The defence lawyer looks at the judge, then the prosecutor then back at the witness and looks at his fingernails again (...) Later on, during the closing argument, the prosecutor claims that the defendant could have fired a warning shot rather than shooting the victim. The defence lawyer shakes his head, rolls his eyes and looks up at the ceiling. (Fieldnote)

A comment often made by those I have spoken to who have also watched Swedish trials is that “nothing happened!!”<sup>44</sup> On the surface, trials appear mundane, stale, boring even. However, my analysis reveals a cornucopia of emotional performances. A criminal trial is a place where adversarialism seems to be hidden behind the inquisitorial presentation of facts and under a veneer of restraint and control. However, I argue that gestures such as eye rolling, headshaking and the checking of one’s fingernails as seen in the opening excerpt here from my fieldnotes of a murder trial, are all strategies for showing the role-appropriate display of antagonism fundamental to the adversarial trial. They are therefore also strategies for displaying the emotions inherent to a trial in a suitable way: anguish, anger, irritation, stress, nervousness, pride, joy, and frustration.

In this chapter I highlight the theatre of the courtroom, presenting the ways in which a criminal trial in a courthouse likens to a play in a theatre and the ways in which defence lawyers talk about their work in dramaturgical terms thus indicating the subtle or invisible performance demands placed upon them.<sup>45</sup>

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<sup>44</sup> Indeed, on one of my first visits to court I note “sometimes it feels as though I am not seeing anything, but maybe this is actually what I am seeing: a poker face. Nothing.”

<sup>45</sup> When finding similarities between trials and theatre, I do not wish to reduce the gravity of courtroom interaction. A difference between the theatre and the courtroom is that the consequences of a trial can be life-changing, for many of those involved.

## 5.1 Sad stories

A play has the same running order, roles, story, script and performers from performance to performance.<sup>46</sup> The same is only partly true regarding a criminal trial. Whilst the procedure formally remains unchanged (reading of charges, presentation of facts, examination including cross-examination and closing speeches) and the same roles are performed (judge, prosecutor and defence lawyer), the story, script and performers are never static. Siri, a criminal defence lawyer tells me that “every case looks different.” Each trial is unique, “never merely a rehearsal on a different stage” (Davies, 1996, pp. 287-288).

The defence lawyer is therefore faced with a blank page instead of a play’s written script at the start of every case which should then be filled with the details of the alleged crime and the associated background. Whilst there may be similarities in the scripts that are produced, there are nevertheless deviations in the stories told and the defence case constructed (cf. M. B. Scott & Lyman, 1970).

The defence lawyer is the director of this performance (as I will return to in the next chapter) and, together with the client, crafts the story to be told – the defence team’s version of events. For instance, in the following excerpt from my field notes from an assault trial, the defence lawyer begins her closing speech by saying,

“This is a sad story”. She goes on to state that her client was attempting to stop the plaintiff from committing suicide by swallowing tablets, and was therefore trying to force the tablets from the plaintiff’s mouth- this is why the plaintiff’s mouth was red and swollen. Another suicide attempt by the plaintiff is mentioned and the injuries inflicted upon the plaintiff then are also described by the defence lawyer as the result of her client trying to stop it. As the defence lawyer goes through these charges, she argues that there is no evidence of abuse or assault. The plaintiff becomes upset and starts crying. The defence lawyer shows no reaction to this and continues with her closing speech. (Fieldnotes)

This excerpt can be used to illustrate how defence lawyers construct “sad tales” (Goffman, 1963b; M. B. Scott & Lyman, 1970) or account of events, by downplaying certain aspects. The case is not described as “tragic” or “devastating” or the like, rather “a sad one.” This is said in an expressionless manner - there is no emphasis on particular words, there is no softening of facial features or body language that one might assume to be appropriate in

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<sup>46</sup> Costuming will be discussed in the next chapter.

such situations. Instead, there is emotive recognition (stating that this is a sad case) however, this recognition is aimed at controlling the emotive content and import: constructing a certain story, a certain version of events or definition of reality (cf. Flower, 2014). The defence lawyer uses discursive means to make emotional plaintiffs and their emotional facts, socially invisible.

The “sad tale” (Goffman, 1963b; M. B. Scott & Lyman, 1970, p. 87) can also be used by an individual to excuse their current behaviour based on their miserable past over which they have had no control. The storytelling described above doesn’t fit into this category as the defence lawyer does not appear to be attempting to frame the accounts given as being an unavoidable culmination of historic events (see also Törnqvist, 2017). Instead she seems to be downsizing the emotional content of this tale. However, the use of such sad stories is talked about by Charles, one of the defence lawyers I interviewed, who jokingly tells me, “it’s not always possible to use their tragic childhood, [laughs], but it’s along those lines” indicating that the tales told in court are often sad ones. Charles is thus also talking about an awareness of the dramaturgical aspect of the courtroom, indicating that the actors themselves are aware of the performances within.

## 5.2 Live performances

These stories are performed live in the criminal trial. The live performance of a trial means that “you only get one chance” as another defence lawyer, Sandra, says – to pose questions, to query evidence - to show weaknesses in the prosecution’s case. A live performance also means that one must stay in character throughout the performance. This can lead to dramaturgical stress being placed on the actor, balancing the external demands to stay in role throughout the performance irrespective of disruptions or surprises (Goffman, 1956c).

Many aspects of one’s performance or indeed, the performance of others, cannot be anticipated and therefore rehearsed beforehand leaving the performance of a defence lawyer filled with spontaneity and improvisation. Richard is one of the lawyers I interviewed who talked about such situations where the witness says something unexpected,

the last thing you should do in that position is to show to the other side of the court that this wasn’t what you expected (...) Of course, you get stressed when you are sitting in a live interrogation and suddenly you’re sitting there with a

completely different line of questioning than what you had thought and then you have to - and this comes with experience - not be gripped by panic, rather try and steer it, make the best of the situation. (Richard)

The unpredictability of a criminal trial is therefore a source of face threats and a constant risk of loss of face, themes which I return to throughout this dissertation (Goffman, 1956c).

### 5.3 Frontstage and backstage

A criminal trial has a frontstage and a backstage. The courtroom itself is frontstage whilst other areas such as the waiting room and chambers for the prosecution are backstage areas for preparation and relaxation (Goffman, 1956c). Once the light turns green on the display outside the courtroom signaling that proceedings are under way, defence lawyers, prosecutors, lay participants in the trial, and the public are welcomed in to the courtroom and the trial begins (see Mattsson, 2014).

The following excerpt from my fieldnotes written when I was waiting to go in to the courtroom to observe a highly publicised murder trial, shows the difference in interactions and emotional performances in the courtroom and those that take place in the waiting room outside. This excerpt can be used to highlight the difference in backstage preparations and the frontstage performances, the latter being the focus of my study:

There are around 30-40 people standing near the entrance to the courtroom. I was one of the first to arrive and I am standing opposite the door. People are chatting with each other in normal tones of voice. Next to me are three reporters who are talking about various cases they have covered and what they think will happen during the day's proceedings. The trial is due to begin at 9am and at 8:59am the chatting dies out and there is quiet in the waiting room. People stand a little stiffer, many facing towards the door. It is eerily quiet, everyone waiting for the announcement over the loudspeaker that the trial is going to begin and that we are permitted in to the courtroom. When the announcement is made at 9am people push each other slightly to get through the door and I feel like I have to push back in order to enter. Although I was one of the first to arrive, I end up in the midst of the crowd of people jostling to get in. (Fieldnote)

We see here that those waiting outside the courtroom converse normally until just before the trial is due to begin. We then see a shift from the relaxed backstage emotion rules of the waiting room where laughing and joking are

permitted, to the stricter emotion rules of the courtroom. This expectation of the shift in emotion rules can be seen in the minute leading up to start of the trial. Differences in the ceremonial order are also glimpsed with pushing and jostling outside the courtroom, in comparison to the stricter rules of propriety inside.

I observed laughing and joking in the waiting room on many occasions not just between members of the public, but also between defence lawyer and client. Bodily contact between defence lawyer and client – an arm around the shoulder for instance, is also more common in the waiting room in comparison to the courtroom. These differences reveal shifts in emotion rules and interaction rules pertaining to frontstage and backstage areas (Goffman, 1956c; Hochschild, 1983; Reddy, 2001).

This is particularly prevalent in regards to the prosecutor and defence lawyer. On several occasions I observed a prosecutor and defence lawyer laughing together or chatting in the backstage of the waiting room, but usually only when the defendant was not present (for instance, if the defendant was in custody or had gone outside to smoke). Discussions could range from the case itself, to gossiping about other colleagues or mundane talk regarding daily life. This chatting can be seen as a “tie-sign” signalling a link between the defence and the prosecution – that both are involved in the overarching team performance of a criminal trial, despite each of them playing different and antagonistic roles (Goffman, 1956c, 1972). It signals an institutionally “anchored relationship” (Goffman, 1972, p. 205) between them such as friendship or professional collegiality (cf. Scheffer, 2010).

However, upon entering the courtroom this tie-sign disappears, pointing to the immediacy of such signs signalling the current relationship (Goffman, 1972). This shift also shows the role obligations and expectations associated with the role of defence lawyer. Chatting with the prosecutor, who is seen as the opposition in the adversarial aspects of this mixed system, may give the wrong impression, conveying loyalty to the legal system over loyalty to the client. A criminal defence lawyer I interviewed, Kate, tells me regarding her relationship to the prosecutor that her clients “shouldn’t think that we are friends and that I therefore don’t represent [the client] completely.” The “impression of opposition” (Goffman, 1956c, p. 125) between teams should be maintained at all times and thus the loyalty line upheld. This impression could be discredited by appearing friendly and chatting even if this informality occurs backstage as the defence lawyer is still in character – the backstage can still be frontstage depending on the relationship (Goffman, 1963a).



## 5.4 Roles

My analysis of the performance of defence lawyers is interested in how they accomplish their role, a role which is “not just a performance, it’s still about doing a good job” as Peter, one of the defence lawyers I interviewed tells me. This entails doing teamwork, showing loyalty, being professional and ultimately achieving the best possible outcome. I argue that these goals are achieved, not just by possessing juridical knowledge, but also by appropriately presenting a public image of self and others, that is in line with the norms of the courtroom, consequently, much as in the theatre, there are roles that should be performed in a trial with associated expectations and obligations which differ to those outside of this specific social interaction (Goffman, 1956c). Peter goes on to describe the contextuality and role-specificity of the defence lawyer’s role:

You are not acting as a human, a fellow human being in the courtroom. You are not. You have a role to play. Outside the court, you can act as a fellow human being, you can give a helping hand. You can really feel sorry for someone or you can address someone in a much more personal way but when in the courtroom you have a job to do. (Peter)

Peter implies that there are assumptions and rules regarding how one should react as a private person - a normal actor who would give a “helping hand” and “feel sorry for someone” as he describes it, which differs to how one should perform in one’s professional role (cf. Maroney, 2011b; Roach Anleu & Mack, 2017). Peter’s description of the courtroom shows how defence lawyers are aware of the emotional order of the courtroom which he presents in terms of professional role expectancies (see Thoits, 1985).

Peter’s presentation of the role differentiation between one’s private and one’s professional role can also be extended to show differences in professional roles in a trial. As in the theatre, there are certain roles to be played: loyal lawyer, objective prosecutor and impartial judge (cf. Bergman Blix & Wettergren, 2015; Roach Anleu & Mack, 2017; Törnqvist, 2017). Thus, for defence lawyers, a central aspect in their role accomplishment is the conveyance of loyalty, indeed, it is “foundation stone for everything” as Siri tells me. Similarly, Leif Silbersky, one of Sweden’s most experienced and well-known defence lawyers says that the biggest mistake a lawyer can make is “to not be loyal to the client” (Silbersky, 2014). Each performer should consequently perform his or her role appropriately in order to accomplish a

successful team performance and the staging of the “single routine” (Goffman, 1956c, p. 48) of a criminal trial.

The role of defence lawyer also has a counter-role in the form of prosecutor, as is inherent in the adversarial system. If one’s counterpart breaks role, sanctions are permitted as per the emotional regime of the criminal trial. For instance, defence lawyers talk about becoming irritated with prosecutors when they are perceived as losing their objectivity, as Peter says, “you can get irritated at the other lawyers if they slip out of their role - if they do something unprofessionally - you can point it out.” In the next chapter I will come back to this.

## 5.5 Audiences

If a criminal trial is like a play then who is the audience? The most obvious answer is the judges – defence lawyers perform in order to show the judges the weaknesses in the prosecution’s case. However, there are other audiences present in the courtroom such as their client, the prosecutor, the plaintiff and the public (which incidentally may also include prospective clients as Charles tells me). Defence lawyers must therefore ensure their performance remains appropriate towards each audience, whilst simultaneously following the ceremonial order of the courtroom, remaining polite and comporting themselves in a controlled, calm and appropriate manner (Goffman, 1956c, p. 67).

The defence lawyers I interviewed also tell me that the audience is different in different localities. For instance, defence lawyer Andrew says,

if I were to go in to a court in [a small city] and do the agro-style, then they are going to look at me like, “are you stupid or what?” In [a big city] it’s ok, but down here - let’s calm down a bit here and take it calmly and carefully. (Andrew)

Aggressive performances are presented by Andrew and others as not being well-received in courts in smaller cities which are associated with a more “personal atmosphere” and being less formal as Siri tells me. This familiarity associated with smaller courts is noted by several of the defence lawyers I spoke with. Defence lawyers thus talk about adjusting their performances on the personal front depending on the audience – formal in large cities, more informal in small cities. This adjustment pertains to manner, rather than

appearance, that is, in smaller cities one may convey one's role in a more informal (yet still pleasant) way, however one should still be smartly dressed.

One audience that was often talked about by the lawyers I interviewed was the jury – an audience that is absent in the Swedish criminal trial. This absence is nevertheless presented as shaping their performances. This is because jury trials (such as in the USA) were often associated with acting, and, as Sweden does not have such trials, there was an expectation that acting is not a necessary aspect of their role. As Perry says, “we don't have a jury so we don't have to convince anyone in that way.” This assumption finds support in research from the USA which suggests that there, “[n]ot only are trial lawyers expected to act, but they are expected to act with a specific purpose in mind: to favorably influence feelings of the judge and jurors” (Pierce, 1995, p. 55, Flower, 2016a; Levenson, 2007).<sup>47</sup> As we have already seen, this also finds support in Sweden, from former State Secretary for the Swedish Justice Department and judge, Krister Thelin, who writes that “the Anglo-American criminal process offers a dramaturgy, largely due to the role of the jury, that Swedish trials cannot offer” (Thelin, 2001, p. 136).

## 5.6 Subtle drama

The dramaturgical skills of defence lawyers in the USA are talked about admiringly in some of the interviews. For instance, Daniel, another of the defence lawyers I interviewed, says,

their ability to express themselves is much better than ours here, I mean, of those arguments I have heard here in relation to those I have heard in the USA, it's more of a drama, we are awfully modest in everything we do here somehow. (Daniel)

Also Hilda, a lawyer with first-hand experience of American trials, describes them as more accomplished performers in the courtroom. Hilda says,

Americans are so incredibly better than us. They have to convince a jury in another way (...) I have attended some trials at the Superior Court and there you have the kinds of things, like, I mean, if you notice that a witness is making a bad impression, then you should get up and walk around because then the jury

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<sup>47</sup> The courtroom is seen as a theatre in which “the parties act out a human drama and the jury provides the conclusion” (Levenson, 2007, p. 3; see also Ball, 1994, p. 1).

follows you the whole time and they don't look at the witness, but if it's a credible witness, then you should establish credibility and expertise - confidence for the witness - by asking lots of personal questions: what do you do? Where do you live? Things like that. Then the 12 jury men and women gain confidence for what the witness is going to say (...) I mean we aren't so, skilled I would say. We are a little bit more cousins from the countryside (...) I mean, they are much more capable in the USA I think. (Hilda)

Vera is another criminal defence lawyer I interviewed who talks about the difference in the two legal cultures, describing performances in Swedish trials as less dramatic:

That is the legal culture we have - we don't go to theatre lessons, because we, I don't know, perhaps it has its roots in the fact that we don't have a jury? So, we don't have anyone to gesticulate for and like, win points via feelings by doing that. Instead, we have a more, kind of, strict legal culture. The facts should be presented - it should be grounded in fact. (Vera)

Vera presents the strict Swedish legal culture as relying on the facts that are presented, not on how the facts are presented. This is also mentioned by another defence lawyer working with criminal cases, Perry, who uses more disparaging terms to depict the performances of defence lawyers in jury trials. Perry says, "if you compare how they carry on in other countries, the Swedish trial doesn't work like that."

However, my argument is that there are still dramatic performances – acting - at large in the Swedish courtroom, but that there is often resistance to acknowledging this. The lawyers I spoke to thus fall into two categories.

The first category of defence lawyers acknowledges that a courtroom can be like a theatre and use dramaturgical terms to describe their role, for instance, defence lawyer Martin tells me he likes "acting in trials". Martin is joined by Peter who says that in the "living theatre" of a Swedish trial, defence lawyers should, "have a professional attitude (...) We should not raise our voices, we should not display too much emotion (...) We should be confident, self-assured and present things to the court like a news anchor more or less."

In contrast, Harry, another criminal lawyer I interviewed, falls into the second category, refuting comparisons to the theatre, telling me that a trial "is not a theatre show". Similarly, Lydia, tells me that there "isn't so much theatre in Swedish courts" which she describes as sitting in court making faces. Lydia therefore associates "theatre" with theatricality which is, per definition, insincere, overly extreme and intended to attract attention. Perry shares this understanding and describes such performances as "silly", saying "there are

those who have very active facial expressions in court, I think it's a bit ridiculous actually."

The difference in these two contrasting accounts of a trial can be explained by their understandings as we see above. Perry and Lydia associated terms such as "acting" and "theatre" to melodramatic theatricalism – acting is linked with over-acting – whilst for others, such as Martin and Peter, it is an accepted part of their role performance. It is a professional expectation. For Martin and Peter, even the absence of overt emotional expression involves acting in order to appear professional, similar to the non-overtly emotional, business-like demeanour used by judicial officers (Barbalet, 2001; Hochschild, 1983; Roach Anleu & Mack, 2017).

We begin to see that the theatre of Swedish criminal trials is one of subtlety – of professional performances and implicit expectations – like news anchors – excluding raised voices and large emotional displays. This is summed up by Peter, who, as we have already seen, likens the courtroom to a living theatre, however, he has one important caveat, that the drama or acting – the theatre – isn't too obvious. Peter tells me for instance that rolling one's eyes is inappropriate as,

you are there to represent your client, as a lawyer. You're not his or her twin (...) [You should not] play too much theatre. It is theatre, you know. But these kinds of things it's too much (...) It's too obvious, it's too obvious theatre. (Peter)

Obvious theatre is therefore associated with being "too personally involved" and that the lawyer is "symbiotic with the client" as Peter goes on to say. For Perry, such obvious theatre is "uncivilised" and "bad manners" – breaking the ceremonial order of the criminal trial which ensures that participants are treated appropriately – politely and with courtesy (cf. Goffman, 1956c; Roach Anleu & Mack, 2017).

Performances should consequently be subtly dramatic performances: understated and muted. For Peter and other lawyers I spoke with, overstated emotional displays are not only associated with insincerity and falseness, but also, incongruously, with too much emotional engagement, leading to the perception that one has placed loyalty to one's client over loyalty to the legal system (Connor, 2007). Such performances are also considered to break the "landet lagom" rule of not sticking out, as Lena who is another of the criminal defence lawyers I interviewed says "Swedes are perhaps a bit more timid" in comparison to their American counterparts.

All this suggests that the emotional regime of the criminal trial in Sweden is formed by social expectations that stifle the display of strong emotions as described in the introduction (Bergman Blix & Wettergren, 2015, p. 3). It also indicates societal differences in the manifestation of the emotional regime of law (cf. Bergman Blix & Wettergren, 2015; Daun, 1998).

My analysis thus focuses on the subtle drama of Swedish criminal trials. There may not be lawyers jumping up shouting “objection” but a furrowed brow can still be dramatic and still convey the same meaning. A dramatic performance is thus a central part of the defence lawyer’s role in Sweden too, a performance which I reveal in the pages to come. This subtle, mundane drama combines the factual and inquisitorial nature of a documentary presenting the facts, with the drama of the adversarial trial system whilst remaining appropriate to the emotional regime.

After observing many trials, I would argue that it is the subtlety of the theatre therein, and the emotional and professional socialization leading to the normalization of one’s everyday role performance that leads to the denial of the use of “emotional ploys” (Thelin, 2001, p. 86) in Swedish criminal trials. The performances are so muted as to be almost silent, so ingrained as to be taken-for-granted. In the pages to come I show the emotional ploys and dramaturgical strategies used by defence lawyers in the Swedish courtroom, in accordance with the emotional regime of law as it manifests in Sweden (cf. Bergman Blix & Wettergren, 2015).

By using the concept of subtle drama, it is possible to show and understand the nuanced ways in which the defence lawyer’s role is accomplished within the emotional regime of the criminal trial in Sweden and reveal the invisible rules guiding performances.



# Chapter 6: The Facework of Defence Lawyers

As with all social situations, there are shared meanings and understandings implicit in a criminal trial, along with expectations regarding roles, rules and rituals. The inherent coordinated conflict of a criminal trial in Sweden stems from the competing realities at play within the overarching working consensus. That is, whilst all are in agreement as to the nature of the interaction – a criminal trial – it is fundamentally based on two competing versions of reality: the prosecution's assertion that the defendant is guilty of the crime, contrasting with the defence team's claim that events did not take place as the prosecution asserts. Consequently, there is an overhanging risk for face threats and interactional disruptions, particularly if certain performers are uninitiated into the ritual.

In this chapter I show how a criminal trial is an interactional, emotional and collective accomplishment - a forced interaction ritual demanding that every player performs his or her role appropriately in order to ensure the trial's smooth and just accomplishment (cf. Collins, 2004).

My analysis shows that within this situation the role of criminal defence lawyer entails the expectation to perform, uphold, support, and at times, threaten, different faces. I present the various forms of facework the defence lawyer should perform: presenting self, presenting others - in particular the client - and presenting the team. These performances should follow the interaction order, ceremonial order and emotional order of the criminal trial which, in turn, are formed by the emotional regime of law. My analysis thus centres on the emotional regime of the criminal trial with the focus on how defence lawyers accomplish their role.

I begin by presenting the explicit rules for the role of defence lawyer before exploring the invisible rules guiding their role. I thus show how they accomplish their professional role, seen in terms of constructing and performing lawyer face before moving on to depicting how the presentation of the client as a credible interactant is achieved along with a short discussion on



managing the face of the judge and prosecutor. Finally, I argue that as the defence lawyer and client constitute a team, it is appropriate to analyse their performance as such. I therefore present the performance of “team face” which focuses on teammates uniting behind a shared version of reality and shared identity. This demands the conveyance of loyalty and teamwork by the defence lawyer.

Throughout this chapter I begin to reveal emotion rules - the emotional order of the criminal trial - and show the invisible rules guiding defence lawyers’ courtroom performances in preparation for the final chapter where these aspects will be delved into more fully.

The research questions that this current chapter centres upon are: how do defence lawyers present self, other and team? And, how are loyalty and teamwork accomplished by defence lawyers in the courtroom?

## 6.1 Explicit rules

The emotional regime of the criminal trial consists of invisible interaction, ceremonial and emotion rules which guide performances and which pertain to the specific principle and role one is performing. Each role, in turn, has associated explicit institutional and legal guidelines. But what are the explicit guidelines that defence lawyers should follow? As mentioned in the introduction, these include those set out by the Swedish Bar Association (2008, p. 4) stating that the “principle responsibility of an Advocate is to show fidelity and loyalty towards the client (...) [the Advocate] must not be influenced by possible personal gain or inconvenience or by any other irrelevant circumstances.” Furthermore, the role of the defence lawyer is to ensure that the defendant receives representation, is treated as innocent until proven guilty, and has a competent, impartial and independent trial (ECHR, 1950; SFS, 1942:740).

I argue therefore that defence lawyers’ courtroom interactions and performances are shaped by these guidelines and, in particular, the legal principle of loyalty (cf. Flam, 1990a; Flam, 1990b). It is therefore the principle of loyalty that guides their performances and it is loyalty that is the underlying meaning to be communicated to others (cf. Jacobsson, 2008). Linked to this, as the role of the defence lawyer is to represent defendants, I argue further that integral to the defence lawyer’s role performance is constructing the defence team. Teamwork and loyalty are thus inextricably linked.

These guidelines also show that professionalism and loyalty are associated with the separation of personal factors. I suggest that encompassed in terms such as “personal gain”, “personal inconvenience” and “irrelevant circumstances”, is emotional experience, therefore professional responsibility is associated with the separation of emotion. We can consequently see the emotional regime of law conveyed in these guidelines, and in this chapter, I will show how it can be seen in defence lawyers’ presentations and performances of their institutionalised social position.

This explains what defence lawyers do and why they do it, which leaves the question, how do they do this? Defence lawyers do not receive training regarding the professional performance of loyalty and as we can see above, how these rules should be performed is not set out (Flower, 2014, 2016a). So, how do they accomplish this role?

## 6.2 Presentation of self

We now understand that dramaturgical performances should entail performing the task, not the performer’s characteristics, and this is particularly true of the defence lawyer who, as we have just read, should not be influenced by personal factors (Association, 2008, p. 4; Goffman, 1956c, p. 47). This performance is particularly challenging for defence lawyers in Sweden as the Swedish courtroom lacks many of the easily recognisable symbols representing justice and the execution of law, such as robes, wigs, a dock, or even a jury. I argue that the lawyer must depend on the “presentation of self” (Goffman, 1956c) to uphold their lawyer face – to perform professionalism and loyalty, bereft as they are of these typical ceremonial props (cf. Roach Anleu & Mack, 2017, p. 165). In this chapter I begin to describe the ways in which defence lawyers present and construct this role and, in the next chapter on the emotion work of defence lawyers, I build on this.

### **Distancing from “Stockholm lawyers” and prosecutors**

My analysis shows that one way in which the role of defence lawyer is accomplished is by positioning their performances away from others, for

instance, from Stockholm lawyers<sup>48</sup>, celebrity lawyers, and prosecutors. Stockholm lawyers and celebrity lawyers (who have a high media-presence) are presented by Daniel as being “a bit more confrontational” and “a bit more aggressive” as Andrew says (cf. Pierce, 1995). Martin uses a highly publicised drug smuggling trial in Sweden (Södertäljemålet<sup>49</sup>) to explain how such performances - which he likens to a “state of war” between prosecutors and defence lawyers - has arisen leading to defence lawyers wanting to appear “tough”:

Martin: There is a lot more confrontation in the courtroom. It began in Stockholm but it's started to spread over the country. It's become a kind of state of war between prosecutors and defence lawyers and I don't think that it benefits the client really. But it's become more and more like that.

Lisa: Why do you think that is?

Martin: It's been escalating somehow. This cockiness-factor that some of the lawyers in Stockholm have has risen (...) It's become sheer war. Here it's still relatively calm, it can still happen in that type of case, but otherwise it's still quite calm.

Lisa: Is it about the defence lawyer wanting to show that they are a bit tough?

Martin: I would venture to say that it's precisely as you say. That tough style is, because it's like this, that when you're sitting, it's exactly like you say, it's often a theatre there. If you have these big cases with criminal gangs then it's the case that we sit in there and, sitting on the other side of the glass in the security courtroom is the rest of the gang. And, of course, there is some kind of marketing, I mean, a kind of marketing to sit there and be cocky in front of the other gang members and say stupid things and be tough towards the prosecutor. I think that it's more than, it's more than likely the case that a lawyer who is doing that might perhaps get more of that type of client, because those sitting there watching, come and say, I want Nisse Nilsson because he seemed so. But I don't think it benefits the client, I mean, the person you are in the process of defending, if the defender does that.

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<sup>48</sup> Stockholm is the capital of Sweden. All of the interviewees come from another part of the country.

<sup>49</sup> “Södertäljemålet” is a case regarding gang murder and organised crime. The prosecution accused the defence of raising too many procedural questions and interrupting the prosecution whilst the defence lawyers in turn accused the prosecution of being poorly prepared and introducing new evidence (Andersson, 2015).

All of the lawyers I interviewed positioned themselves away from the kind of cocky and aggressive courtroom demeanour Martin talks about here and many others also echo Martin's position that it is used as a strategy for garnering clients. Indeed, one of the criminal defence lawyers I interviewed, George, tells me that a well-known criminologist in Sweden, Professor Leif G. W. Persson commented a few years ago that "these so-called 'star lawyers' don't win any more cases than anyone else, it's just that they're good for their clients' self-confidence" (L. G. W. Persson, 2009). For the lawyers I interviewed, the use of such "pyrotechnics" (Mungnam & Thomas, 1979) or "aggressive facework" (Goffman, 1967, p. 25; K. Tracy & Tracy, 1998, p. 227) is frowned upon.

Aggressive, Stockholm lawyering is therefore not talked about as a good lawyering practice in order to achieve the best possible outcome for the client, rather it is presented as a marketing strategy to gain clients. It is also depicted as the defence lawyer adjusting his or her performance to make the client happy – good for their self-confidence. George is therefore saying that the client considers the defence lawyer's performance to reflect upon him or her (the client). In dramaturgical terms, George is saying that the defence lawyer's face is the client's face, pointing to their shared identity, a concept that I have termed "team face" (which will also be discussed in more detail in the section on "presentation of team"). Here we begin to see that the teamwork of a defence team is an interactional accomplishment – that the performance of one's teammate is, by extension, a reflection on the other teammates.

"Stockholm lawyers" are thus associated with "over-involvement" (Goffman, 1957, p. 52) – perceived by the lawyers I spoke to as having broken interactional and emotional boundaries. Accordingly, they are considered to be "out of play" (Goffman, 1961b, p. 50), abdicating their role as interactants and instead being seen as an "alienating distraction" (Goffman, 1957, p. 53). These performances are thus perceived as disruptions in the ceremonial order, breaking rules of propriety.<sup>50</sup> The consequence may be that the focus moves from what is being said to who is saying it. For the defence lawyer this means that he or she risks being viewed as unprofessional and overly-loyal. It also means that there is a risk that an important argument that he or she has made is overshadowed by the performance given leading to the argument losing weight. All of the lawyers in this study talk about the importance of the manner in which their role is performed - their demeanour as presented on the

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<sup>50</sup> The same can be true of clients - if they break the interaction and emotion rules they risk being seen as incapacitated, which is a disruption that should be repaired (as I discuss in the section on frontstage directions and in the next chapter) (Goffman, 1961a, 1967).

“personal front” (Goffman, 1959). This will be explored in more detail further on.

I argue that the defence lawyers I interviewed are engaged in “identity talk” (Snow & Anderson, 1987) to construct, present, and sustain a professional identity in order to produce sense, significance and meaning. This is achieved by “associationally distancing” (Snow & Anderson, 1987, p. 1349) themselves away from “Stockholm lawyers.” These lawyers are perceived as breaking the ceremonial order of the criminal trial which calls for good manners – their aggressiveness is talked about as being bad conduct. They consequently also risk breaking their role in the interaction – not being personally involved, along with breaking the emotion rules – showing aggression in the wrong way. There is therefore a shared understanding of Stockholm lawyers that may not necessarily be based in courtroom interactions, rather it may be an attempt to construct a coherent identity in line with professional expectations.<sup>51</sup>

This shows that defence lawyers’ social identities are relational, characterised as much by what they are not as what they are, through a process of “dis-identification” (S. Scott, 2017, p. 5; R. Williams, 2000). Lawyers are thus able to interactionally accomplish their identity category, that is, lawyer face is negotiated in interaction with others enabling them to position themselves into a certain identity category, in contrast to another identity category, that of aggressive, Stockholm lawyers (cf. McKinlay & Dunnett, 1998). This counter identity affirms their own identity.

The defence lawyers I interviewed also engaged in “identity talk” (Snow and Anderson, 1987) to associationally distance themselves away from prosecutors. Similarly to defence lawyers, prosecutors are talked about as being intelligent and well-prepared but there are nevertheless cultural preconceptions or stereotypes regarding prosecutors that distinguish a boundary between the two professional roles. For example, when I ask Vera if she could ever work as a prosecutor, she replies, “prosecutor? No, no, I’ve never been the [laughs] complaining type [laughs]. No! [Laughs].” Prosecutors are thus jokingly presented as being complainers but are also frequently talked about as being boring, as Lena discusses here:

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<sup>51</sup> Indeed, very few of the lawyers I interviewed had actually seen “Stockholm lawyers” in action and when I visited the courts in Stockholm I didn’t observe any instances of aggressive lawyering. It seems that there is a cultural understanding of Stockholm lawyers as being aggressive based on only a few first-hand experiences or, perhaps even the same mediated view of the court as the general public receives, reading about the sensational, dramatic trials in the newspapers.

This is a bit prejudiced, not everyone is like this [laughs], but you probably think, a little bit more, that prosecutors are a bit more this, civil servant type, a little bit boring [stops herself from saying 'boring'], I mean, a bit, that it's more routine. They have lots of cases and aren't as engaged in the way that us lawyers are. (Lena)

Prosecutors are also presented as being very blinkered with a list of tasks to be done, described by Andrew as bringing the case to court, presenting the case, conducting the questioning and bringing in the witnesses. This is contrasted to the work of defence lawyers which is described as having more variety and freedom but which, in turn, places higher demands on the lawyer. Other lawyers I spoke to mention that prosecutors do not have contact with clients therefore they do not have as much sensitivity or awareness of the plaintiffs and defendants' life situations (as I discuss in the next chapter regarding empathy). Client contact is talked about by many of the lawyers I spoke to as being something that they enjoy in their role, and one of the things that they would miss if they had worked as a prosecutor.

On top of these demands of flexibility and social skills, defence lawyers also present themselves as being the underdogs – as having a harder job to do in comparison to the prosecutor, partly because the sympathies of the court are automatically with the plaintiff. For instance, Lena tells me that, “as a defender, you are already like, sitting on the wrong side, you really have to move over the sympathies to your client whereas the prosecutor has it from the start a bit more.”

Finally, defence lawyers present their role as being more delicate and as having greater consequences compared to that of the prosecutor as Siri says:

You have a bit more playing room as a prosecutor. If you ask the wrong questions for example, then they can't be that wrong because, if it turns out that the person is innocent because someone answered differently than what the prosecutor thinks, yes, then the prosecutor has to drop the case. A prosecutor can't lose in that way because a prosecutor doesn't want an innocent person to go to prison either. But, if I ask the wrong questions then it could be a catastrophe for the client, perhaps a question that I happen to ask suddenly shows that the client has done it. (Siri)

Implicit in Siri's answer is that the client might be guilty and that by asking the wrong question, this can be inadvertently revealed in the courtroom. Leaving aside the ethical or moral debate associated with this and looking at it from a purely interactionist perspective, we see that this puts specific performance demands on the defence lawyer who may accidentally bring about a face threat

to their own team by asking the wrong question (which I will also explore in more detail later on in this chapter).

It is therefore possible to see the interaction order via the “identity-values”, (Goffman, 1952, p. 453; 1963b, p. 153). These are values that are associated as being important to the role of defence lawyer and which are conformed to in order to ensure the interaction flow. Many of the lawyers I interviewed present values that are in alignment with the guidelines of the Swedish Bar Association (2008). For instance, it is inappropriate to make degrading or threatening comments to the opposing party which, as we see above, is something that the lawyers I interviewed distance themselves from. Also, the presentation of a reluctance to adjust one’s performance to please the client is in accordance with the guideline of providing “the client with an impartial advice and representation and not the advice and representation favoured by the client” (Association, 2008, p. 6). Accordingly, adjusting one’s performance based on the client’s wishes would constitute a break of one’s professional role. Their presentation of professional lawyer face is thus in line with institutional expectations – the code of conduct. This means further that they present themselves as placing loyalty to the legal system over loyalty to the client in this regard (Connor, 2007).

## **Costuming and props**

Giving a professional and loyal impression can be accomplished by conveying information on the “personal front” (Goffman, 1959): via clothing, voice and props. It involves looking like a (loyal) lawyer. This can be seen by contrasting the performances on the personal front of two defence teams from a trial regarding drug dealing that I observed. There are two defendants: one of them is represented by one lawyer, the other defendant has two lawyers representing him. We join the trial just after the prosecutor has presented the facts of the case and the judge has asked the defence lawyers if they would like to add anything. The contrast in defensive facework strategies to convey a professional impression used by the two defence teams is striking:

This defendant has two lawyers, one of whom is wearing a bright yellow tie and a smart, expensive looking suit. His hair is coiffured. His associate is younger and is also wearing a smart suit and has slicked back hair and black framed glasses. Mr Yellow Tie presents his client’s version of events whilst his associate hands out a document that is about an inch thick. The document is colour-coded with post-it notes sticking up. The prosecutor, judges and the other defendant’s lawyer all get a copy. Mr Yellow Tie then gives a short

presentation stating that their client denies the accusations and can't be linked to the email account which is central to the prosecution's case, and thus cannot be connected to the crime.

The second defendant's defence lawyer is not as snappily dressed as the others, not as polished-looking. His hair needs cutting and he has a slightly ill-fitting suit. He compliments the prosecutor for a "detailed presentation of facts" and states that he doesn't really have anything to add. The tone of his voice is monotonous with only slight emphasis when stating that his client "has not" used the email account that the prosecutor also accuses his client of using, linking him to the crime. Halfway through there is a loud noise of a walkie talkie which is the defence lawyer's and which he has evidently forgotten to turn off. He apologises and turns it off and there are slight murmurs of amusement amongst everyone in the courtroom. (Fieldnote)

Which of these two lawyers would you rather have? Which of these two performances conveys professionalism? It is apparent here that facework fulfils an important function in communicating professionalism.

We see several impression management strategies in the first team: firstly, the use of the compendium filled with post-it notes and colour-coding which can be seen as a way of drawing attention to the professionalism of these two lawyers (Mr Yellow Tie and Mr Slicked Back Hair): it conveys a sense of thoroughness, well-preparedness and confidence. I interpret this document as a prop used to convey the impression of professionalism, therefore I consider it to be an impression management strategy rather than an emotion management strategy. It should be briefly noted however that props such as documents can also be used as a tactical emotion management strategy aimed at creating hesitation or anxiety in others. Another of the lawyers I interviewed, Richard, tells me that sometimes during questioning,

as a control question you can just, "but what you just said, is that really the same as what was documented [in evidence]?" And it could very well be that it is the same, I mean, with what we know is written down, but just the knowledge (...) that I am perhaps a second away from pulling out a document that can reveal a lie - then people show their true colours. (Richard)

The second way in which impressions are managed in the fieldnotes with Mr Yellow Tie are through clothing. The first defendant's lawyers are smartly dressed in expensive looking suits and ties with trendy yet age-appropriate eyewear. This contrasts to the slightly scruffy looking lawyer for the other defendant. The importance of clothing in making a certain impression is discussed by Charles who tells me that, in the 1980s, celebrity lawyers got



clients because they sat in “ridiculously fancy offices, wore tailor-made suits, and so people thought that they looked successful even though they had no professional experience.”

So what about this scruffy lawyer? Has he used facework strategies? Perhaps his ungroomed appearance is meant to imply that the client does not need an expensive, well-dressed lawyer as he has not committed any crime? Or, is the impression conveyed that he simply did nothing - he didn't hand out any compendiums! Is this an “act of commission” - rejecting the expected action, or is it an “act of omission” - a passive failure to act? (S. Scott, 2017, p. 3). It is difficult to know if his appearance and performance is giving the intentional social information conveying his client's innocence or whether he is unintentionally giving off a display of indifference (Goffman, 1959, 1969; see also Blumberg, 1967). The point is that clothing and props convey meaning. They thus constitute an important strategy for communicating meaning in a ceremonial setting devoid of many of the usual sacred props.

In my interview with Lena we discuss how clothing has become more relaxed in Swedish courts for the legal actors, however most are still smartly dressed. I jokingly asked her if she thought it would become even more relaxed, with lawyers wearing shorts, she replied,

I hope not! [Laughs] (...) Personally I think that I wear, I dress quite formally. I don't always have a suit but I normally have a blazer when I'm in court. And I think that, somehow, I signal that I take this seriously. (Lena)

Clothing is therefore talked about by Lena, and many of the other lawyers I interviewed, as a way of ceremonially conveying professionalism. It is a way of symbolically communicating loyalty to the legal system and its ceremonial order and the gravity of it, as well as loyalty to one's client: that one takes one's role seriously as reflected in one's clothing.

Presentation of self regarding one's appearance using costuming and props communicates not only the individual's social status but also whether he or she is in a formal or informal situation (Goffman, 1959). Lena discusses this when I asked her if she is aware of how she looks in the courtroom:

I'm very aware that, partly that you dress in a way so that you get into your role. Today I haven't been in court so I look like this [casually dressed] but I wouldn't dress like this in court, I would dress a bit more, to get into my role. (Lena)

We see here that Lena wants to make me aware that her informal appearance, or “temporary ritual state” (Goffman, 1956c, p. 15) reflects her current position

of interview respondent and the informal situation we are in, as opposed to her appearance when she is in her role of defence lawyer in the courtroom.

Other studies have shown that lawyers in jury systems dress in a certain manner in order to please the jury, however the lawyers I have spoken to talk about clothing in terms of appearing professional and not about influencing the judges (see Levenson, 2007 for a discussion). Clothing can nonetheless be used by lawyers to go into character and create a certain impression. In this way, defence lawyers are similar to service workers who put on a uniform and go into a role that is habituated and routinised (Bergman Blix, 1996; Leidner, 1993). For instance, George tells me that he puts on his lawyer role when he puts on his suit. For George and Lena as we also saw here, clothes help one enter one's role – both dramaturgically speaking but also, in extension, regarding emotional performances.

I also observed that the legal professionals are often easier to recognise due to their personal front: how they dress and deport themselves. Here is an extract from my observations of the waiting room whilst waiting to go in to an assault trial:

The plaintiff is sitting outside with her counsel. She looks around with quick eye movements then looks down again. Her sleeves are pulled down over her hands. She has friends with her, one of whom is a witness. It is easy to tell the people playing parts in this drama: the plaintiff is quiet, withdrawn, slightly frowning, body arranged so as not to take up too much space: crumpled almost, eyes searching for someone (the defendant?). The counsel for the plaintiff is slightly harder to identify, or at least, it is possible to pinpoint her as a lawyer of some description, mainly through her clothes and the way in which she portrays a sense of belonging. I've seen this in many of the legal professionals. Head up, determined walk (they know where they are heading), relaxed, perhaps nodding or acknowledging others. (Fieldnote)

### **“It’s really important to sound certain of your case”**

It is not just clothes, props and sitting down that maketh the lawyer, but also sounding like a lawyer as Lena explains:

The worst thing, I think, is when you feel that you didn't quite nail it, that you get a bit uncertain, then you're always a bit afraid that it can be heard that you're not quite, you want it to sound like you are as sure as possible and then I think that people listen and believe you more than if you sound uncertain. That's what you think yourself if someone is talking and you think, “this person sounds really uncertain, not credible”. (Lena)

Other lawyers I spoke to also talk about the importance of sounding confident in the courtroom (cf. Rock, 1993). A confident voice is therefore a facework strategy aimed at both giving oneself face, but also in undermining and building up facts – sounding certain of something gives it more weight. Defence lawyers talk about being aware when the prosecutor sounds uncertain as Richard tells me,

You notice on a counsel who is inexperienced and has a tendency to be nervous and stressed, stammer. You notice in different ways that this wasn't quite what they thought. It's a question of habit being able to stay cool in such situations. (Richard)

Both sides of the adversarial courtroom watch each other for signs of nervousness or stress which are then utilised to one's advantage thereby showing the interactional and emotional nature of an adversarial trial: a prosecutor sounding unsure may be inadvertently revealing a weakness in his or her own case, a weakness which can then be focused upon by the defence. This also means listening not only to how a witness sounds in court - an uncertain-sounding testimony from a witness can be questioned for its credibility – but also reading the performance of one's own client as I will explore later on in this chapter and the next.

Maintaining a confident façade and interpreting the performance of others is therefore an important part of the defence lawyer's performance. Edward, one of the lawyers I interviewed, even describes a confident façade as a “weapon” in business law, as here there are often very large sums of money involved.

Whilst lawyers do not have rules regarding the standardisation of intonation and body language as in some of the service industries, there are nevertheless expectations or informal rules regarding tone of voice (see Leidner, 1993, p. 111). Not only should one sound confident, but also, not once did I hear a defence lawyer shout when questioning someone. A louder voice was occasionally used in the closing speech in order to emphasise certain emotional elements of a case, but this too was unusual. One reason for this could be that a louder voice is associated with an authoritarian position which, in the case of a trial, is held by the judge (cf. Roach Anleu & Mack, 2017, p. 131). This can be seen as an aspect of the ceremonial and emotional order of the criminal trial: voices should remain at a normal volume and calm, expressing emotions in an appropriate way in order to remain courteous and polite.

We thus see again that the emotional regime of law which stifles emotions calls for subdued emotional displays. This may come into conflict with the

client's expectations and lead to disappointment and disruptions as I show in the next chapter on defence lawyers' emotion work.

## **Staying seated and taking a break**

During the entire time I conducted fieldwork, I only saw a defence lawyer stand up during a trial once. This was when a defence lawyer walked over to the witness to ask her to specify more clearly on a diagram where she was standing when she witnessed the crime. This was met with slightly raised eyebrows and a look which I interpreted as mild amusement from the judge indicating that it was perceived as a role break, a performance outside the remit of the defence lawyer's usual repertoire. The reaction of the judge served as an implicit rule reminder, revealing that the defence lawyer had broken the interaction order of the criminal trial – this is not something one expects a defence lawyer to do (cf. Hochschild, 1983; Rock, 1993).

I began to think that standing up was not permitted and asked about it in my interviews. Perry sums up the general consensus amongst the respondents when he says that standing up “seems a bit over the top” whilst Daniel tells me that it should “only be used if you have back problems” and goes on to say that he has thought about doing it and has other colleagues who have done it but says, “personally I think it would have looked silly.” Daniel even mentions colleagues who have stood up in court, in particular one colleague who was so unusual as to be memorable. There is therefore a consensus amongst defence lawyers that standing up in the courtroom is inappropriate.

The accepted courtroom conduct is thus to remain seated throughout proceedings, an expectation which can be seen through its absence in the performance of defence lawyers (Borgström, 2011, p. 135; see also Duck, 1986). Sitting down is thus an implicit, informal rule (North, 1990). Standing up means standing out which is against social expectations and may thus also break the etiquette of the criminal trial (Daun, 1998). This is also true of prosecutors in Sweden who should not attempt to “really stand out” (Törnqvist, 2017, p. 310), indeed, George mentions a prosecutor who used to stand up but the prosecutor was seen as being odd by everyone else because of this.<sup>52</sup>

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<sup>52</sup> Such behaviour would not comply with English Crown Court rules (Scheffer, 2010, p. 171) either, however in jury systems such as the USA, lawyers may walk around the courtroom, moving towards the jury to make a point or for dramatic effect (Pizzi, 1999, p. 126; Scheffer, 2010). This implies that it is not simply a case of whether or not a jury is present as juries are a part of the English Crown Court and the American criminal trial.

Staying seated is consequently an example of an invisible interaction rule that is a shared understanding despite its unwritten and implicit origin. Deviations from the performance of this rule lead to one being viewed as unusual, even stigmatised (Goffman, 1963b).

Another way in which lawyers can uphold their presentation of lawyer face on the personal front is by asking for a break if they feel they are losing concentration or falling asleep, and consequently in danger of losing face (cf. Lee, 2009). When I read through my fieldnotes, I found that on certain trials I too was struggling to stay awake, noting things like “this is the longest hour. Ever.” On several occasions, I also observed how the lay judges looked like they were falling asleep, but rarely the legally trained judge (cf. Westlund & Eriksson, 2013).

This problem of maintaining “dramaturgical discipline” (Goffman, 1956c) and always looking vigilant is described by Martin who says, “you have to sit there and look like you are interested the whole time. It can be damn difficult at times I can tell you.” Taking a short break enables the defence lawyer to gather himself or herself backstage and return to the courtroom with professional face in-tact.

## **Stoneface as lawyer face**

Now I want to introduce a form of facework that will be a recurrent theme throughout the rest of the analysis as it is used to manage threats to different types of face. This strategy, which I have termed “stoneface”, will be presented here as a tool for performing professionalism and thus defending lawyer face. Later on in this chapter I go on to show how it can also be used to project the impression that the client and defence lawyer are a united team and thus constitutes a strategy for sustaining team face.

All of the lawyers I interviewed associated professionalism with the ability to deal with unexpected problems and with being well-prepared. Situations where they risk losing lawyer face by showing that they have not prepared appropriately, for example, that they have not properly thought through the line of questioning, must be managed in order to sustain the performance of professionalism. In such interactional emergencies, defence lawyers talk about using stoneface – looking “neutral in the moment” as Daniel says - as a pre-prepared “canned resource” (Lee, 2009) in order to cover up mistakes.

Here we see that stoneface is an “act of commission”, a demonstrative doing nothing that is actively chosen, rather than an omission or passive failure to act (S. Scott, 2017). By not showing any visible reaction, the lack of response is,

in itself, a response and a symbolic act. Actively doing nothing, in interaction with others, is therefore, simultaneously, the production of something, in this case, of professionalism (S. Scott, 2017). Accordingly, stoneface is a form of social action<sup>53</sup> occurring in a situated encounter with significant others and involving interpretation, joint action and shared meanings (Blumer, 1959; Mead, 1934; S. Scott, 2017).

I have observed the use of stoneface on numerous occasions and it was talked about in all of the interviews as a professional tool. This means that this usual absence of overt emotional expression makes covert expressions meaningful – they become “deviant cases” (Strong, 1988, p. 236) revealing the rule. Such deviations from this performance rule are unusual however the following excerpt shows a rule break with the defence lawyer dropping her mask of professionalism for a brief moment during a trial where the defendant is accused of assault. The plaintiff has already been questioned by both the prosecutor and the defence lawyer. The judge then asks the plaintiff how drunk he was at the time of the assault (of which he is the alleged victim),

the plaintiff replies, “I’ve been more drunk” to which the judge asks “you don’t have any problems remembering the incident?” When the judge says this the defence lawyer blinks. She has not asked the plaintiff any such questions. (Fieldnote)

I interpret the defence lawyer’s blink as a micro-expression revealing her mistake in not asking these questions herself (cf. Ekman, 2004). Rather than performing stoneface, we see a momentary loss of professional face, arising from the defence lawyer’s own (in)action. I will return to this at the end of this chapter.

Stoneface involves actively hiding certain emotions and producing a face of stony professionalism. It entails hiding social and emotional information that may be inappropriate in order to convey the appropriate impression. It is therefore an emotion management strategy, aimed at managing emotions inappropriate to the situation such as shame or embarrassment, and ensuring that one’s performance is in line with the emotional regime of the criminal trial and one’s professional role.

We therefore see the underlying emotion rule - surprise or disappointment should remain hidden if it is associated with a lack of professionalism. The hierarchy of acceptable emotions thus positions these displays as inappropriate

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<sup>53</sup> Social actions encompass “both failure to act and passive acquiescence” (S. Scott, 2017; Weber, 1978, p. 2).

for defence lawyers. Siri tells me that if something happens during a trial and “it’s something that I am really surprised about then I don’t want anyone else to know. You try and like, just, yes, that was part of the plan, let’s carry on.” It is therefore a strategy arising both as a result of the social situation, but also formed by the social situation. In this respect, it is a professional emotion rule aimed at performing the lawyer’s situational disinterestedness (cf. Parsons, 1954).

In this section I have showed the strategies used by defence lawyers to construct and perform their professional face: lawyer face. I have also begun to distinguish the invisible rules guiding performances and associated emotion management strategies. I now turn to the ways in which the defence lawyer manages the face of others with the focus on courtroom interactions.

## 6.3 Presentation of other

The defence lawyer also has to ensure that clients stay in face by initiating them into the interaction order, ceremonial order and emotional order of the criminal trial (cf. Adelswärd et al., 1988; McBarnet, 1981). This is aimed at conveying the impression that they are a credible interactant. My analysis here will focus on preparing the client’s personal front and the ways in which the ceremonial order - good courtroom manners - are introduced to the client. These preparations can be seen pre-emptive, protective face saving strategies. I will also touch briefly on the ways in which defence lawyers interpret the performances of others and how they manage the face of the judge and prosecutor in order to ensure the flow of interaction.

### **It’s about the client giving a good impression**

Preparing the client for trial includes advising him or her how to convey an image in line with normative societal expectations. This includes the client’s presentation of self on the personal front: what to wear and how to act (Goffman, 1956c). Such preparations can take place backstage, prior to the frontstage trial.

A few of the lawyers I spoke to said that preparing the client’s personal front regarding clothing is irrelevant - it doesn’t matter what the client wears in court. However, the client’s appearance and manner in court is discussed by many of the other lawyers I spoke to as being important in conveying a certain

impression that can influence the judges. Siri discusses one client's appearance in a trial, telling me,<sup>54</sup>

he wore a very political t-shirt in court with a slogan from a racist party (...) and I tried to like, because we were going to go up to the Supreme Court, then I thought, maybe you shouldn't wear that again, like, because it doesn't give that good an impression, you don't win the court's sympathy if you wear that (...) The court doesn't know [you]. It's about giving a good impression. (Siri)

Several of the lawyers I spoke to said that they advise clients to dress and act naturally although perhaps dress a little bit smarter than normal, or as Lena says, to dress "credibly". The importance of giving a credible impression is also discussed by Perry who recounts the case of a client who turned up to court in a suit (a form of clothing that is associated with formal occasions and certain professions in Sweden), an occasion so novel it made him chuckle to recall it.

Siri, Lena and Perry therefore tell me that the client's personal front should be in line with client face, that is, the image that the client and indeed, defence lawyer, are hoping to portray of the client. In this way, the defence lawyer is attempting to portray the client's social identity in a particular light, using information on the personal front to communicate this identity (Goffman, 1956c). By extension, portraying a virtual social identity by the use of impression management strategies using clothing and manners may lead to assumptions being made that the client's actual social identity is also in line with this socially communicated identity (Goffman, 1963b).

The defence lawyers I interviewed present inappropriate or non-credible clothing as possibly leading to conclusions being made about the client's character and which could have implications for how credible his or her testimony is considered to be (Simmel, 1957; cf. Dahl et al., 2007; Kaufmann, Drevland, Wessel, Overskeid, & Magnussen, 2003; Wessel et al., 2006). Clothing communicates meaning, for instance, holes in a suit may reflect more than poor tailoring, they reflect social standing, character and morals (Simmel, 1957). Accordingly, by managing the client's personal front, encouraging him or her to dress naturally and credibly, the lawyer is attempting to construct the client's face.

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<sup>54</sup> In the USA, lawyers are more likely to attempt to change the client's look in preparation for a trial in order to influence the jury (Levenson, 2007, p. 4). Again, the absence of the audience of a jury in Sweden and the presence of judges making decisions implies for many lawyers that there is no-one possible to influence in the Swedish courtroom.



One aspect of personal front that many of the lawyers I spoke to agreed is inappropriate, is wearing a cap in the courtroom. During my fieldwork, I saw only a handful of people wearing a cap during a trial. Most commonly it was someone in the public gallery and, on rare occasions, the defendant. Wearing a cap is often a cause for sanctioning by the judge with the defendant being asked to remove it in the courtroom (but not spectators sitting in the public gallery). There are no official rules regarding caps and hats, however, it is talked about in terms of breaking the ceremonial order of the criminal trial: showing bad manners towards the official office of the court as reflected in sanctions by judges.

If a criminal trial occurs within an “interaction membrane” (Goffman, 1961b, p. 65) which selects “how various externally relevant social distinctions will be managed within the interaction” (Goffman, 1956a, p. 11) then the meaning communicated by a cap crosses over from the outside world to the inside world of the courtroom because in Sweden, a cap can be associated with a “deviant subcultural status” (Rypi, 2017). This therefore reveals that there are similarities in the ceremonial orders inside and outside the courtroom (cf. Hillyard, 2010; Schuster & Proppen, 2011).

Lawyers advising their clients not to wear a cap is therefore not just about showing good manners, it is also a way of managing the appearance of the client in order to create the impression that the client is non-deviant – constructing and conveying social information regarding him or her.

The removal of headwear is, however, not enough to create a good impression as the following extract from my fieldnotes shows when the defendant is asked to remove his:

The defendant slumps in his chair throughout proceedings, mumbles his answers, keeps his coat on and only removes his hat when told to by the judge. The defendant does so begrudgingly, saying that he is worried that it will show his messy hair (he re-arranges his hair as soon as the hat came off). (Fieldnote)

Although clothing plays a part in managing appearance, ensuring that one has the right manner requires managing body language, posture and tone of voice also in order to show respect. Lena tells me that it is important for the client to make a good impression, saying,

you usually say to your client to behave themselves, give a good impression and I think that, if you confess, that you, “yes, I stand for what I did and I apologise” then I think that you can absolutely get the court on your side. (Lena)

Good behaviour is presented as positively influencing the court. Lena is talking here about the client showing contrition thereby ensuring that he or she fulfils the expectation of showing regret for one's deviant actions (Bandes, 2015). She is thus talking about encouraging the client to follow the emotional order with its associated emotional expectations. I will go in to this in more detail later on in this chapter and the next.

Other aspects of the client's personal front that should be prepared include the use props, which, as we have already seen, may be used by defence lawyers to convey a certain impression (cf. Goffman, 1956c, p. 143; Waldron, 2000). Scheffer's (2010, p. 174) study of criminal trials includes an observation of a defendant accused of indecent assault being encouraged to bring his well-dressed and well-behaved girlfriend to court in order to give the appearance that he was capable of a normal relationship (which had been questioned by the probation service). The use of such props, or "disidentifiers" (Goffman, 1963b, p. 59) as a way of distancing the client from a stigmatized or deviant identity, in this case as violent and impulsive, in order to create a competing impression of normal, is not mentioned by the lawyers I spoke to.

However, on more than one occasion it was clear during my observations that the defendant's family was in the courtroom in order to provide support which could be a way of disidentifying the client with the act he or she is accused of. However, this can also backfire. In one trial I observed, the presence of the family appeared to have a detrimental effect, distracting the defendant. We join proceedings after the prosecutor has asked to re-direct more questions to the defendant:

The prosecutor asks the defendant a question but the defendant doesn't hear as he is staring at his family again. The defence lawyer has a slight frown on his face and taps his client on the elbow and gestures to the prosecutor. Later on, when the defendant's mother reacts loudly by commenting again on some of the evidence presented, the judge looks at her and says "you have to be quiet over there in the gallery". (Fieldnote)

Here we see that the defendant's different roles have come into conflict with each other and a role-break has occurred (Goffman, 1961b). Rather than performing in the role of defendant, he is performing as a father, a son and a husband which, in turn, leads to a change in the definition of the situation – it becomes no longer a trial but a family gathering (Goffman, 1956c). The defendant's family, rather than giving him face - as a family man with responsibilities - instead disrupts the trial. His mother's failure to play the role of member of the public gallery who is expected to passively observe, instead performing as mother protecting her son, also disrupts the interaction order and

ceremonial order. This in turn disrupts the defendant's performance and the flow of the trial leading the judge to sanction the mother.

The defence lawyer is thus expected to prepare clients and present them on the frontstage of the courtroom, an aspect of their legal role that is not expected in judges or prosecutors to the same extent, if at all. This is therefore a unique aspect of their role performance.

There are occasions, however, when the client intentionally deviates from their expected performance, as can be seen in the following excerpt from a cross-examination in a trial for assault and robbery. The perpetrators of the crime arrived in a car and, contrary to his police statement given at the time of his arrest, the defendant is now claiming that he was not in the vehicle. The prosecutor continues the questioning:

Prosecutor: How long did it take for you to walk [to the scene of the crime]?

Defendant: Don't remember

Prosecutor: Where were you before that?

Defendant: Don't remember

Prosecutor: Have you seen the car?

Defendant: No

Prosecutor: Did you know that [your accomplice] had a weapon?

Defendant: No

The questioning continues in this vein for a while longer with the defendant giving monosyllabic responses. Within the space of a few minutes, the defendant replies "no" 16 times, "yes" 8 times, "don't remember" 3 times and "don't know" once. The defence lawyer shows no reaction to any of this. (Fieldnote)

The strictly ordered interaction of a criminal trial does not provide many opportunities for the client to use defensive facework to defend his or her own face, however one strategy I observed on many occasions was "hedging" (Goffman, 1972) – acting as though they were not totally committed to the interaction, for instance by maintaining a joking relationship to the trial in order to show how unseriously they take it (Goffman, 1952, p. 462). This can be seen in the excerpt above. This performance by the defendant can be construed as displaying disinterestedness or rudeness – bad manners. I interpret

this deviation from the ceremonial order not as resulting from a lack of initiation into the interaction order but rather as the performance of a seasoned performer – a repeat offender familiar with the system who intentionally deviates from the rules of interaction in order to display disrespect for the ritual he is forced to interact in (cf. Collins, 2004). The defendant is performing his lack of commitment or reluctance to play his assigned role in this interaction, distancing himself from it in an interactionally constraining situation (Goffman, 1961b). Such instances may constitute an interactional challenge for the defence lawyer requiring him or her to direct the client back into face as I will describe later on in this chapter.

## **Managing the face of judges and prosecutors**

In order to ensure the interaction flow of the criminal trial, the defence lawyer must also manage the faces of other performers. I will begin with the strategies the defence lawyer might use for saving the face of the judge. These are, however, fairly unusual to observe.

In one of the trials I watched, the defence lawyer clearly referred the court to read a page in the preliminary investigation but the judge misheard the page number and was therefore looking in the wrong place. The judge spent a minute or so looking for the right page and then commented that he couldn't find it to which the defence lawyer apologised for being unclear and repeated the page number again. This is a form of protective facework aimed at saving the face of a higher status individual - the judge - by providing a situated account in order to contain potential embarrassment (Goffman, 1959; M. B. Scott & Lyman, 1968). The trial is therefore able to continue without conflicts or role-breaks.<sup>55</sup>

However, there are (rare) occasions where the judge's face is threatened. Here are my fieldnotes from a murder trial describing this:

It is now time for the defendant to be questioned. The judge asks the defence lawyer to begin his examination (which is procedurally incorrect, the prosecution should begin, before the defence). The defence lawyer frowns and says "I think that it is *much* better if the prosecutor asks questions first" he points with his hand and arm out in front of him. (Fieldnote)

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<sup>55</sup> Prosecutors can also perform facework to save the face of the judge, for example when a judge is unable to get a defendant to leave the courtroom, the prosecutor may discretely assist in this process (Bergman Blix & Wettergren, 2015).

Here the defence lawyer points out the judge's mistake, thereby threatening the face of the judge as a legal professional who is knowledgeable of the law and the procedures to be followed. In such moments, tactful inattention is not permitted (Goffman, 1956c; Rock, 1993). Rather, this role break had to be highlighted, yet, still according to the ceremonial order and emotional order of the criminal trial: politely reprimanding in an emotionally appropriate manner.

Another example of this can be seen below when a mobile phone rings during a trial (mobile phones should be switched off):

One of the lay judges starts looking through his pockets to find his phone. The ringing continues for a while before he finally finds his phone and realizes that it's not his that is ringing. He then leans over and tells the judge that it is her phone. The defence lawyer says "I'll remember that one!" with a small smile on his face. (Fieldnote)

I interpret this smile as a way of reducing the interactional impact of the judge's deviation from the ceremonial order. On another trial I observed the defence lawyer question whether the judge is focused on the trial:

The judge began proceedings by saying to the public gallery "no disagreements in the form of stupid comments or gestures". He looks at certain people sitting in the public gallery when he says this. Later on in the trial the judge is looking at the public gallery whilst the defence lawyer is speaking causing the defence lawyer to ask "are they being disruptive behind my back?" to which the judge replies "no". The judge stops looking at the gallery and looks at the defence lawyer. (Fieldnote)

The defence lawyer gives the judge a mild rule reminder in the form of a question "are they being disruptive behind my back" to subtly point out that the judge is breaking the ceremonial order – impolitely not focusing on the defence lawyer when he is speaking – and also deviating from the courtroom rules of interaction by not fulfilling his role obligations.

Judges therefore also risk losing face because, as George says, "they're only human (...) they're social beings, they don't exist in a vacuum even if they think that themselves. That's not how it is." George talks about judges presenting themselves in line with the emotional regime of law but that he himself is wise to their condition – that they are only human and thus susceptible to influence (cf. Bergman Blix & Wettergren, 2015; Maroney, 2011a, 2016). George is unusual in his position, as in contrast, we have already seen that the majority of the defence lawyers I interviewed say that they do not need to "perform" because there is no jury present to be influenced thereby implying that judges are perceived as immune to it. Many of the defence

lawyers I spoke with thus present judges in terms of upholding the traditional dichotomy between emotionality and rationality. Opening up the possibility that judges are “only human” and thus possible to influence as George does here, opens up questions regarding the impartiality and objectivity of judges (Bergman Blix & Wettergren, 2015).

Whilst facework is used to uphold the face of judges (both in the courtroom but also in the interviews), aggressive facework may be used in order to attack the face of the prosecutor, in particular his or her objectivity as I introduced in the chapter on the theatre of the courtroom (K. Tracy & Tracy, 1998). As prosecutors have a duty of objectivity, this attack is aimed at questioning whether or not the prosecutor has strayed from his or her legal role obligations. The duty of objectivity applies when building a case but also when presenting the case to the court, therefore even during the trial, the prosecutor should lift evidence that goes in favour of the defendant which several of the lawyers I spoke to claimed is not always the case. I observed such a face attack towards the prosecutor in the trial with Mr Yellow Tie and the colour-coded compendium which we return to now as Mr Yellow Tie’s associate – Mr Slicked Back Hair - is presenting the contents of the compendium. He begins by saying that it contains evidence which the defence team has found in the “*slasken*” [a term used to describe evidence that the prosecution has decided not to use in the case],

Mr Slicked Back Hair says this with slightly more emphasis on the word “*slasken*” but still uses the same tone of voice, no louder voice, just more emphasis. He goes on to say, regarding some of the evidence that they have recovered which supports his client’s version of events, “I think that it is noteworthy that the prosecutor has not included it”. This is also said in the same polite tone of voice. (Fieldnote)

Here the defence lawyer is openly attacking the face of the prosecutor by claiming that the prosecutor has not followed the duty of objectivity in presenting evidence that goes in favour of the defendant.<sup>56</sup> All of this should nevertheless remain in accordance with the ceremonial order of the criminal

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<sup>56</sup> Another example of this can be seen in one of the largest trials ever held in Sweden - “the trial of the lone sailor” - a drug-smuggling trial which lasted over 70 days. The prosecution and defence team accused each other of breaching their juridical positions. The defence team accused the prosecution of not being objective - of throwing a “stink bomb” by not revealing all the evidence to which the prosecution countered by stating that the defence team were throwing “smoke grenades” to detract attention from the evidence (Wahlberg, 2012; Öster, 2012).

trial, maintaining politeness and courtesy. In our interview, Daniel explains what he does in such instances:

You have to explain to the court that, even if the prosecutor isn't taking this into consideration, then the court does still have to consider these circumstances which point to my client actually telling the truth and that he hasn't done it or that it hasn't happened in the way the prosecutor has claimed, but rather as my client has said. (Daniel)

Again, this is a description of a potential face threat stemming from a legal error: the failure of the prosecutor to raise evidence in favour of the defendant.<sup>57</sup> An openly aggressive face threat can then be legitimately used by the defence lawyer towards the prosecutor as he or she has committed a role break, deviating from their position of objectivity ("even if the prosecutor does not take this into consideration, then the court should still consider it").

Such a role break also permits the display of an emotion that should otherwise remain hidden, namely irritation or annoyance. This is also the case if the prosecutor is deemed to have made a mistake, which again is seen in terms of a role break. Such mistakes lead to the face that the prosecutor is attempting to portray (legal professional, well-prepared) being damaged and again permits other emotions to be shown by the defence lawyer.

### **“Are they cool?”**

Defence lawyers also talk about an awareness for how others present themselves - reading their “emotional cues” (Clark, 1990; Waldron, 2000). This is presented as an important lawyering tool in order to understand how their own performances have been received and how to adjust them accordingly. This demands interactional and emotional dexterity.

Peter says sometimes he just sits back and watches the judges' faces to gauge, “are they cool? The lay judges, how do they look at this? To see, are they, how much attention are they paying, what impression do they show that they get from this?” He presents reading others as an important part of his role. This includes reading the faces of the judges in order to gauge the performance

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<sup>57</sup> On one occasion I observed the defence lawyer's position threatened when he was reading his client's statement and the prosecutor interrupted, saying “sorry” and holding up a finger before asking the defence lawyer to read the whole statement as he was apparently only reading that part of the statement that was to his client's advantage. This is in accordance with their role obligations as per the Swedish Bar Association's (2008, p. 33) code of conduct – defence lawyers do not need to introduce facts detrimental to their client's case.

given by the prosecutor but also, as Richard previously mentioned regarding uncertain-sounding prosecutors, and as George also says, watching the prosecutor in order to look for slips of the prosecutor's mask (cf. Törnqvist, 2017). For instance, if they see the prosecutor get angry, they adjust their own performance as Lena tells me,

you can exploit this in two ways as it can be a prosecutor, who is very, very worked up on the other side and then you yourself can stay calm and then you look like perhaps, the one that, yes, I don't need to flare up because I know that I'm right. You should try and exploit it. (Lena)

Defence lawyers thus talk about reading the emotions of others and using their own emotional display of calmness to build facts to convey to the judge, a display which arises in response to, and in interaction with, the prosecutor.

Lydia also talks about how, if she reacts with surprise at something, then there is a bigger chance that the judge notices it. She remarks that it "would be very interesting if the judge, I mean, how they read the prosecutor and the defender, how much they look at how we react". Judges are perceived as difficult to emotionally read. Or, to be more precise, the emotions of the presiding (legally trained) judge are presented as difficult to interpret, hidden behind a façade of impartiality (Bergman Blix & Wettergren, 2015; Roach Anleu & Mack, 2017). Lay judges, on the other hand, are talked about as easier to interpret. This indicates that impartiality is a professional accomplishment.

There is, therefore, awareness amongst the lawyers, for the importance of interpreting the impression that others are conveying. This is akin to judges who both perceive and display (Roach Anleu and Mack, 2017, p. 169). Thus, similarly to Roach Anleu and Mack (2017), I find that many of the lawyers I interviewed rate interactional skills as important in their role, not just in terms of being "better at listening than talking" and "a good judge of character" in order to know which questions to ask the client, and which questions to leave as Vera tells me, but also at reading others' presentation of self - including emotional expressions - interpreting them and adjusting one's performance accordingly.

In this section I have shown how defence lawyers prepare and present the client's face as a credible interactant and explaining the rules of interaction in order to avoid breaking the interaction order, ceremonial order and emotional order of the criminal trial (cf. Goffman, 1956c).



## 6.4 Presentation of team

So far, I have discussed the facework strategies of defence lawyers regarding the presentation of lawyer face. This was seen in terms of giving a professional impression and accomplishing one's role with particular focus on how this is achieved through clothing, voice and gestures. I then went on to show the ways in which defence lawyers protect client face by preparing the client's personal front and by explaining the rules of interaction, again in order to ensure the client's presentation of self as an adequate interactant of the social situation at hand. I also introduced how the client's presentation of self can bring interactional challenges for the defence lawyer. Finally, the facework involved in saving or threatening the face of others was discussed.

I will now go on to show how the defence lawyer and client can be seen as being in a team and how this team performance can be analysed as such.

### **“I meant, like, me and the client”**

Goffman (1956, pp. 48-49) writes that performances can be analysed as team performances when there is co-operative activity within the team and when the performance is aimed at staging a “single routine”. My analysis also shows that many of the lawyers I interviewed talk about the client and themselves as a “we” or a team. In Goffman's (1956b, pp. 48-49) vocabulary, a dramaturgical “performance team” sustaining a “team impression”. This became clear in my interview with Vera when she said that “*we* managed to change the decision” of the court when it was appealed at the Supreme Court. I asked her to whom she was referring when she says “we”:

Vera: I meant, like, me and the client.

Lisa: But that's how you think, in terms of “we” and not “I”?

Vera: Yes, at least I do! [Small laugh]

As I presented in the previous chapter, the criminal trial is a scene of predictable unpredictability due to its unscripted nature. Situations frequently arise where the defence lawyer must quickly adjust his or her performance in order to convey a certain impression. I have already presented this in terms of defending their lawyer face, but he or she must also present themselves as members of the defence team. Both client and lawyer therefore unite behind a shared reality - which is based on the client's version of events - and social

identity: the defence team. I therefore suggest that it is appropriate to talk about the presentation and management of “team face” which I will analyse as such (cf. S. Scott, 2016, p. 11).

Collective facework is therefore required within the defence team in order to uphold their shared identity and the shared reality they are united behind (S. Scott, 2016, p. 11). This involves presenting defence teammates as capable performers, thus requiring them to help each other back in line when their performances falter or when team face is threatened.

This team impression can be accomplished explicitly but also more implicitly. For instance, as already mentioned, the team impression is immediately visible in the Swedish courtroom with the tie-sign of them sitting next to each other communicating they are a team. The courtroom layout also enables specific social interactions which assist in maintaining team face (cf. Goffman, 1972; S. Scott, 2015; Åkerström, 1997). For instance, I have observed defence lawyers placing a calming hand on the client’s leg as well as exchanging notes and comments (on one occasion I even observed the lawyer winking to his client). We can also see the performance of team in the following interactions between a defence lawyer and his client during a trial regarding possession of weapons (amongst other charges):

During the prosecution’s presentation of facts, the defence lawyer points to things in the file on the desk in front of him and his client. He is explaining things and asking questions every now and then. A little later on, the defence lawyer leans over and asks the client something about the photos being presented and asks “are you sure?” to the client’s response. Everything is spoken in a whisper. The defence lawyer pours himself a glass of water then offers to pour one for the client but the client declines. (Fieldnote)

However, the team impression is also communicated in more subtle ways and must be upheld even when threatened. I suggest that there are two sources of face threat to the presentation of team face: the face threat can either stem from a source outside the team - such as the plaintiff, witnesses, prosecutor and others – this comprises an external face threat, or it may stem from one’s teammates thus constituting an internal face threat. I will now describe what I mean by this before going on to show the ways in which these face threats are managed in order to convey and uphold team face.

## Sources of face threat

Upon initial analysis, many of the face threats I have discussed in my study thus far appear to originate from the prosecutor, plaintiff or witness, constituting face threats coming from outside the defence team. Indeed, as I have already mentioned, the adversarial nature of the criminal trial constitutes a face threat to the defendant, with the prosecutor questioning the defendant's version or reality and presentation of self as innocent<sup>58</sup> (Adelswärd et al., 1988; J. Emerson, 1970). However, I would like to problematize the face threat of the trial in order to show how an external face threat can lead to an internal face threat arising from within the team, and furthermore how, due to team membership, a face threat aimed at the defendant is rather a face threat to the team and in extension, lawyer face.

### *External or internal face threats?*

Here are two examples of how, what may at first glance seem to be an external face threat, can also be seen as an internal face threat. The first extract from my fieldnotes regards a defendant who is claiming that the police coerced him into a confession:

Prosecutor: You are going to have to explain what happened.

Defendant: It felt a bit leading. The [police] wanted me to confess.

Prosecutor: I've never heard of this happening before! [Said in a tone of voice conveying outrage]

Defence lawyer does not alter his facial expression or what he is doing. (Fieldnote)

In the second excerpt the defendant, who is accused of committing a crime whilst wearing a balaclava, is mocked by the prosecutor when the prosecutor asks him why the police happened to find a similar balaclava to that worn during the crime in his wardrobe at home:

Defendant: I usually go on skiing holidays.

Prosecutor: You go on skiing holidays?!?

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<sup>58</sup> Although it should be noted that in some trials, guilt to some degree may have been acknowledged.

Defendant: Yes.

The prosecutor asks if he has any other skiing equipment.

Defendant: It's in the wardrobe.

Prosecutor: Yes, I'm sure it is!

The prosecutor says this with heavy intonation on "sure" which I immediately interpret as expressing sarcasm or disbelief. The defence lawyer keeps on writing notes showing no change in facial expression. (Fieldnote)

In both of these extracts, the prosecutor is intentionally threatening the face of the defendant by questioning their version of events and presentation of self by implying that they are lying ("I've never heard of this happening before" and "Yes, I'm sure it is!"). The prosecutor thus constitutes an external face threat (cf. S. Harris, 2011a; Penman, 1990).<sup>99</sup>

However, I argue that these and many of the other exchanges I present can also be seen as internal face threats. Using this approach, I interpret the performance of the defendant in both the forced-confession and the balaclava excerpt as undermining or weakening the version of events the defence team is attempting to portray. They are therefore examples of "incompetent role performance[s]" (S. Scott, 2015, p. 10) thus calling for collective facework strategies being employed by the defence lawyer in order to bring the team performance back in line.

### *Internal face threats*

Although the defence lawyer and client constitute a performance team they are not mutually dependent and there is an imbalance when it comes to obligations and expectations (cf. Goffman, 1956c, p. 51). On the one hand, the responsibility of the team performance is shared as both the client and the lawyer have to be present and in agreement as to team membership. With these requirements in place, they are able to work together to unite behind a joint version of reality: that the client has not committed the crime or that there are mitigating circumstances.

However, on the other hand, the defence lawyer has obligations to the client as a function of his or her role as defence lawyer. This brings with it expectations from the client as to what the lawyer will do, expectations that

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<sup>99</sup> The prosecutor is simultaneously building up the evidential facts of the case (cf. Archer, 2011a; Potter, 1996).

can be disappointed if one is not aware of what to expect (as is discussed in the next chapter on emotion work), yet the lawyer cannot expect or depend on the client's dramaturgical co-operation and loyalty (Goffman, 1956c). The defence lawyer cannot assume that the client will stay in role, follow the rules of conduct and uphold the version of events the team is attempting to convey. Furthermore, the defence lawyer has little possibility for "dramaturgical circumspection" (Goffman, 1956c) - choosing his or her teammates to ensure a successful performance (as is the case in many other team performances) - as the majority of lawyers I spoke to said that they take all cases they are offered and none of them said that they would turn down a case because of who the client was (excluding of course, conflicts of interest).

Linked to this is the fact that the client does not take an oath to tell the truth and is free to change his or her version of events presented in court. As the defence lawyer's performance is, at least in part, based on his or her client's version of events, this places even greater demands on an already dramaturgically demanding situation. All of this makes the client one of the sources of face threat to his or her own team face.<sup>60</sup>

All of the lawyers I spoke to talk about the client being a major source of potential internal face threat which the defence lawyer must manage throughout the trial. This kind of internal face threat is not discussed in previous interactionist work (cf. Rossing & Scott, 2014).

The risk for internal face threats arises, not just when the defendant is being questioned by the prosecutor, but also when being questioned by his or her own lawyer. Vera talks about how the situation of a criminal trial can lead to the defendant becoming nervous and changing their version of events:<sup>61</sup>

You can have gone through it a hundred times: what happened? Did you know that there were things there or whatever, or, what were you thinking when you fought or when you hit and then they tell you and based on what they say I can say [to the court], sure this and this has happened but there was no intent. And then when they are in court, they say something completely different! Because either they feel pressured or uncertain in the situation and they think that perhaps it sounds better if I say this. And suddenly you have created intent

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<sup>60</sup> The risk of the client as a face threat becomes even clearer if we compare criminal law, where the client is present in the trial, to business law, where clients aren't always present during the pre-trial hearing because, as Edward tells me, they leak so much information to the other side before the settlement has even begun. The client therefore risks giving off information which the lawyers would prefer to remain hidden (Goffman, 1956).

<sup>61</sup> The actual contents of the client's version of events are presented as being unimportant, according to the defence lawyers I have interviewed.

which the whole time you said wasn't there (...) It's also dangerous because, often when the lawyer is going to ask a question, the client relaxes because they know that we are on their side and then maybe they answer even worse because you've asked the question. (Vera)

The "bond of reciprocal familiarity" (Goffman, 1956c) in the defence team can inadvertently lead the client to relax and reveal facts that the team either had hoped would remain hidden such as facts that are damaging to the case, or facts that are new to the defence lawyer posing a potential face threat, not just to team face but to lawyer face. This can, in part, be due to the other partner in that specific interaction, namely the defence lawyer who is doing the questioning which may lead to the client relaxing more perhaps associating the interaction with a backstage situation. However, it may also be due to the client interacting in a situation where the rules of interaction are unclear. This internal face threat coming from within the team described by Vera is an *unintentional* internal face threat, based on the client's lack of initiation in the interaction order of the courtroom (cf. K. Tracy & Tracy, 1998). This differs from the interaction I described earlier on in this chapter where the client gave monosyllabic answers which can also be seen as an internal face threat, however, in contrast to the one described here, the monosyllabic performance does not arise from a lack of initiation, rather, I argue, from familiarity with the interaction order which one does not take seriously (Goffman, 1961b).

The client's presentation of self as damaging team face is talked about by all of the lawyers I spoke to. Lydia says that some of her clients,

have said things that I think, oh, maybe you shouldn't have said that, when I've said to them before, "you don't have to talk about that." Most of them listen when I say, "maybe you don't need to get in to that". The classic is when they say "but if I had hit him then he would have fallen back ten steps because I'm so strong!" [...] Or, "if I had really tried then she would have fallen down so I can't have hit her that hard." No! You don't say that! (Lydia)

Team face is about presenting a united front - a shared identity and joint reality. Lydia is saying that the client's presentation of self can threaten this. Clients who present themselves in court as aggressive may convey an image that is not in line with the impression that the team is attempting to present, for instance, that the client is not a violent person and has not committed the offence. Lydia therefore tries to prepare her clients beforehand as to how they should portray themselves in the courtroom. I explore this in more detail in the next chapter and, later on in this chapter, I show the strategy of directing the client by using "staging talk" (Goffman, 1959, p. 173).

The “structured mayhem” (Jacobson et al., 2016) of a trial means that it is filled with the unexpected. As we have already seen, the defence lawyer cannot know what their own client will say, but also, even though most witnesses take an oath to tell the truth, the defence lawyer cannot be certain as to how they will answer thereby placing dramaturgical demands on him or her to maintain normal appearances if something unpredictable occurs. Another source of internal face threat to team face can therefore be the defence lawyer himself or herself if he or she inadvertently poses a “fatal question” as lawyers describe it, the answer to which is unknown or unforeseen and the consequence of which may be damning for the case. The unpredictability of a trial means that it is not always possible to know what this “fatal question” might be as can be seen in the following excerpt from my fieldnotes of a robbery trial. We join proceedings as the defence lawyer is asking the plaintiff about the crime:

“How was [the defendant]: [his] state of mind?” The plaintiff replies, “he was as cold as ice, I got goosebumps. He was either a professional criminal or he was drugged.” The defence lawyer replies, “that wasn’t what I asked, was he threatening in any way?” (Fieldnote)

Here the response of the plaintiff is damaging to team face as the defence team is attempting to portray the defendant as non-violent. The plaintiff thus comprises an external threat to team face. However, the lawyer has also posed a “fatal question” the answer to which damages team face therefore he has inadvertently threatened both his lawyer face as well as the reality the defence team is presenting. Inadvertently posing such a question may require corrective facework in order to give the impression that the answer was expected and/or to attempt to reduce the impact which may have unintentionally built up the prosecution’s facts rather than undermining or weakening them.

The fatal question is the subject of folk lore amongst defence lawyers. For instance, Siri tells me about a murder trial she has heard tales about:

The witness points out a man for murder and, as I say, this isn’t my case, and the defence lawyer asks, “how can you be so sure that it was this man you are now pointing out?” And the woman replies, “because it was the most beautiful man I had ever seen”. (Siri)

Now think about your own reaction when reading this and place yourself in the shoes of that defence lawyer who must keep up normal appearances when dealing with this (beautiful) face threat. The ability to manage face threats is a key lawyering tool.

Another source of internal face threat can be a witness that the defence has called if it is considered that their testimony can uphold team face, that is, if the testimony can support the version of events that the team is presenting. However, the defence's witness can also, despite being a teammate, unexpectedly comprise a face threat. George talks about how he had called an expert witness who gave evidence supporting the defence's case but then changed his testimony in court when the case went to the Supreme Court for appeal. George describes what happened in the Supreme Court, telling me,

I didn't listen to start with and then I realised what he has actually said, and what should I do? I can't. Either I can take a chance that the court hasn't noticed or I have to go back and ask the same question again and if I get the same answer then I have really hammered it home. (George)

George goes on to say that fortunately a second expert witness corroborated the first expert witness' original statement, but such irreparable damages may require immediate face-saving strategies. This shows that the defence lawyer must be alert at all times as a face threat can come from within the team.

### **“Crisis management in the moment”**

So, face threats can either come from within the team or from outside the team. Whatever the source of the threat, it places dramaturgical demands on the defence lawyer, as Richard says, “it becomes a kind of crisis management in the moment.” My analysis shows that it is the source of such “destructive information” (Goffman, 1956c, p. 87) that shapes the strategy used to manage it: (1) External face threats may be managed by highlighting or over-communicating information. Here, the defence lawyer uses strategies to draw attention to information that threatens team face. These are called “dramatic productions” (Goffman, 1972); (2) External face threats may also be managed by the defence lawyer downplaying or under-communicating destructive information thus drawing attention away from damaging information that is threatening team face. I have named these strategies “dramatic reductions”; (3) Internal face threats tend to be under-communicated with dramatic reductions as they constitute “communication out of character” (Goffman, 1959, p. 167) that is, a misalignment to the team performance.<sup>62</sup>

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<sup>62</sup> It was unusual to observe the defence lawyer drawing attention to missteps. Indeed I only saw this on a handful of occasions, for instance, when the defendant reacted strongly to a



What is important to note here is that all of these facework strategies can involve subtlety and understatement in line with the ceremonial order and emotional order of the courtroom which demands emotional restraint, civility and politeness. This subtlety can nevertheless convey meaning and be used by others to make sense of the situation (Scarduzio & Tracy, 2015).

I begin by introducing the strategies that defence lawyer use to draw attention to face threats before moving on to show strategies of disattention (Goffman, 1959).

### *Dramatic productions*

A defence lawyer may manage face threats and do teamwork by aligning to the client via a dramatic realization of loyalty. This can be achieved by rhetorically<sup>63</sup> and gesturally supporting the client's version of events and questioning the claims of the prosecution. This is done by drawing attention towards damaging information or evidence that is presented in the court which threatens the impression of reality the defence team is portraying and which therefore constitutes a face threat. The defence lawyer is thus dramatically highlighting certain facts in order to sustain team face (Goffman, 1956c, p. 19). Such symbolic gestures communicate support for the client's version of reality and consequently loyalty to the client. We can therefore see that loyalty and teamwork are interactionally intertwined.

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 facework. Such performances can then be used to contrast the other end of the extreme where defence lawyers use strategies to draw attention away from information presented by not appearing to react, which will be discussed further on. Typically, the employment of props and emotional displays are included in the facework of teamwork.

The strategy of dramatic productions will now be introduced by presenting an excerpt taken from my fieldnotes from the closing speech of a murder trial where the defendant denies the crime. We see how the defence lawyer acts as though an external face threat has been committed and that the worst possible

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mistake made by the translator thus justifying the outburst (cf. M. B. Scott & Lyman, 1968).

<sup>63</sup> I follow Potter's (1996, p. 108) use of "rhetoric" seen as "a feature of the antagonistic relationships between versions: how a description counters an alternative description, and how it is organized, in turn, to resist being countered."

interpretation of events might occur: that the judges deem the prosecution's version of events to be strong enough to find the client guilty:

The defence lawyer begins his closing speech. He takes off his glasses and states that "the prosecutor is *wrong* in making these claims!" He 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. He shakes his head and raising his voice and speed of delivery states that it is impossible that the incident transpired as claimed by the prosecutor. He points a finger on the desk, waves it in the air, points at the prosecutor and, raising his voice even more states that there is *no* evidence for the accusations. His voice becomes slightly higher in pitch emphasizing his client was in *shock* after the incident. He 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 defence lawyer continues that the claims of the prosecution "are pure speculation" said in a tone of voice implying incredulity. His voice then softens stating, "my client is not the same person now as he was when taken into custody" which makes the defendant's mother start to cry. The defence lawyer then states that the charges will never be accepted by the defence and looks to the mother when he says this, before saying in the softest tone of voice yet that his client should be released immediately. (Fieldnote)

The defence lawyer uses facework in the form of bodywork by using his body as an impression management tool to draw attention to the face threat: leaning forwards, shaking his head, pointing his fingers, in order to draw attention to certain facts and thus sustain team face. This bodywork supports what is being said when he presents an alternate version of events (this *could* be what happened). It is also used to draw attention to the destructive information presented by the prosecutor that goes against the team's version of events (the prosecutor is *wrong*). In this way, the defence lawyer uses symbolic gestures to loyally sustain the impression of reality the team is projecting, thus supporting team face.

Bodywork is consequently used to align to the team performance and is also a way of building or undermining facts, hence it is appropriate to talk of it being a form of "factwork". With this I mean that the defence lawyer is using gestures and emotions to build facts and/or undermine facts (cf. "sensegiving" and "sensebreaking" Scarduzio & Tracy, 2015). He is presenting and shaping facts in the courtroom using interactional techniques, similar to the way that deviancy or normalcy can be collaboratively constructed in the courtroom

(Holstein, 1988, 1993).<sup>64</sup> Factwork involves “working up” (Potter, 1996, p. 123; cf. Staske, 1996) an account (based on the client’s version of events) to make it appear as a fact, whilst simultaneously “working down” (S. Scott, 2015, p. 68) another account - undermining the facts presented by the prosecution.

The dramatic production in the closing argument presented above also involves emotions, stretching from outrage to indignation to incredulity to sympathy, all in the space of ten minutes. Garnering such emotional engagement from the court, in part by evoking sympathy for the defendant, is an important part of defending one’s client (Althin, 1994). 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 (Reddy, 2001). It is a way of aligning to the client and producing a team performance by performing emotional expressions (cf. Maroney, 2011a).

Towards the end the tone changes notably, becoming much softer and quieter. The emotions of the defendant’s mother are now also included and reinforced. This can be seen as another way of using emotions as an instrumental tool, however in this case, it entails the utilisation of another actor’s emotions - namely the mother’s - it is a rhetorical tool using pathos (McCormack, 2014; Sobota, 1994).<sup>65</sup>

We thus see a contextual aspect to the performances: in the closing speech it is acceptable to show a wider range of emotions and use impression management tools such as props, the body and rhetoric, in a more explicit or obvious manner, compared to other parts of proceedings. I suggest this is because the closing speech signifies “the culmination of the representational project” (Scheffer, 2010, p. 156) and therefore more dramatic strategies are used.

So, facework can involve bodywork in order to do factwork with defence lawyers interactionally constructing or deconstructing facts in order to perform

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<sup>64</sup> The verbal construction and destruction of facts in the courtroom is an interesting area for future study, however my focus is on nonverbal, symbolic communication enabling me to explore how different strategies are used when turning a defendant’s description into facts or when disputing the prosecution’s facts (cf. Conley & O’Barr, 1990; Cowan & Hitchings, 2007; Potter, 1996, p. 7; D. E. Smith, 1978).

<sup>65</sup> Although my study may have overlaps with research on rhetoric (which is considered one of the central lawyering tools) as I show how defence lawyers discuss and perform emotional and interactional means of persuasion, my focus is nevertheless on the ways in which the emotional regime of law shapes and guides courtroom emotions and performances, not on how arguments can be used to persuade others (Bakken & Graver, 2013; Graver, 2010). I am interested in the accomplishment of a role and a principle, not how a case is argued.

team face. Whilst this can be accomplished more conspicuously as in the example I have just presented, often, the performance of teamwork and loyalty is subtler. Team face is more usually sustained by using a combination of understated non-linguistic gestures together with a muted verbal performance (Blomkvist, 1987, p. 83; Flower, 2016a, 2016b; Hägg, 2004).

This can be seen in the following 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 for the prosecution 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 defendant denies all the charges and claims the car had been left in the shade. The findings of this report are thus of importance for the defence's case and when the exact temperatures are read out,

the defence lawyer looks up sharply and says, very quietly but also very forcibly “what?!?” (*nämen*) The defence lawyer looks 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 states that he became “quite annoyed” when hearing the report which he claims includes incorrect details. (Fieldnote)

The claims of the prosecution's expert witness are an external face threat as it implies that the client has been criminally negligent, thereby opposing the social position and impression of reality that the defence team is attempting to portray. However, the defence lawyer must ensure that his team performance communicates his support of the team line by challenging or undermining the facts presented by the prosecution – the face threat - whilst simultaneously following the flow of interaction and ensuring that his performance of adversarialism remains appropriate. His emotional performance of annoyance is therefore accomplished verbally by saying “what?!?” and changing his tone of voice and nonverbally by looking up and sitting upright. This form of dramatic production remains appropriate to the interaction order, ceremonial order and the emotional order of the criminal trial: non-confrontational, muted and polite whilst also being appropriate to the context. He uses bodywork to convey alignment and meaning to the situation in an interactionally confined context (cf. Goffman, 1972, pp. 11, 125).

We see then that the scope for responding to such face threats is consequently limited to subtle verbal responses and gestures ensuring the continuation of the interaction flow. Responses of “what?!?” or similar are recurrent in numerous observations and demonstrate the normative nature of the emotional regime. Quietly mumbling “what?!?” is therefore the Swedish

equivalent of shouting “objection!” in an American courtroom, a difference in performance stemming from the difference in display rules between the two legal cultures thus pointing to differences in the “societal emotional regimes” (Bergman Blix & Wettergren, 2015, p. 3).

In such situations the defence lawyer is performing what I have named “vicarious facework” as in this situation and context, the client is unable to save his own face as such protestations would disrupt the flow of the criminal trial. As I mentioned at the start of this chapter, the dramaturgical scope for the defendant’s defensive facework is fairly limited (although displays of nonchalance may be used). The defence lawyer must therefore save the client’s face on his behalf.

This is a form of collective facework that differs to the current literature on collective facework strategies as it is not aimed at aiding interactants within the team to regain face when they have let their own face slip (cf. Lee, 2009). In the excerpt above, vicarious face-saving is done by the defence lawyer, for the client, when the face threat arises externally (from the prosecutor). This also functions to maintain the defence lawyer’s professional face as it is part of his role to question evidence that goes against his client’s version.

At the end of the following excerpt we see the defence lawyer dramatically producing attention towards certain facts by exclaiming “very strange!”<sup>66</sup> thereby giving face to the client. It is taken from my fieldnotes of a trial where the defendant is accused of various crimes related to the possession of various narcotics with intent to supply:

When the defendant is being questioned by the prosecutor, he claims that he doesn’t know how the cocaine ended up under his mattress which the police found when they searched his flat. He thinks that he might possibly have tidied it away there the night before (after a party that he had at his house) but he doesn’t remember doing this. He does remember seeing a white powder but didn’t know that this was cocaine, and plus it was in different packaging. He goes on to say that he only uses a small amount of marijuana every day but that

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<sup>66</sup> The reader may remember that Reddy (2001, p. 252) writes that the emotional regime can be navigated by using “emotives” as a form of “self-management or self-exploration” in order to arrive at a desired state. I argue that this concept can even encompass the management of others’ emotions and may also be used as an impression management tool (Austin, 1962; Törnqvist, 2017). The defence lawyer in the extract presented here is expressing support for her client - “how strange” - which I see as a socially situated emotive aimed at drawing attention to the damaging information being presented by the prosecution, and also aimed at giving face to the client by underscoring the bizarreness of the situation (Wright Mills, 1940). However, in order to retain analytical focus in this dissertation, I will not include emotives in my analysis.

he had no intention of selling the large amount that was found in his residence - it was all for his personal use. The prosecutor points out that this is a large amount of marijuana to buy if he only uses a small amount but the defendant stands firm that he was not going to sell it. The lawyer does not visibly react throughout.

When the defendant is being questioned by his defence lawyer, she asks him about his bank accounts. The defendant says he has no idea how one million Swedish crowns [€96,000] ended up in one of the accounts: he never uses that bank and can't imagine where the money has come from. He explains that he doesn't use the card that is connected to the bank account and therefore that it wasn't him who made all of the purchases visible on the bank statement. When he is talking about this the lawyer makes the comment "very strange!" saying this in a serious tone of voice. (Fieldnote)

However, in the middle of this excerpt, we also see the defence lawyer using another strategy, namely the dramatic reduction of stoneface which I will now develop further.

### *Dramatic reductions using stoneface*

In the excerpt I have just presented, the defence lawyer draws attention to certain facts by commenting "very strange!", and draws attention away from others - for instance, that the defendant does not know how the narcotics came to be under his bed - by not reacting. These are the two extremes of how destructive information to the team impression should be dealt with: either highlighted or downplayed.

There are numerous examples in my data of defence lawyers using dramas of reduction wherein normal appearances are upheld by not responding to destructive information given by the client in order uphold team face (Goffman, 1969). Dramatic reductions include various strategies, one of which I have already introduced as a way of upholding lawyer face (for instance by covering up mistakes) namely stoneface. However, stoneface can also be used as a strategy for upholding team face by downplaying face threats or destructive information coming from either within the team or from outside the team. It is also used to build and undermine facts.

I return now to the excerpt from the opening of this dissertation and where we are now able to see stoneface being used. This excerpt is taken from a criminal trial where the defendant is accused of breaking and entering into a flat and stealing various goods. There is a witness who has given a description of the suspect and seen him entering the property in question and, after a short while, leaving with a full bag. The police were called to the scene and caught

the defendant leaving the area, wearing plastic gloves and carrying the stolen property in the bag described by the witness. He is therefore arrested. We join proceedings as the prosecutor is asking the defendant for his version of events:

The prosecutor asks the defendant how he came to be in possession of the stolen items and the defendant claims that he bumped into an acquaintance who gave them to him. When asked to describe the acquaintance, the defendant claims he does not remember what his 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. The prosecutor points out to the accused that in his police statement he stated that the acquaintance he bumped into was called Danny Diamond, which the arresting police officer has also testified to. 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 and he didn't want to get his fingerprints on them therefore "Erving" gave him his plastic gloves along with the items.

Throughout all of this, the defence lawyer stares, almost without blinking, at the prosecutor. His facial features do not move: 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. (Fieldnote)

Take a moment here to reflect upon your own reaction upon reading the above excerpt again. Does it sound credible to you? Did you raise your eyebrows when reading it? Perhaps smile or shake your head? I have presented this extract at various conferences and seminars and it is always met with amusement and incredulity, therefore this may be seen as the expected reaction in such a situation when one is presented with a version of events that seems very unlikely. However, the defence lawyer does not react as you or I would react, or indeed perhaps as he would react upon hearing such an unlikely tale if heard outside his professional role as a defence lawyer.

As we have seen in the guidelines for the Swedish Bar Association (2008), the defence lawyer above should not allow any personal opinion regarding the version of events being presented by the client, and therefore, the team, to affect his performance (providing, of course, the version is not overly far-fetched). This means that even in instances such as that described here, where the version of events is unlikely, the defence lawyer should nevertheless uphold it. Additionally, he must convey the qualities integral to his role which includes ensuring that his expressions are coherent with the reality being presented – he should keep up "normal appearances" (Goffman, 1972). This means that he should use emotion work to ensure that his emotional display is

in line with the reality the team is presenting. He should also follow the appropriate emotion rules in such situations, for instance, disbelief should not be displayed. There may also be other emotions in need of management such as embarrassment, as the client appears to commit a faux pas by fabricating the name of his acquaintance - a name that only 0,1 percent of the population of Sweden have as their given name (SCB, 2017).

In such situations, defence lawyers use stoneface as a form of factwork in order to build up alternative facts<sup>67</sup> which otherwise would not have existed (S. Scott, 2017). By performing a “nothing unusual happening stance” (J. Emerson, 1970), the defence lawyer is supporting the version of reality that the client has constructed, giving it credibility (Porter & ten Brink, 2009).

Stoneface is therefore used here as a form of emotional factwork involving the modulation of responses (Maroney & Gross, 2014). For instance, had the defence lawyer in the Danny Diamond excerpt shown disbelief, he would have granted that the facts presented were not quite believable and thereby inadvertently supported the opposition’s facts. By not showing any surprise or disbelief in the client’s version of events, the defence lawyer is supporting it, thus sustaining team face. This can be demanding, particularly when the defence team are joined in a “polite fiction” (Burns, 1992) as may be the case in the Danny Diamond excerpt, and as Sandra also tells me,

I can do a closing speech where I know that some of the things I say are going to be very difficult for the court to believe in because it’s, it’s not especially likely that it was like that, but I hope that, that it’s not noticeable that I also think it seems a bit unlikely. (Sandra)

Stoneface can also be used as a counter-move against the prosecutor’s attempts at discounting the defence team’s reality. For instance, in one of the previous excerpts I presented, the prosecution openly questions the reality of the defendant as being unusual (when the defendant claims he was coerced into a confession the prosecutor exclaims “I’ve never heard of this happening before!”) – yet the defence lawyer continues to stay in line. He uses stoneface to construct, define and sustain a reality that contrasts to that claimed by the prosecution.

The presentation of facts thus requires the appropriate performance, drawing on the appropriate emotions in order to achieve the strategic goal of proving the client’s innocence by questioning the validity of evidence, by showing

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<sup>67</sup> I am not using “alternative facts” in the Trumpian sense of the term, rather Potter’s (1996, p. 107) approach to constructing “descriptions and alternative descriptions.”



weaknesses in the prosecution's case, or by hiding weaknesses in the defence (S. Harris, 2011b, p. 103). Stoneface highlights how this fact production and reduction is accomplished using nonverbal communication, not just verbal.

I consider stoneface to be a "dramatic reduction", building on Goffman's (1972) concept of dramatic productions. It is based on the premise that even the absence of an action is still an action. Dramatic reductions are thus active commissions, rather than passive omissions, aimed at keeping facts hidden (remember - stoneface can also be used to hide professional mistakes as I presented at the start of this chapter) (cf. Goffman, 1956c; S. Scott, 2017).

This is another performance on the "personal front" (Goffman, 1956c, p. 14) using bodywork as a tool for impression management, in order to align oneself to the team by not showing any reaction, even small facial expressions such as a slight frown as Charles says, "you really try and control yourself, you really do" (Goffman, 1972, p. 125).<sup>68</sup>

All of the lawyers I spoke to talk about using this strategy which they called doing "stoneface", "poker-face" or "blank-face" in order to convey the appropriate impression (Goffman, 1969). The observant reader will have noticed that several of the fieldnotes presented in this chapter have already shown the defence lawyer doing stoneface: for example, in the balaclava-trial, the defence lawyer remains still-faced, writing notes. Here is another example of stoneface taken from my fieldnotes of a trial 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. (Fieldnote)

The defendant is caught out in a potentially face threatening situation: a lie. Similar to the client's presentation of self in the Danny Diamond extract, the client's performance may be deemed embarrassing to the team thereby comprising an internal face threat to team face.

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<sup>68</sup> It is almost as though the defence lawyer treats the client who has committed a faux pas, as a non-person and in this way acts to reduce the damage to their team performance (Goffman, 1953). It should also be noted here that the Danny Diamond extract shows stoneface being used as a form of bodywork to draw attention away from damaging information – a dramatic reduction – unlike in the examples presented previously where bodywork is used as a dramatic production produce attention towards something.

We see then that the client may contribute to undermining the version of events the team is presenting – an internal face threat - and it is up to the remaining team members - the lawyer - to manage this gaffe. Dramatic reductions are therefore another instance of vicarious face-saving and maintaining lawyer face. 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).

Stoneface is thus used here, not as a defensive strategy employed by defence lawyers to sustain their own lawyer face as I presented at the start of this chapter, rather it is used as a collective strategy to protect the team's dramaturgical fate, that is, saving team face and protecting the team's image. Stoneface can thus be performed for the team – a form of “emotional teamwork” (Waldron, 2000, p. 80).

Failing to use stoneface and showing doubt in a client's version of events could threaten the team performance as Vera talks about here,

if we show [doubt] in some way, then we show the client that we don't believe in their case (*sak*). And it might become obvious for the client as well, which in turn, makes the client worried and maybe answer incorrectly or think, “yes, oh, what did I do now?” and “maybe my lawyer isn't doing their best” or something. Rather it's our job to react like [shows nothing]. (Vera)

Vera presents stoneface as critical to the justice process. If her performance deviates from the team line (the version of events being presented by the defence team), by showing disbelief in her client's version of events, this could lead her client to question, not just Vera's professionalism, and in turn, loyalty, but also the entire interaction, in this case, whether or not he or she (the client) has received a fair trial (cf. Schudson, 1984). Vera is therefore saying that her “emotional cues” (Clark, 1990; Waldron, 2000) may be interpreted by her client as communicating disloyalty, which may lead to the client feeling anger or disappointment (cf. Waldron, 2000). These cues can also be construed as Vera positioning herself outside the defence team, i.e. distancing herself from the client, which, in turn, signals a break in Vera's professional role obligations.

Daniel also tells me about using stoneface to avoid giving cues to others in the courtroom, for example, the prosecutor. He describes stoneface as a tactical strategy aimed at concealing disappointment to ensure that the prosecutor does not interpret his emotional expression as revealing a weakness in the defence team's case:

If I somehow expressed it, that [the client gave] the wrong answer, then maybe you put more weight on it, then maybe the others in court, the lay judges and prosecutor also notice that this was something that the defence didn't want to happen and it has happened and then, perhaps the prosecutor tries to push it and then suddenly, then perhaps it's something that, well, benefits the prosecutor in the end, or that is, basically, to my client's disadvantage. (Daniel)

Daniel wants to ensure that he manages the social information, encompassing emotional information, that he gives and indeed, gives off (Goffman, 1956c, 1969).

Stoneface is discussed by the defence lawyers as coming with experience and the successful use of it during trials is talked about admiringly with defence lawyers recounting tales of being complimented for their stonefacing. Stoneface reveals an invisible emotion rule outlining the expected emotional display, learned through a process of implicit socialisation (cf. Flower, 2014).<sup>69</sup>

Stoneface is therefore a form of facework used to accomplish teamwork and loyalty. Teamwork demands dramaturgical co-operation on the side of the defence lawyer in order to sustain the team performance.<sup>70</sup> Taking the team "line" means simultaneously taking the loyalty "line" (Goffman, 1967). We see again that teamwork and loyalty are interlinked.

### *Doing stoneface or doing distance?*

It could also be argued that the defence lawyer is performing stoneface in order to save his or her own professional lawyer face by creating distance from the client's incriminating testimony. The defence lawyer may thus be doing distance rather than doing loyalty or teamwork. However, the defence lawyers interviewed state that when they accept a case, they should represent the

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<sup>69</sup> Other factwork strategies include stating "thank you, I have no questions" when it is the defence's turn to question the defendant. This is a strategy that I observed repeatedly in the courtroom and one suggested in the literature surrounding the role of defence lawyers (Borgström, 2011, p. 103). This is another example of a "canned resource" (Lee, 2009): an interactional life vest used in cases of emergency aimed at drawing attention away from something. Another form of dramatic reduction is described by Peter who says "if there is a weak point in the case, maybe you try to avoid it. Or you try to briefly serve it on a plate so that it looks nice." Weak points are therefore briefly acknowledged yet still presented so as to strengthen the client's case as much as possible. In much the same way that the client is idealised in the team, so are other aspects in the team's version of events (cf. Strong, 2001).

<sup>70</sup> If, as is sometimes the case, there are several defendants, the defence lawyer has no bond to the other defendants and may react with disbelief at another's claim to reality, however commitment should be shown to one's own client thus highlighting the "team" aspect of dramaturgical loyalty.

client's version of events, therefore even if the client's story seems farfetched, the defence lawyer will follow the team line.<sup>71</sup>

When an exception to this rule arises and a client wants to drive a case despite the defence lawyer advising that their version of events will be deemed implausible, the defence lawyer can create distance discursively by avoiding alignment to the client, stating in court "*my client* claims that he was not at the scene of the crime" (cf. Potter, 1996, p. 148). This is a strategy seen in research from other countries, for instance, barristers in England may state: "I have been instructed to say..." (L. C. Harris, 2002, pp. 569-570). In this way the emotional display of professionalism is merely symbolic with lawyers using "coded oral messages to signify their detachment to other legal professionals present" (L. C. Harris, 2002, p. 575, see also Adelswärd, Aronsson & Linell, 1988). This can be seen as a professional break-sign similar to the way that newsreaders achieve the appearance of neutrality, by attributing a controversial description or statement to a third party, or by the use of quotation marks, seen as a shift in alignment (Clayman, 1992; Goffman, 1979, cf. Goffman, 1972). This approach is however, frowned upon, both in the legal literature but also by the lawyers I interviewed (Borgström, 2011, p. 101). I observed doing distance in only a handful of trials, for example in the following excerpt:

Prosecutor: I've read somewhere in the preliminary investigation that you have boasted to others that you hit a security guard.

Defendant: That's bullshit!

The defence lawyer blinks rapidly three times then puts his left elbow on the desk again, with his chin resting on his hand, writing in his papers with his other hand. His arm and elbow look like a barrier between him and his client. (Fieldnote)

The elbow on the desk forms a symbolic boundary between the client and defence lawyer, constituting a break-sign, in contrast to the "tie-signs" (Goffman, 1972) which have thus far been presented. The defence lawyer may be distancing himself from the reality that his client is presenting but he may also be distancing himself symbolically from the client's break of the ceremonial order seen in the use of the word "bullshit" conveying a lack of

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<sup>71</sup> Removing oneself from a case is talked about in the interviews as being unethical and could lead to questions pertaining to the client's innocence as legally, the defence lawyer cannot represent as innocent a client who has confessed his or her guilt. Consequently, by removing oneself from a case, the defence lawyer is threatening the face of the client, giving the impression of guilt.

respect and manners. Blinking can be a “micro-expression” (Ekman, 1992, 2004) revealing an underlying emotion in need of management thus displaying disloyalty as will be detailed at the end of this chapter.

In another trial the defence lawyer distanced himself from his client who claims that he has no other choice but to steal to fund his drug habit as he can’t get accepted on a rehabilitation program, to which the defence lawyer replies, “just because you can’t get onto rehab program doesn’t mean you have to steal.” However, Sandra discusses how there is nothing to be gained from distancing oneself from the client, she tells me,

there is no reason to somehow send some kind of double message, to have a double agenda, to try and show that court that, “you understand that I think that this seems crazy” or “now he’s lying again” or whatever. (Sandra)

For these reasons, I do not consider stoneface to be a case of “derisive collusion” (Goffman, 1956c, p. 119) where the performer does not really agree with the version of events being presented, and communicates this in subtle ways to the audience. Neither is this how defence lawyers present themselves in the interviews. The guiding premise is that the shared identity and shared reality of teammates means that it is unacceptable to “sell your client out” in the courtroom as one defence lawyer interviewed states. The risk is therefore that one is perceived as “doing disloyalty” when doing distance. I will return to this at the end of this chapter.

### *Dramatic reductions using props*

In the extract from my fieldnotes from the closing argument of a murder trial that I presented earlier in the section on dramatic productions, we see dramatic production using the body as a facework tool in the form of nonverbal gestures such as finger pointing and other gestures in order to dramatically realize the client’s version of events. Props are also seen in this excerpt when the defence lawyer takes off his glasses in a performative gesture. The use of props as an impression management tool during jury trials has been discussed although in general, they have gained little sociological attention (Ball, 1994; Hägg, 2004, p. 182). I will now discuss the use of props to symbolically communicate meaning in more detail where most illustrations will focus on their use in dramatic reductions to do factwork and facework (cf. Waldron, 2000).

In situations where destructive information is presented constituting a face threat, the defence lawyer sometimes uses props to tone down or undercommunicate the potentially damaging impact. Props can therefore be used to dramatically reduce or undermine facts. In the following trial, 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 says that the defendant stated he wanted “to kill the man” that he stabbed in the neck. When the police officer says this the defence lawyer takes his mobile phone out of his trouser pocket and checks it, holding it on the desk in front. The policeman goes on to say that the defendant told him “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. He then goes back to leaning forwards with hand on chin and cheek. (Fieldnote)

In all instances in the above extract the defence lawyer either looks at his mobile phone or fingernails when destructive information is presented. Looking at mobile phones is a recurrent occurrence I have observed 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, as we have already seen, 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 indicating that this comprises a deviation from the ceremonial order (as described in the section on managing the face of judges).

The inspection of fingernails is a strategy used by many defence lawyers at times when testimony is being given which could be perceived to be damaging to the defence. It is thus used to manage face threats. 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 undermining the facts. It may therefore be seen as a 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.

Other examples of props being used to draw attention away from evidence are plentiful in my fieldnotes. The following excerpt is taken from a trial where the client is accused of assault and we join proceedings where the plaintiff is being questioned by the prosecutor and is giving her version of events:

The plaintiff is describing in detail when the defendant chased her and pushed her into a window. The defence lawyer glances at the clock, the prosecutor, the judge, his client, and then his notes. The plaintiff goes on to describe how she was pinned to the floor and was being choked by the defendant, with his hands around her neck, lifting her head up and hitting it on the floor. The defence lawyer takes out his mobile phone from his blazer pocket and checks it before putting it away again. When the plaintiff says “it really hurt!” the defence lawyer checks his fingernails. The plaintiff goes on to say that “it felt as though my arm broke” the defence lawyer’s hand goes to the pocket with the mobile phone again. The plaintiff then goes on to talk about the children’s involvement. The defence lawyer stops reaching for the phone again. He reads the papers in front of him instead and makes notes. Later on, he takes out chewing gum and starts chewing when the plaintiff is talking about another incident where she was attacked and strangled by the defendant. (Fieldnote)

The next excerpt also comes from another trial where the plaintiff has claimed that the defendant assaulted her in front of their small children:

At the most delicate point of the proceedings, when the plaintiff is describing how scared and upset her small children became when witnessing the defendant’s attack on her, the defence lawyer brushes some (invisible) crumbs from the front of his jumper. This occurs mid-morning so the gesture is unlikely to be the result of a recently eaten meal. (Fieldnote)

A prop or a gesture can also be used as a sign of something else than the ostensible usage, in this case, showing that the plaintiff’s testimony is, at the least inaccurate, at the worst, untrue as the client claims he has not committed the assault in both of the cases above. A mobile phone, fingernails or brushing away crumbs may be used as a subtle way of manipulating reality (cf. Goffman, 1956c, p. 162).

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’ 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. (Fieldnote)

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 neutralizing 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.<sup>72</sup> The defence lawyer is "figuratively erasing" (Katz, 1999, pp. 320-321) 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, defence lawyers in such instances deviate from the emotional norm of showing empathy when hearing a tragic story as would be expected in a different situation. (In the next chapter I expand upon this, showing how empathy should be used, controlled and triggered.) The defence lawyers' performances here are of teamwork and loyalty – the client has claimed that the plaintiff or witness is lying, therefore reacting in a more sympathetic manner might jeopardize this.

It should also be noted that this deviation from the emotion norm of showing sympathy or compassion in such a situation and instead retaining a cool countenance, could lead to the defence lawyer appearing heartless to the non-legal actors in the courtroom as they may be unaware of emotional order of the criminal trial (cf. Goffman, 1967, pp. 10-11). Again, we see an explanation for the preconception I presented in the introduction that questions whether or not defence lawyers have feelings (cf. Goffman, 1967, pp. 10-11).

All of the excerpts in this section show that props tend to be used when the source of the face threat is external to the team. However, once again, the observant reader may notice that writing notes is often used when doing stoneface, both when managing external face threats and when the source comes from the client, internal to the team.

Writing notes is therefore another facework tool used to distract attention from a potential face threat which I have observed on numerous occasions in the courtroom. Whilst the defence lawyers interviewed state that writing notes

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<sup>72</sup> An alternative explanation could be that defence lawyers use props to manage their own inappropriate emotions that might arise from hearing sad accounts. However, I posit that as props are used in an array of situations ranging from descriptions of attempted murder (which could, in other situations, provoke feelings of sadness in the defence lawyer) to descriptions of minor incidents (which would not be considered to be emotive), they can be understood as strategies for drawing attention away from facts, rather than strategies for managing one's own inappropriate emotions.



is necessary to remember what has been said, it is also talked about as a form of staying focused and awake and strategy for covering up face threats.

All of these strategies must however remain subtle. This can be seen in the following excerpt where we first see the various reduction strategies that the defence lawyer uses:

When the plaintiff describes the abuse she has been objected to by the defendant, the defence lawyer writes notes non-stop. The plaintiff is explaining about the defendant's jealousy and how he acted. When she describes being choked and not being able to breathe the defence lawyer shifts in his chair slightly. The plaintiff says "it really bloody hurt" the defence lawyer scratches his ear and gives a slight sigh. He then continues to write in his notes. The plaintiff states that the defendant cried afterwards and was saying "what have I done?!" The defence lawyer looks at her and remains looking at her. The plaintiff goes on to talk about another instance when the defendant choked her. She says, "I couldn't breathe, I panicked". The defence lawyer sits very still, not making any notes but not looking up either. He then rips a piece of paper out of his notebook and it makes a loud noise whilst the plaintiff is still talking. The defence lawyer makes a face at the noise, drawing his lips in. (Fieldnote)

The defence lawyer writes notes and uses stoneface throughout the plaintiff's questioning by the prosecutor. However, at the end, we see that in ripping a page from his notebook and making a loud noise, he has broken the ceremonial order of the courtroom, seen in his drawing his lips in. All of the other strategies used above, appear to be in line with ceremonial rules.

## **Directing the defence team**

As I mention in the introduction, in the theatre of the courtroom, the defence lawyer is the director of the team performance, constructing a convincing story for the court and ensuring that the team performance stays on track (Dershowitz, 1986; Ebervall, 2002; Levenson, 2007). The strategies used to direct the team impression will now be discussed.

### *Staging talk*

A successful team performance should conceal any prior consultation regarding the party line between team members which is done backstage (Goffman, 1959). If this has not been possible then there is a risk that the frontstage performance falters, revealing cracks in the team performance.

As we have already seen, documents and clothing can be used to create a certain impression. These performances on the personal front can be prepared

in advance. Another important factor is for team members to “get their story straight” (Goffman, 1956c, p. 54) beforehand, in order to identify and then follow the “party line” (Goffman, 1956c, p. 53).

Whilst studies from the USA show that defence lawyers prepare their clients for cross-examination in the courtroom (Pizzi, 1999), the lawyers I spoke to say that their “staging talk” (Goffman, 1959, p. 173) is aimed at counselling their client to “tell it like it is”. However, they do request that the client tells them the version that they are going to present in court, and to stick to that version. This backstage talk is a form of “communication out of character” (Goffman, 1956c, p. 112), enabling lines and positions to be established so that past and possible future disruptions or performances can be discussed and agreed upon.

“Staging talk” (Goffman, 1959, p. 173) seen in terms of preparing the case, is not always possible for a defence lawyer, for example the client might not reply to contact from the defence lawyer before the trial. This makes it difficult for the defence lawyer to know the client’s version of events which, in turn, makes it difficult to know how to question a client in the courtroom. In other words, the party line becomes a “thin party line” (Goffman, 1956c, p. 52) and can negatively affect the impression given by the lawyer in the trial. Lydia talks about clients who don’t respond to her attempts at contact before their trial,

I can think that you get, a bit, you don’t get nervous, but at the same time it’s harder because the court doesn’t know that I haven’t had contact with my client and they can think that I seem unprepared but it is very difficult for me to pose questions to my client if I haven’t spoken with them before because then I don’t know how they will answer. (Lydia)

Appearing to be unprepared, nervous or less confident in court is damaging for one’s lawyer face as already noted in the beginning of this chapter. The lack of such preparatory discussions can also threaten team face as it makes it harder for teammates to unite behind an impression of reality if the defence lawyer is uncertain as to what that reality is. Lydia goes on to talk about how it can be frustrating with such clients, yet this frustration between teammates must remain hidden as it could threaten the team’s bond and integrity and lead to a disruption in the interaction order (S. Scott, 2015). Just to remind the reader, the interaction order is based on the definition of the situation: a criminal trial which is a social situation that expects the defence team to be united. The defence lawyer is the legal voice of the defendant. If the defence lawyer is not seen to be representing the defendant, then one facet of this social situation has broken down, and the interaction order is no longer upheld.

### *Frontstage direction*

Sometimes the backstage work of teamwork fails and is revealed frontstage in the courtroom. This shows a breakdown in team face: a collective communication out of character. The following is an example of where such dramaturgical co-operation breaks down. It is revealed to us in the courtroom that the defence lawyer has used backstage “staging talk” (Goffman, 1959, p. 73) in order to give face to the client in the courtroom by presenting him as willing to take part in mediation<sup>73</sup>. However, the client fails to uphold the line the defence lawyer is attempting to project:

Defence lawyer: Are you still willing to take part in mediation?

Defendant: What’s mediation?

Defence lawyer: Are you still positively inclined to meeting and talking to the plaintiff?

The defendant does not look at all open to the idea of meeting and talking to the plaintiff. He looks blank.

Defence lawyer: Is it the case that you are open to mediation?

Defendant: Uuuuuuuh.

Judge: Perhaps you would like to discuss this?

Defence lawyer: Yes, it might be that I have misunderstood. (Fieldnote)

The defence lawyer’s attempt at giving face to the client backfires in court as the defendant does not appear to know what mediation is. It deteriorates into a breakdown in team performance making them appear disunited. We see once again, that the defence lawyer is not able to rely on his team members’ dramaturgical co-operation and the (lack of?) backstage preparation is accidentally revealed frontstage.

Thus, even if one has prepared with one’s client backstage 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, 1963a, pp. 34-35). The lawyer, as the director of the team performance, must ensure that the performance remains dedicated to this “joint

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<sup>73</sup> Mediation involves the perpetrator and the victim of the crime meeting together with an impartial mediator to talk about the crime and its consequences.

identity” (Strong, 2001, p. 10). This involves a process of idealisation of the other team member’s roles. In the extract above we see a failed attempt by the defence lawyer to present the client in the best possible light, as positive to mediation – a form of idealisation (Strong, 2001).<sup>74</sup>

Frontstage directions take place in full view of the courtroom with the defence lawyer playing the role of “cooler” (Goffman, 1952) as Andrew talks about here:

If I feel that it’s getting like, that [the client is] starting to get worked up then I always angle the microphone away and then I lean in and I talk calmly with them, calm them down. And then if it’s the case that they are sitting there bouncing then I ask for a break if I know they’re about to explode so to speak, because I want a client who ‘behaves themselves’ [shows citation marks]. I mean, if your client is suspected for a violent crime for example, then I don’t want the person in question to sit there and show violent tendencies because then it’s like, “yes, yes, it was like the prosecutor said”. Bit like that. Instead, behave yourself, pull yourself together. (Andrew)

Andrew has the “canned resource” (Lee, 2009) of asking for a break if the client is about to deviate from the rules of interaction which prescribe turn-taking in speech and acting in a calm and controlled manner. Just as lawyers talk about taking a break in proceedings if there is a risk to their own face, taking a break is also presented as a way of cooling the client down if he or she has “flooded out” (Goffman, 1961a, 1967) or is on the brink. This is necessary as such emotional outpourings may reveal something regarding the client’s character that the defence team is attempting to keep hidden. As Andrew describes, if the client is accused of a violent crime, then his or her possible violent tendencies should remain hidden. Taking a break can therefore ensure that the client stays in face. In the next chapter I explore in more detail how defence lawyers prepare their clients in order to avoid such situations arising.

The following excerpt from my fieldnotes is another example of frontstage direction, taken from the part of a trial where the defence lawyer is questioning his client regarding a charge of drink driving (I will return to this excerpt in the next chapter to further explore the production of regret):

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

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<sup>74</sup> Pizzi (1999, pp. 196-197) writes that in the USA, lawyers attempt to humanize the client by placing an arm around him or her.

defence lawyer then states “you were in a spiral of drinking too much”. His head is tipped slightly to one side and his voice is softer when he says this.

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.” (Fieldnote)

This is an unusual 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 performing “identity work” (S. Scott, 2015; Snow & Anderson, 1987). The questions attempt to construct the defendant’s identity as regretful by forming the client’s answers in order to produce a performance of regret with a tinge of sympathy (“you were in a spiral of drinking too much”) (cf. Althin, 1994; Gathings & Parrotta, 2013). We also see frontstage direction aimed at producing regret in the following excerpt:

When the prosecutor is questioning the defendant, the defendant admits that he “did stupid stuff” and looks at his defence lawyer when he says this. His lawyer nods and says “say what you did” in quite a soft but fairly stern voice. His client continues that he stole some items, looks again at his lawyer who nods again. It is the first time there has been any interaction between them and the first eye contact that has been made. (Fieldnote)

Rather than facework (aimed at maintaining appearances in the present) this can be seen as “character work” aimed at showing the client’s “moral core” and therefore, “future behaviour and the effects of the individual on society at large” (Strong, 2001, p. 42). The use of eye contact also serves to strengthen the united front between client and lawyer as will be discussed in more detail later at the end of this chapter.

By this rationale, a great deal of defence lawyers’ work, if not all, is indeed character work, ensuring the court that the client is not a danger to society. In the above example, we clearly see the defence lawyer attempting to portray the client as having sound moral character demonstrated by showing regret: the normatively expected emotion both inside and outside the courtroom when one has done wrong.

When the defence lawyer asks his client in the drink-driving excerpt 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 constructs the fact 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 given by simultaneously using bodywork, giving an individual performance whilst also producing a performance in the client, by pulling forth details that otherwise would have remained hidden, in this case, the client's regret, and by nodding in order to indicate 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, the above episodes are ways of "teaming up" to construct facts (Holstein, 1993).

We also see in these two excerpts that facework in the courtroom can also have multiple goals (Penman 1990). I have previously shown how the prosecutor often threatens the defendant's face and also presented an excerpt where the defence lawyer threatens the face of an expert witness by reacting with indignation in order to protect team face. These two current extracts shown here present defence lawyers intentionally damaging their own client's face by encouraging them to admit the crime - "say what you did" - in an attempt to reduce the severity of the sentence.

While 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). Although the defence lawyer's actions in the drink driving example can be seen as an intentional face threat to the client's face - painting him as having an alcohol problem - the goal is nevertheless to strengthen the team's version of events: that the client was unable to stop himself. I therefore argue that the face threat is intended to accomplish an instrumental goal and should instead be seen as an "instrumental face threat".

More specifically this instance shows an *internal* instrumental face threat, coming from within the team. However, an instrumental face threat can also have an external source, for instance the prosecutor, who is attempting to give the defendant another face than the one he or she has claimed. This is, I believe, implicit in Goffman's (1967) theory but it is in need of greater clarification.

Internal instrumental face threats can also be seen as a form of facework where the defence lawyer gives the client "an opportunity for repair" (Scheffer, 2006, p. 329; see also Scheffer, 2010, p. 156) by intentionally damaging the face of the client (as an alcoholic) and the plaintiff (as a liar) whilst simultaneously maintaining lawyer face and team face (Penman, 1990). It

balances this open face threat by attempting to accomplish normality by weakening or “working down” (S. Scott, 2015, p. 68) the deviant identity of drinking too much, and “working up” (Potter, 1996, p. 123) another identity. In this way the defence lawyer is attempting to construct a social identity that is socially approved: a person showing regret for their actions (S. Scott, 2015, p. 68). In contrast to previous interactionist work on identity construction, in this case, it is the defence lawyers who is actively constructing an identity for his client, rather than the client constructing his own (cf. Potter, 1996, p. 114).

This, in turn, can also be seen as another form of dramatic production and reduction: dramatically producing one identity and dramatically reducing another. Both facts and identities can be built up or undermined (Flower, 2016a; Potter, 1996, p. 201; S. Scott, 2015).

The performance of instrumentally damaging the client’s face should be handled with care as disclosing to the court the client’s improprieties may lead to the client questioning his or her lawyer’s loyalty (cf. Goffman, 1956c, p. 89). This is a balance of engaging in an open face threat to one’s own client whilst at the same time ensuring that the client understands that this face threat is coming from a place of loyalty.

This extract displays the emotion work of teamwork demanding the active production and reduction of emotions in self and others. The defence lawyer as the director of the team performance demands that he or she encourages the appropriate personal front, including emotional expression in team members (Goffman, 1956c).

### *Hidden directions*

As already shown, directing clients to remain in face during the trial occurs mainly backstage, prior to the trial, as the lawyers I spoke to talk about reminding clients to remain “poker-faced”, with one defence lawyer even saying that she writes this on a note to be shown to the client at pertinent points in proceedings. The surreptitiousness of the note placed on the desk in front of defence lawyer and client, means that this direction remains backstage, despite being performed frontstage. It thereby avoids any threat to the flow of interaction (Goffman, 1959).

The reader may remember from my methods chapter that my positioning in the courtroom afforded me a view of more intimate interactions between the defence teammates. I have thus observed hidden directions in court as we see in an extract from my fieldnotes from a trial regarding the possession of various firearms, explosives and drugs:

The client is now going to give his version of events and states that he has only a very weak memory of things and would rather be asked questions than speak freely. He starts to shake his legs again, he has done this throughout proceedings. He sits with his feet crossed at the ankles, knees out to the sides and bounces his legs back and forth. When he starts doing this now, his lawyer touches him on the leg to make him stop. His lawyer does this at least ten times throughout the questioning which lasts around 30 minutes. He stops shaking his legs for a few seconds then starts again. The lawyer keeps touching his leg to make him stop. His lawyer is sitting with his hands resting on the side of his leg so that he can make the movement without it being visible to the rest of the courtroom. On one occasion, the lawyer shifts in his chair slightly and at the same time taps the client on the leg to make him stop again. (Fieldnote)

As fidgeting can signify hostility or anxiousness, this constitutes another example of the defence lawyer attempting to direct the client into giving a more credible performance in line with team face: a tapping leg might convey guilt (Levenson, 2007).

Another example of directing the client that is discussed by several of the lawyers is kicking the client in the leg under the desk during the trial. When I asked Andrew what he would do if he needed to calm down a client in the courtroom, he points to his desk and, whilst assuring me that he is joking says, “you know, this is why they have these in a courtroom [points to the front side of his desk that obscures his legs] so that you can kick your clients in the leg! [Laughs].”

Although Andrew tells me he is joking about kicking clients, other defence lawyers I interviewed talk about using this strategy. Whilst kicking the client in the leg can therefore be an effective way of directing a client backstage to calm him or her down or be quiet, out of sight behind the cover of a desk, such strategies risk accidentally becoming frontstage. Martin explains that such strategies should be agreed on beforehand as “once, the client asked me why I kicked him in the leg” thereby moving the discrete backstage direction to frontstage. Perry says that he has never kicked anyone but tells me about a colleague who failed at hiding direction during a trial by accidentally stabbing a client in the leg with the sharp end of his pen when attempting to quieten him.

The danger in hidden, situationally-backstage direction becoming frontstage is that it can reveal information that the lawyer would otherwise prefer to have remain hidden, for instance, weaknesses in the team performance or information regarding the defendant’s character. As many of the defence lawyers discuss this strategy, it appears to be a shared understanding and expectation that directing one’s client is part of one’s professional role.



## 6.5 Disloyalty

Defence lawyers endeavour to stay in character, keeping their place in the interaction. However, situations may arise when a discrepancy between the official projection and reality occurs that is, the defence lawyer falls out of face, deviating from their role and exposing unmanaged or inappropriate emotions - conveying the “wrong” impression (Goffman, 1956c, p. 33). The affective line of loyalty is dropped, the mask falls, if only for a moment. In short, the lawyer looks disloyal.

Such “communications out of character” show a break in “dramaturgical discipline” and a disconnect between the expectations of role enactment and the actual performance (Goffman, 1959, p. 167). By revealing these disruptions, we see the rules that otherwise have remained hidden – the rules for performing loyalty (Goffman, 1959, p. 168; 1961b).

### **“She had moved her chair away from the client”**

When the lawyers I spoke to talked about their ability to stay in role, all presented themselves as accomplished performers, able to stay in face throughout the performance, even when met with face threats, both to their own face or team face. However, in my observations of trials, I have found examples of role breaks, of faces slipping. My observations thus show that people “act better than they know how” (Drew & Wootton, 1988).

Here is an excerpt from a trial I observed where the defendant is accused of stealing a wallet and train ticket from someone’s pocket which he denies doing. There is surveillance film footage from the train station where the theft occurred, which shows the event from several angles. We join proceedings just after the court has seen the film showing the suspect who bears a striking resemblance to the defendant and even has the same distinctive clothing. We see the suspect entering the train station and approaching the victim. The footage is shown on two large screens, one behind the prosecution and one behind the defence which affords me the opportunity to watch the footage and observe the reaction of the defence lawyer:

The film shows the suspect talking to the victim. The victim has asked the suspect for help in finding his train. The suspect stands very close to the victim. He knocks the victim’s leg with his leg, kicks the victim’s bags and also claps him on the shoulder. It is during one of these exchanges that the suspect is said to have taken the man’s wallet and train ticket. We even see on the video how at the end of the meeting, the suspect turns and walks away and is holding what

looks to be a wallet in his hands. He is then shown on film footage from a different angle walking along, looking through the wallet and also holding something that looks to be a train ticket in his hands. When this film sequence is shown, where we see that the suspect turns and walks away from the victim with a wallet in his hand, that is, where we see the theft, the defence lawyer blinks. A big blink, more than a mere opening and closing of the eye as a normal blink would be. His face scrunches up slightly more than it does the other times he blinks. He has not blinked like this before and he does not blink like this again afterwards. (Fieldnote)

The defence lawyer has maintained a neutral facial expression throughout the majority of this viewing of video footage. However, when the theft is shown, he blinks an unusually large blink. As minor signs and symbols can convey social information, a blink may exemplify an inadvertent act giving off an inappropriate impression (Goffman, 1956c, p. 132; 1967). Here, it may convey a crack in the team performance with the defence lawyer briefly falling out of his role.

Such “unmeant gestures” (Goffman, 1956c, p. 132) may serve to reveal the strong emotional undercurrents because, not only are clients talked about as being a source of face threat but, as we will see in the next chapter, they are also a source of irritation and frustration which should be managed. I therefore interpret the blink as a kind of “micro-expression” (Ekman, 1992, 2004) revealing the felt emotion during emotional concealment. That is, the blink might reveal the concealment of an underlying hidden emotional experience such as irritation, disgust or surprise that is in need of management.

I observed the blink as a micro-expression in various trials, for example, one concerning the handling of stolen goods where there were two defendants. The first defendant states that he did not know that the goods were stolen when he is being questioned in court, however, as I captured in my fieldnotes, “the second defendant says that he knew he was buying stolen goods. The defence lawyer of the other defendant blinks four times in rapid succession.”

This failure in “expressive coherence” (Goffman, 1956c, p. 34) – failing to align expressions with the reality being presented by the defence team - could also serve as an example of the defence lawyer taking the opportunity to drop the mask when the audience’s attention is elsewhere, watching the surveillance footage. This creates a backstage area for the defence lawyer to break from his role, probably observed only by the ethnographer in the courtroom.

Another example of a micro-expression is sighing which also reveals a lapse in face. I observed and wrote down the following exchange in one trial:

Prosecutor: Did you threaten her?

Defendant: No

Defence lawyer keeps on writing notes.

Client: Or, maybe what I said about the windows [he threatened to smash her windows]

Defence lawyer gives a small sigh. (Fieldnote)

We see that when the client says that he didn't threaten the plaintiff, the defence lawyer uses stoneface - he does not react, he continues to write notes in order to hide inappropriate emotions (such as surprise or irritation) which could lead to a loss of team face if shown. When the client then changes his version of events and says that he might have threatened the plaintiff the defence lawyer falls out of role by giving a small sigh.

Maintaining face and displaying loyalty in order to achieve a successful defence is discussed by all those interviewed. Tales of when a colleague has dropped their mask may be told. Sandra describes a situation where a colleague realised that their mask had dropped:

Sometimes you have to put yourself in very uncomfortable situations in order to not be disloyal to your client (...) I know that another lawyer has said that sometimes you have to sit with a client who has done completely disgusting things and so, one time, this lawyer realised she had moved her chair away from the client in the courtroom because in some way, it was so terrible, child pornography for example, but then she thought no, [move] back again, it's us, I represent you. It's those kinds of feelings you have to put to one side. (Sandra)

Later on in the interview, Sandra states that she thinks that the lawyer probably managed to save the situation and that it was hardly noticeable. This points to the importance that defence lawyers place on such gestures and the role of facework and emotion work in the courtroom. The comment also illustrates that at times, defence lawyers are aware that they have dropped the mask and must attempt to recover it. These small revealing signs such as moving away one's chair must be kept hidden so as not to damage the impression of loyalty (cf. Bergman & Blix, 2015; Westlund & Eriksson, 2013).

At times this can be harder, for example when a client decides they want to do their own closing speech. Martin describes one such situation he encountered as,

a complete catastrophe (...) [the client] dug his own grave you could say (...) I met someone else who had been at the trial afterwards who said that I looked

like I thought it was bloody tough so I think I didn't quite succeed there.  
(Martin)

I observed something similar in one trial when the client asked the judge if he could ask the prosecutor a question and proceeds to ask the prosecutor if it is permitted for someone to attack him with a weapon (he is accused of stealing something and is disturbed by the owner who is armed with an axe). In my fieldnotes I wrote, "when the client first asks if he may pose a question, the defence looks at him very sharply with wide eyes, with an expression I immediately interpret as fear."

One last example shows where the client actually confesses to one of the charges whilst being questioned by the defence lawyer, a charge which he has previously denied:

The defence lawyer does not show any reaction, no change in tone of voice, body language or facial expression, he just continues to the next question. At the end of the questioning the defence lawyer states that they are changing their plea from not guilty to guilty. The client looks at his lawyer and says something to which the defence lawyer replies "No, but now you confessed to it!"  
(Fieldnote)

Even when confronted with a confession in the middle of a trial, the lawyer's mask did not drop!

When I describe these instances of doing disloyalty, I am describing situations where the loyalty layer guiding the defence lawyer's performance is something other than loyalty to the client (Arvidson & Axelsson, 2017; Connor, 2007). Implicit to a shift in loyalty layers is therefore a shift in the emotional performance: different layers require different performances.

Other examples of a shift in loyalties can be seen in the defence lawyer doing distance as described earlier in this chapter - stating "my client claims." This can be seen as an instance of the defence lawyer placing "self-loyalty" (Arvidson & Axelsson, 2017) which is loyalty towards oneself or integrity, highest in the hierarchy of loyalties to be performed.<sup>75</sup>

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<sup>75</sup> There are also other layers of loyalty that the defence lawyer should manage (Connor, 2007). For instance, defence lawyers must not break the law in their professional role, hence they should remain loyal to the law. Defence lawyers may also have familial loyalties (such as ensuring that their children are picked up from nursery on time as one of the defence lawyers I spoke to talked about), and also loyalties to the self which means ensuring one remains steadfast to one's morals and values (Arvidson & Axelsson, 2017). I will however keep my focus on how the first of these - professional loyalty to the client and how it is symbolically communicated appropriately.

I would like to briefly show that instances of the judge breaking role and communicating out of character are also unusual. Occasionally the judge might sigh or shake his or her head if a defence lawyer is close to breaking the rules of interaction, but, as we will see in the next chapter, this can be seen as a rule reminder (Hochschild, 1983). Role-breaks by the judge or communication out of character thus serve to reveal the underlying rule of conduct. Hilda described one such role break by the judge where both the judge and Hilda, slipped out of their roles and colluded together in staging a dramatic scene when the prosecutor broke role. The defence lawyer and judge thus shifted from their roles as sincere performers to cynical agents (Goffman, 1959) as Hilda talks about here:

The opposing counsel said something that showed a lack of knowledge in that area of law and the judge looked at me and I looked at him and we both knew that we both understood that he didn't know anything or that he was out on thin ice, the opposing counsel. (Hilda)

This communication out of character with the exchange of “collusive looks” shows a temporary realignment where the judge and the lawyer in question are momentarily on the same team, in opposition to the opposing counsel (cf. Goffman, 1956c, p. 124).

## **Making and avoiding eye contact**

Eye contact is used to initiate and sustain social interaction and is thus an expected action (Goffman, 1963a; Kendon, 1990; Shilling, 2003). In the literature on courtroom practices, eye contact is described as being important when addressing the judges or indeed whomever one is talking to (Blomkvist, 1987; Mellqvist, 1994). In particular, during cross-examination, eye contact is seen as an important part of persuasive communication and should be made when questioning witnesses (Ball, 1994, p. 4; Blomkvist, 1987). I therefore expected to see eye contact in the courtroom interactions I observed. The analysis of my fieldnotes shows that eye contact is indeed made when defence lawyers question witnesses and plaintiffs and when they are talking to the judges or prosecutor. Furthermore, I noted that when defendants are questioned by the prosecutor, the defendant looks at the prosecutor. If the judge addresses the defendant, eye contact is made.

This routine use of eye contact in these interactions thus revealed the systematic absence of eye contact between defence lawyer and defendant. My fieldnotes show that frequently there is no eye contact made between these

teammates during long stretches of proceedings. For instance, near the start of one trial I observed, I wrote “the defence lawyer first looks at his client at 9.43am (proceedings started at 9am).” This absence is particularly notable during the defence lawyer’s questioning of his or her own client. Even then there is often no eye contact made between teammates. When I asked defence lawyers about this in the interviews, all of them claimed that they do make eye contact and many reacted strongly when I told them what I had observed, deeming this act of avoidance as unprofessional. This reluctance to acknowledge the lack of eye contact may stem from the shared understanding of the importance of mutual glances on “[t]he union and interaction of individuals” (Simmel, 1921, p. 358). Defence lawyers are therefore reluctant to acknowledge the absence of this otherwise expected action, an absence which could indicate the absence of a union or interaction.

The defence lawyers I interviewed gave various accounts for this situated behaviour. For instance, Peter tells me that maybe I just can’t see it because of where the spectator seating is positioned. However, in nearly all of the observations I conducted, I was able to have a direct, uninhibited view of the defence team’s interactions.

The placement of the microphone on the desk in front of the client was also used as an explanation by several lawyers: the client and lawyer both face the microphone when speaking, not each other. Others explained that clients receive information before the trial informing them that they will be recorded by a film camera in the middle of the courtroom when they are questioned, therefore defendants tend to look into the camera when speaking.

Other accounts provided include defendants looking at the judge who presides over the trial and who therefore becomes the natural focus when speaking. For instance, when I told Lydia how unusual it was to see eye contact between defence lawyer and client she replied, “I think that [clients] think they are [answering questions] for the court’s sake.” This is supported by studies showing that gaze orientation indicates who one is addressing (Sacks et al., 1974). However, the gaze of both defence lawyer and client is usually fixed in the middle of the courtroom, the no-man’s land of neutral territory that does not belong to the prosecution or the defence. It is a “middle distance gaze” (J. D. Robinson, 2006, p. 13) akin to that used by patients during physical examinations (Heath, 1988) – in contrast, in this courtroom interaction, both parts are gazing into the distance, rather than just the patient (or client).

Yet another account given by defence lawyers uses the fact that the client and lawyer sit side-by-side making eye contact difficult. This close physical proximity may encroach on the interactants personal space, or “use space”

(Goffman, 1972, p. 34) leading to the interaction being experienced as too familiar and intimate. Such deviations from the normal rules of interaction may make it easier to fall out of role which both parts want to avoid. Accordingly, eyework in the form of gaze avoidance, can uphold the interaction (cf. Goffman, 1957).

A sociological explanation is that gaze orientation or eye contact can lead to individuals revealing information about themselves that they would prefer to keep hidden (Kendon, 1967, 1990; J. D. Robinson, 2006). Gaze avoidance may thus be a form of civil inattention, in order to avoid seeing the client's vulnerability or shame if such is the case (Goffman, 1956c; Rossing & Scott, 2014; Simmel, 1921).

The defence lawyer's avoidance of eye contact with the client could also be a way of communicating the form of their relationship. Eye contact can provide emotional support, thus the avoidance of eye contact can convey the professional nature of the relationship being based on legal support (cf. Katz, 1999, p. 295). Indeed, many of the lawyers I interviewed state that emotional support falls outside the remit of the defence lawyer's role.

The most readily available explanation is that the client avoids eye contact because he or she is lying, based on the common perception that gaze aversion is linked with deception (Team, 2006; Vrij, 1995). However, a comprehensive overview of the literature shows that there is little association between gaze avoidance and lying (DePaulo et al., 2003). This was an explanation that was not given by any of the defence lawyers.

The avoidance of eye contact can therefore be seen as a way of upholding the role performances and the formal relationship between teammates whilst showing consideration for the situational discomfort of being a defendant in a criminal trial. As the avoidance of eye contact is therefore the norm when questioning one's client according to my observations, eye contact becomes unusual - a relatively "deviant case" (Strong, 1988, p. 236) - thus highlighting the underlying norm. I argue further that when eye contact is used between teammates, it is used instrumentally as a form of dramatic production drawing attention to facts and reinforcing the team impression as we see in the following excerpt when the defence lawyer is asking questions to his own client:

Defence lawyer: "Was this something that you had planned?" He makes direct eye contact when asking this.

Client: No

Defence lawyer: It was a complete whim?

Client: Yes (Fieldnote)

On another trial I observed the defence lawyer only made eye contact once when posing questions to his client - asking him if he would have committed the crime had he known it was illegal at the time. The defendant replies “absolutely not!” Again, eye contact is made here as a form of factwork – intentionally drawing attention towards something.

Lydia tells me that she might not look at her client during questioning as she has prepared the client and therefore already knows what he or she is going to say, “it’s more like, ticking off the answers based on what you expect.” The lack of eye contact is therefore seen as conveying the team impression – I know what my client is going to say. This means that making eye contact with a client might be an unmanaged response to an unexpected answer, inadvertently drawing attention to certain information, as we see in the following excerpt:

There are two defendants – Dave and Kevin - in this trial for theft. The plaintiff is being questioned by the prosecutor about the break-in. Dave’s defence lawyer sits with his arms crossed over his stomach, looking at the plaintiff over the top of his glasses. He glances down at his papers briefly and occasionally makes small, quick notes, but otherwise he looks directly at the plaintiff throughout the whole time she is questioned by the prosecutor. When the plaintiff says that she only recognises one of the defendants - Dave - his defence lawyer looks directly at him and gives four rapid blinks. Proceedings began over half an hour ago and this is the first time that he has looked at his client (although eye contact is not made). Another half hour passes without eye contact. It is then time for him to question his client, Dave. He does not make eye contact with Dave when asking questions, he just looks at the space in the courtroom in front of them both. (Fieldnote)

In the above we see Dave’s lawyer looking at the plaintiff but avoiding looking at his client throughout proceedings, even when questioning him. The only time he does look at him is when destructive information is presented. The strategy of stoneface is not used, rather rapid blinking and looking at his client. Eyework can thus undo teamwork.

In this final section I have shown how teamwork and thus loyalty are accomplished in the courtroom. Defence lawyers are the directors of this team performance, faceworking to sustain the united reality and shared identity being conveyed and ensuring the coordinated conflict of the criminal trial flows unhindered.

To summarise, in this chapter I have analysed how defence lawyers talk about presenting themselves, others and the defence team and shown how this is



accomplished in the Swedish criminal trial with its inherent adversarial competing realities, in order to show the invisible rules of interaction guiding dramaturgical performances.

Central to the role of defence lawyers is the performance of loyalty and the accomplishment of the defence team. My analysis has therefore centred on how the abstract principle of loyalty is performed in a criminal trial and how teamwork is done. I have shown how the subtle and nuanced facework of defence lawyers remains aligned with the emotional regime of the criminal trial which may be seen in and is upheld by the interaction order, ceremonial order and emotional order. In the next chapter I continue to explore the emotions involved in these performances.

# Chapter 7: The Emotion Work of Defence Lawyers

As is now clear, my central premise is that the structurally embedded emotional regime of law forms the emotional performances of legal professionals (and indeed, lay participants). These performances are guided by unwritten rules pertaining to the specific role and thus principle one is performing. This is because, as we have also seen, there are no explicit guidelines beyond phrases such as having “good professional conduct”, and not being influenced by “personal gain or inconvenience or any other irrelevant circumstances” (Association, 2008, p. 4; Heuman, 2013; cf. Jacobsson, 2008).

In the previous chapter, my focus was on showing the invisible rules for how defence lawyers dramaturgically accomplish their role, now I turn to the emotional accomplishment by analysing how defence lawyers talk about emotions and emotion work and by analysing their emotional performances in the courtroom.

I will first discuss how defence lawyers give emotional accounts for their role performances before moving on to explore different emotion management strategies. Defence lawyers’ emotion talk and emotional performances reveal the social and professional expectations they perceive they are faced with pertaining to their legal role which demands that emotions are professionalised and rationalised. These expectations constitute a set of invisible guidelines for their role performance and a resource for emotion management (Jacobsson, 2008; Törnqvist, 2017; Wettergren & Bergman Blix, 2016).

Questions to be addressed here are as follows: How are emotions talked about and performed by defence lawyers? How do defence lawyers manage their own emotions and the emotions of others?

## 7.1 Managing own emotions

As I have presented in the chapter on previous research, the professionalization of everyday emotions is an integral part of many professions and involves rendering or managing inappropriate emotions into suitable ones (Hochschild, 1979, p. 551). My analysis shows that defence lawyers talk about “everyday emotions” (Ashforth & Humphrey, 1995) as inappropriate to their professional role thus requiring management into what I have termed “professional emotions”. These professional emotions are aligned with defence lawyers’ professional code of conduct which, in turn, upholds the separation of rationality and emotionality. This is exemplified by Charles who tells me that, “people act in affect. A lawyer must not do that” (cf. Association, 2008; Hochschild, 1979, p. 551; Wettergren & Bergman Blix, 2016).

I begin by showing how defence lawyers talk about and manage their own emotions and, in particular, the emotion rules for the performance of loyalty. I am thus interested in how they construct and uphold lawyer face with emotion talk.

### **How can you defend a rapist?**

In the introduction to this dissertation, I describe my interest in defence lawyers as partly stemming from the suspicion they are often viewed with by members of the public, the media, and indeed other legal professionals. In this study I have found that defence lawyers use their position in the legal system to explain, justify, create meaning and make sense of their role – that is, they give “accounts” (Baker, 2002; Ogletree, 1993; Rennstam & Wästerfors, 2015; M. B. Scott & Lyman, 1968, 1970). For instance, Andrew tells me,

if you work as a defence lawyer then you have to be convinced that every individual who is suspected of a crime deserves to have their case heard and they deserve a fair trial and they have the right to a defence. (Andrew)

Harry tells me that, as a defence lawyer,

you might have to represent someone who is accused of beating their child to death. They should not be exposed to a harder punishment than necessary. There is a legal system: a judge, a prosecutor, a lawyer and a suspect. The accused should be able to be represented by the law. (Harry)

Both Andrew and Harry are explaining their role based on their position in the legal system. All of the defence lawyers I interviewed gave similar accounts and also tell me that it is usual for them to explain it at social occasions such as dinner parties or family events. This can also be seen in an interview with a well-known criminal defence lawyer in Sweden who explains that when he is faced with the inevitable how-can-you-defend-a-rapist question at a social occasion he usually tries to,

glide out of the situation by pointing out that no-one is guilty before he or she has been sentenced and pointing out that everyone, including the person asking the question, wants to have a defence lawyer if they get into trouble with the law, and then it's pretty lucky that someone is willing to do it! (Olsson, 2017, p. 50).

The defence lawyers I interviewed thus used accounts to show their membership in a certain professional category - defence lawyer - as seen in the way that their actions and motivations are explained as stemming from their position in the legal system (Baker, 2002).<sup>76</sup>

This is necessary because, as Sandra tells me, people may initially have a sceptical attitude towards her role in defending someone accused of rape, “almost like I think that rape is good, that I put an ‘equals sign’ between them” (see Siemens, 2004). She is telling me that she is perceived by others as doing what sociologists have labelled “dirty work” (Emerson & Pollner, 1975, Hughes, 1962, Tata, 2010). Indeed, all of the defence lawyers I interviewed stated that they have faced such a “valuative enquiry” (M. B. Scott & Lyman, 1970, p. 84) which, many of them said, was not the case for prosecutors or judges (see also Bandes, 2006b). Defence lawyers therefore present, or account for, their role as defending the person not the crime which is a “bloody cliché” as Andrew puts it, but accurate nonetheless (Munukka, 2007; Wiklund, 1973).

Many of the lawyers I interviewed also present themselves as being motivated by a sense of justice - an “emotional purpose” (Schweingruber & Berns, 2005) driving them to fulfil their role obligations. It is associated with feelings of pride at performing a vital role: providing defendants with a fair defence and achieving the best possible outcome. This contrasts with feelings

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<sup>76</sup> I posit that defence lawyers present themselves as having a moral purpose that is line with their role, in the same way the honour of the civil servant is linked to his or her ability to execute the order of superiors, “exactly as if the order agreed with his own conviction (...) Without this moral discipline and self-denial, in the highest sense, the whole apparatus would fall to pieces” (Weber, 1946, p. 97).

of outrage that may arise when an injustice is perceived to have occurred (cf. Bandes, 2006b; Sarat, 1998).

Defence lawyers thus account for their legal role but they also account more specifically for the associated emotional performances and experiences. I have termed this latter form of accounting as “emotional accounts” (cf. M. B. Scott & Lyman, 1968; Jacobsson, 2008; Westaby, 2010). Whilst an accused rapist might awaken feelings of disgust or dislike outside of one’s role of defence lawyer, when one is in that role, such feelings are irrelevant. Emotional accounts are thus used to justify the absence of otherwise expected emotions. This, in turn, facilitates loyalty to the client, which as Siri says is “easier than you think”. She is therefore following the emotion rule that defence lawyers should not be influenced by personal feelings, in line with the professional code of conduct and emotional regime of law (Association, 2008).

Emotional accounts are therefore a form of “character work” (Strong, 2001) assuring others of the defence lawyer’s personal moral core. Consequently, defence lawyers must not only do “character work” (Strong, 2001) on behalf of their client in court, presenting him or her as morally upstanding as discussed in the previous chapter, they may also need to do it for their own presentation of self. Emotional accounts are also a way of maintaining face and managing eventual face attacks in order to ensure the interaction continues smoothly, for instance, at dinner parties or other social occasions (Goffman, 1956c).

Emotional accounts may thus be used as a strategy to reduce “emotional dissonance” (Hochschild, 1983) by reframing a dilemma in order to ensure that one’s emotional experience is in line with expectations (cf. Wettergren, 2010, p. 413). Defence lawyers talk about their professional role as shaping and even excluding emotional experience and moral judgement, enabling their role to be performed freed from such factors. This can also be a strategy for managing the emotions of others: attempting to allay fears or suspicions regarding their moral core.

### **If you want to win, be a prosecutor**

As already noted, around 93 percent (Nordén, 2015) of trials lead to a conviction due to the nature of the legal system as prosecutors do not bring a case to trial unless they determine that the evidence they have gathered will lead to a guilty judgement. So, how do defence lawyers continue to work in a role which almost always leads to the client being found guilty of a crime they claim they did not commit?

My analysis shows that defence lawyers give emotional accounts which align winning or losing with their role-based emotional purpose which, as we have just seen, is presented as fighting for justice. Winning is therefore seen in terms of achieving justice - providing the client with legal representation and achieving the best possible outcome for him or her. As Daniel says, “winning a criminal case doesn’t have to be about getting some freed, it can be about them getting the appropriate sentence.” Winning is thus not talked about in terms of conviction or acquittal as it might be viewed in the eyes of the media or general public, but rather in terms of role fulfilments: if one has fulfilled one’s role as a competent defence lawyer then this counts as a win. This is a form of emotion management making it possible to sustain one’s self-image as an accomplished lawyer – lawyer face - even in the face of repeated “losses” (cf. Törnqvist, 2017). The otherwise expected emotions of disappointment associated with losing are thereby managed.

Another strategy for accounting for losses is for defence lawyers to present themselves as the underdogs (as also noted in the previous chapter), indeed Lena tells me, “if you want to win then you should probably be a prosecutor instead” (cf. Pizzi, 1999). Losses are accounted for as a result of the justice system, for instance, Lena describes the workload of preparing a case for trial as being unequal between prosecutors and defence lawyers, saying, “prosecutors have far more resources behind them, I mean, prosecutors work with a load of police (...) Having a client to defend, you are very alone.”

Losing is thus presented as arising from external factors, such as the client not having a strong enough defence case to begin with. I have seen a similar tendency to place the blame on situational factors amongst law students accounting for academic failures by blaming the teachers (for example, for not preparing the students correctly or for setting an exam that was too difficult) (Flower, 2013).<sup>77</sup> Some lawyers even remove themselves one step further stating, “I don’t lose a case, my client does”.<sup>78</sup> This can be seen as a protective face saving strategy and a way of the defence lawyer cooling themselves out in a situation where they are at risk of humiliation (Goffman, 1952, 1956c).

Whilst some of the lawyers talk about winning in terms of professional competencies, viewing one’s own role as the decisive factor in winning or losing a case can be problematic according to Andrew as then a loss can be

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<sup>77</sup> The wording of a judgment is important in order for recipients to accept its legitimacy and, I would add, can also be seen as a way of cooling the “losers” out (Graver, 2010, p. 125).

<sup>78</sup> For an extreme example of this Frederick Duchardt the defence lawyer in the USA who has had the most clients sent to death row denies that his repeated losses are related to his performance (D. Rose, 2016).

seen as arising from one's poor performance. This may, in turn lead to feelings of shame.

### **“Keep that wall in place”**

Thus far I have shown how defence lawyers emotionally account for their role and professional losses and I now move on to show how they talk about emotions and the strategies they use to manage their own emotions.

I begin with an excerpt from my interview with Andrew where he talks about some of the difficulties of working closely with clients and the emotion work demands it places on him. He begins by talking about the hopelessness in defending clients who are obviously guilty saying,

sometimes, the clients, you can feel like this: come on, seriously? What the hell am I doing? (...) You begin to doubt your professional role - that everyone has the right to a defence. It's there that it starts to crack when I feel, come on! An example: you're sitting with a client who is accused of a number of violent crimes for which there is solid evidence, it's not just testimonies from the plaintiff but also there are maybe medical records, there are witnesses, I mean, like, [the client] is fried. Full stop. But the client is in their own little world: "this hasn't happened. It wasn't me." And, sometimes, it can feel a bit like this: seriously, I mean, can't you just open your eyes and see how it looks? (Andrew)

Andrew then goes on to discuss how he responds to a similar version of the how-can-you-defend-a-rapist question, namely "how can you defend a paedophile?" He dwells not on how he responds to others' questions regarding this, but instead on how he reasons with this question on a more personal level:

It can feel a bit like this: why am I sitting here, trying to give you as good a defence as possible when you clearly aren't listening to anything I say (...) People ask, "can you take any case?" "How can you defend a paedophile" for example, that kind of thing. Sure, at times you can ask yourself, if you're sitting in that kind of trial where there have been so many atrocities and perhaps there is overwhelming evidence against the client, then I think that you can reason internally, on the personal side, now let's grit our teeth and go forwards and try desperately to keep that wall in place between the professional role and what it demands of you and perhaps your personal feelings. (Andrew)

Andrew gives us a glimpse of the smörgåsbord of emotions that he should manage in his professional role towards the client such as irritation, doubt, and disgust as well as frustration and anger towards the legal system as a whole

(see also Törnqvist, 2017). I will focus on these specific emotions shortly, but now I would like to focus on the way in which these emotions are talked about.

I have already touched upon how emotional accounts present personal feelings as irrelevant to the professional role and my analysis shows further that emotions are talked about as possible to “switch off” or “suffocate” (Hochschild, 1983; Maroney, 2011a; R. I. Sutton, 1991cf. Harris, 2011). For instance, George tells me that when he had to look at photographs of child pornography that had been introduced as evidence he “just sat there and categorised the photos” according to severity. He goes on to say “I didn’t have any of those feelings [of disgust], I just [did it]”.

This ability to “switch off” emotions is presented by defence lawyers as a strategy for professional survival (cf. Kemper, 1978a; Westaby, 2010). Andrew tells me that at his law firm,

we usually say that, when you come, when you are new, then you are filled with idealism - belief in the future - you are going to stand there and weigh the scales of justice and everything. And you take a lot of things personally. You get personally engaged. If you are going to make it, if you are going to work with criminal cases, then you have to develop a circuit breaker inside yourself [points to the base of his skull], which says, “now I am at work”, “now I am not at work”. Because, frequently, you are in investigations and it can be anything from criminal investigations, if you sit with clients who are suspected of atrocious deeds and if you take it all personally I mean, let it in, and take it home with you, then you don’t feel well. You don’t do that. You have to be able to switch off, that’s how it is. (Andrew)

This finds support in other interviews, for instance, Daniel tells me, “you have to be able to cut yourself off (*avskärma sig*) because otherwise, ultimately, I don’t think you can cope with working [as a defence lawyer].” Similarly, Perry compares his role to that of medical doctors, saying, “you have to be professional. I mean, if it’s a doctor taking care of someone who is going to die, then they also have to suffocate their feelings and I would say that we have to do that too.”

This expectation is talked about as something that defence lawyers are socialised into as Andrew says above: when you are new, you take the work personally and as Martin also says, new defence lawyers should learn they “have to switch off and look at everything with professional eyes.”<sup>79</sup>

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<sup>79</sup> However, Martin goes on to tell me that this can lead to you having an “occupational injury - you become a bit like a machine” akin to the flight attendants in Hochschild’s (1983, p. 135) study who “go into robot” as a form of distancing themselves from the job.



Defence lawyers' emotion talk thus presents a "wall" between personal and professional emotions. Everyday emotional experiences and professional emotional experiences are presented as controllable things lying within them - psychological states that can be suppressed or turned off and on (cf. Maroney, 2011a; Burkitt, 2002). We see that when discussing professionalism, defence lawyers often neglect the interactional nature of emotional experiences and their "sociality" (Ahmed, 2004; see also Collins, 2004; Durkheim, 1912/1995).<sup>80</sup>

The illusionary division of rationality and emotionality is thus upheld and reproduced by defence lawyers by presenting emotions as possible to "switch off" or "suffocate". However, as my analysis will go on to show, this presentation can be more appropriately depicted as a process of strategically managing emotions (Wettergren & Bergman Blix, 2016).

### **"You look at it very clinically"**

My analysis of defence lawyers' emotion talk regarding disgust shows that rather than using a strategy of suppression as presented by the lawyers above for these inappropriate feelings, it is more accurate to describe an engagement and transformation process wherein everyday emotions become professional emotions (cf. Lehrberg, 2014). This is a cognitive process which involves engaging with the object of emotion – for example child pornographic images as George described above – and first appraising it as something that is morally offensive before then reappraising it either by changing how it is perceived, how it is evaluated, or according to the goal (Maroney, 2011a, p. 1508; Maroney & Gross, 2014). This situated professionalisation of everyday emotions thus entails engagement and transformation - not suffocation or suppression - transforming an everyday emotion into a professional

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<sup>80</sup> However, it should be noted here that in certain instances, the social aspect of feelings is acknowledged, for example, as I show later on in this chapter, liking a client can be a more open source of motivation. This ambivalence towards acknowledging the social construction of emotions and their presence in all interactions can be seen in terms of a tension between presenting oneself as a professional actor which traditionally involves denying the role of emotions as per the emotional regime of law, and talking about oneself from a more personal frame (Goffman, 1986). (Linked to this, in a previous study I showed how law students signal when they are switching from a professional statement to a personal statement by sniffing which I termed the "emotional sniff" as it conveys a shift in emotion norms (Flower, 2014)). It also points to the social expectation that negative emotions should be controlled (Daun, 1998; P. N. Stearns, 1994).

appropriate tool (cf. Harris, 2002; see also Bandes & Salerno, 2014). This is described by Siri who says,

if you look at physical examinations and you see, like, a close up of someone's anus basically, yeah, you look at it very clinically. It's a photo that I don't really want to see but I have to look at it. (Siri)

Siri is describing how she engages in the image and appraises it as a photo that she doesn't really want to look at, then reappraises it in order to perceive it as evidence. Peter also describes this, telling me,

when I read [the investigation report], I focus on the evidence, what is there? Are the bruises different colours? Then they weren't caused at the same time. Are there a lot of bruises? This could indicate abuse of alcohol, especially if the colour is different. (Peter)

Siri, Peter and others present this transformation as cognitively re-defining the image to legalese: to finding evidence that supports or opposes one's case. Defence lawyers thus learn to define the viewing of gruesome evidence through a legal lens (Maroney, 2011a; A. C. Smith & Kleinman, 1989; see also Wettergren, 2009). This involves a process of engagement and cognitive reappraisal in order to normalise emotional experiences (Maroney & Gross, 2014, cf. Harris, 2002). Looking at explicit or unpleasant images thus becomes normalised - just another part of one's job. This has already mentioned by George when he described looking at child pornographic images, and is also described by Lena here who says, "you look at it very technically somehow [laughs]. You talk about and read about things that, yeah I mean, it becomes a job, law, nothing else, that's how you have to tackle it." Andrew likens this to the normalisation process that pathologists go through, telling me that when he is looking at gruesome images,

you look at it a bit clinically, I mean, I think that it's kind of like, when I talked with a doctor who was a pathologist, then the first time they were going to do an autopsy on a body, like, "eeeeeeew" [draws back in disgust] like this, but, after a while then it becomes scientific work, it's not, I don't know what to call it but you distance yourself, you see it in another way. (Andrew)

This normalisation enables the achievement of specific goals whilst simultaneously ensuring that emotional experiences, expressions and performances are in line with the emotional regime of law (cf. Ashforth & Humphrey, 1995; Cahill, 1999; Maroney, 2011a; A. C. Smith & Kleinman, 1989).

Again we also see here that defence lawyers use emotional accounts to explain their (lack of) expected emotions and use the law as an emotion management strategy (cf. M. B. Scott & Lyman, 1968). This is akin to the way that medical students use science as an emotion management strategy by defining contact with dead bodies and intimate examinations of patients as part of scientific medicine (Cahill, 1999). In this way the lawyers, like medical students, present themselves as able to separate their feelings from the object invoking them and instead focus on the “impersonal facts of the subject matter” (A. C. Smith & Kleinman, 1989, p. 61). Their emotion talk presents a division between emotionality and professionalism that is also in line with the emotional regime of law (Barbalet, 2001).

This process of learning to manage one’s emotions – the professionalisation of emotions – in particular, disgust, can be seen in the way that Andrew talks about gruesome images as becoming scientific after one has worked as a defence lawyer for a while. Vera also describes how a young intern working at her law firm first reacted to seeing photographic evidence in a murder case:

She was completely horrified, she just “aaaaaaaaaah! [screams] No, I don’t want to see, it’s a lot of blood, I’m sensitive when it comes to blood” and all that whilst the rest of us, we were just, “yeah, ok” [laughs]. She was like, completely new, but of course, it’s like doctors, I mean, you get used to it, you don’t see it in the same way as you did the first time you saw it. (Vera)

Here we find support that defence lawyers are expected to learn to look at evidence, such as photographs or autopsy reports that would be considered gruesome in other situations without reacting in the same way as those who are not accustomed to viewing such material.

I posit that defence lawyers learn this transformation and normalisation process via professional emotional socialisation as there is little mention of emotions or emotion management strategies on law programmes in Sweden (Flower, 2014; cf. Boon, 2005; Cahill, 1999; L. C. Harris, 2002; Westaby, 2010). The focus on law programs is instead on learning analytical skills, rather than interpersonal skills leaving law students and lawyers to learn strategies implicitly (cf. Hess, 2002; Lehrberg, 2014).<sup>81</sup> The goal is for this emotion management to become habituated (Bergman Blix, 2010). As we have already

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<sup>81</sup> Furthermore, the management of emotions is seen to be a tacit skill and is linked to high academic achievement therefore it may be assumed that the soft skills of lawyering come naturally in high achieving law students (K. M. Macdonald, 1999; Somech & Bogler, 1999).

seen, this socialisation process also entails to learning to “switch off” inappropriate emotions and act professionally.

Unlike medical students who may act “as if” a body was no longer a body but rather a cat or a toaster in order to transform it into a non-specific thing, the defence lawyers I interviewed did not talk in such terms (Hochschild, 1983; A. C. Smith & Kleinman, 1989). The body remains a body but it is transformed into evidence through a process of making discomfort with anatomical issues personally insignificant yet legally important (cf. Lief & Fox, 1963).

The underlying emotion rule is therefore that disgust is an inappropriate everyday emotion that should be managed (cf. A. C. Smith & Kleinman, 1989).

Although my focus at this point is on the management of the defence lawyer’s own emotions, in particular disgust, it is relevant to show here that there is also a tactical dimension to this. By succeeding in managing one’s own emotions and looking at gruesome pictures, one is also, in extension, managing the emotions of others as Andrew describes here,

I look at it from two perspectives: evaluating the evidence, how can this be tied to my client in one way or another and then it’s less about pictures and more about the technical investigation that has gathered evidence. And then of course, at the same time, I keep in mind that ok, how is this going to influence the court if it’s shown and what can I do to dampen the possible impact that it might have on the trial? It’s those two [perspectives]. (Andrew)

George also talks about this when he tells me more about looking at child pornographic images which had been introduced as evidence:

It’s a bit tactical because I think that, in this case, by avoiding looking at these pictures at the trial, then I got the judge on my side. Uh, so I created a more positive climate for my client because, uh, they were not nice pictures. I think that the court would have been negatively influenced in relation to my client by showing these pictures so it was also a tactical reasoning on my side. (George)

George and Andrew thus reappraise images in order to achieve a certain goal (Maroney, 2011a). Learning to look clinically at gruesome details is a vital “trick of the trade” aimed at enabling oneself to look at the images professionally but also in order to prevent shocking images being shown in the courtroom which may negatively influence the judges.<sup>82</sup>

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<sup>82</sup> This also implies that emotion management strategies used by defence lawyers are learned after the law program as prosecutors, judges and defence lawyers all study on the same law program, choosing to specialise after the education is completed.

We also see here that Andrew and George have the shared expectation that the lay judges and judges may not be able to view the photos through the same “rational” lens as they themselves view it – that the judges would not be able to transform personal emotions into professional focus on the evidence. This, in turn, might influence their judgement. So, whilst we saw in the previous chapter that defence lawyers talk about their performance as not influencing the judges, the presentation of gruesome photos is seen as swaying them. I suggest that this is because photos are considered as evidence which should be judged according to their legal value, performances are not. This presentation upholds the presentation of the legal system in Sweden where “it is the facts that are of importance” as Perry said in chapter five.

### **“Even if you think the person is a real asshole”**

The role of defence lawyer involves client contact and, due to the interactional nature of emotions, this may lead to the emergence of emotions in need of management in order to perform one’s professional role. I will now focus on how specific emotions are talked about.

#### *Dislike and fondness*

Personal feelings towards a client should not influence one’s performance according to the Swedish Bar Association (2008), irrespective of what these feelings might be. Siri describes this succinctly when she tells me, “you want to do your best even if you think the person is a real asshole, you still want to do your best. You don’t want to go to court and make a fool of yourself.” Siri is describing the importance of maintaining face in the courtroom (Goffman, 1956c). Her fear of being negatively evaluated in the eyes of others, that is, the fear of embarrassment arising from deviations in her professional role performance, leads to an increased awareness, and increased management, of inappropriate emotions (Cooley, 1922; Flower, 2014; Scheff, 2000).

Siri is also presenting professionalism as entailing the separation of her everyday emotions of dislike from her role-based professional emotions. This successful separation leads to feelings of pride in her performance. Once again, this emotion talk upholds the division of emotionality and professionalism. However, whilst disliking a client is presented as an inappropriate emotion in need of management, liking a client can be an accepted source of motivation as Andrew tells me,

if you take your professional role seriously then you treat [all clients] exactly the same. Full stop. But, I'll put it like this [gets a pen and places it on the desk in front of him], here are all the measures I can take and here is the line for all the measures that are required in this specific case. If I have fulfilled these measures then I have fulfilled my obligations as a defender in relation to the ethical rules and legal requirements and everything. Full stop. You never mess with that but then, of course, I'll put it like this, if I have a client who I like, then perhaps I go [shows moving over the line where the pen is lying on the table]. It's not that I do a better or worse job in relation to procedural responsibility but that maybe I do that little bit extra. (Andrew)

Disliking a client is presented as something that does not hinder or inhibit their role, however liking a client is a legitimate motivator of performance (cf. Lipsky, 1980). This shows a new aspect of emotion management theory. Hochschild (1979, p. 564) discusses the rules regarding the extent, direction and duration of feelings. However, here the defence lawyers are talking about how much a feeling is permitted to *influence* them. Defence lawyers therefore present a distinction between positively valenced feelings<sup>83</sup> (liking a client) which are permitted to influence one's performance, and negative valenced feelings (disliking a client) which should not influence one's performance at all (cf. Hochschild, 1983; Maroney, 2011a; R. I. Sutton, 1991). Negative emotions are thus seen as inappropriate and in need of control whilst positive emotions are more acceptable (cf. Wettergren, 2009).

### *Irritation*

In any social interaction, personal feelings towards the other interactant will arise. This is also the case for the interactions between defence lawyers and their clients. For instance, when I asked Perry what the biggest cause of irritation is in his professional role he replies,

Perry: The thing you often get most irritated at is, and I hardly dare to say it, but it's your own client.

Lisa: Because? Or what is it that makes you irritated?

Perry: They're stupid. Yes, it's often so. You're not in court because you're an honourable and honest and wise person, many [clients] can be pretty stupid.

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<sup>83</sup> The term "negative emotions" is misleading as what classes as a negative emotion is contentious and often deemed to be negative in a moralistic sense (Kristjánsson, 2003).

Although Perry's remark is unusually outspoken, Lydia also tells me that she can feel irritated at clients who don't make use of her services, saying "I can think that it's a bit rubbish if they haven't been in touch before [the trial] because often, it's enough with a phone call, it's nothing!" As both Perry and Lydia talk openly about feeling irritated by their client, it signifies that it is acceptable according to the feeling rules. Furthermore, irritation may even be displayed more explicitly in the backstage situation of our interview. For instance, during my interview with Perry a client rang him repeatedly and sent text messages leading him to say in response to a question I had posed, "can you repeat the question? I get so distracted by all this with the client, he drives me insane!" This irritation should, however, not be displayed towards the client in client meetings (perhaps only in extreme cases) or in the courtroom as Martin says "you can get irritated with the client, but of course, you don't show that." In order to perform loyalty and teamwork, inappropriate emotions, such as irritation, must be managed (cf. Roach Anleu and Mack, 2017, p.168).

Here we can see the differing contexts of the emotional regime of the criminal trial at play: irritation with a client may be felt and displayed in the backstage of an interview situation with a researcher, however, such emotions are prohibited to be displayed in the frontstage context of the courtroom and may be shown to varying degrees in the client meeting. Irritation is thus permitted according to the feeling rule, but its display is dependent on context.

## **Making someone cry**

Later on in this chapter I will highlight how the management of others' emotions inherently demands management of the defence lawyer's own emotions. However, before this, I would like to focus on the defence lawyer's emotions in this process. I will use the situation of making someone cry as an example.

In chapter five I presented my fieldnotes from an assault trial in which the defence lawyer began her closing speech by saying "this is a sad story" before refuting the prosecution's claims that her client assaulted the plaintiff, stating that the documented injuries resulted from her client attempting to save the plaintiff. She is therefore openly threatening the face of the plaintiff by questioning her version of events, and in doing so, brings the plaintiff to tears (Goffman, 1956c). This is not a strategic production of emotions in the plaintiff aimed at achieving a specific goal, rather I see it as an unintentional side-effect (cf. K. Tracy & Tracy, 1998). Indeed, Lena talks about how it could be detrimental to the case as "you don't want [the plaintiff] to get sad because

then the sympathies [of the court] end up there and not with you.” Although there may be occasions where one might want to make one’s client cry, for instance, in order to produce sympathy, this is unusual according to Lena. Face threats thus have an inherent emotional aspect.

Producing feelings of sadness in others can lead to feelings of discomfort arising in the defence lawyer. As Lena describes, “it’s never fun being the one asking the questions that make someone break down.” Such feelings should be managed in order to display loyalty to one’s own client.

This is important because tears are “mediated by thought, they depend on how we perceive the world” (Neu, 2000, p. 14), consequently a crying defence lawyer could indicate that they perceive the plaintiff’s version of events as credible, a version of events which one’s client might insist is inaccurate. The underlying meaning conveyed in crying risks being interpreted as believing in the plaintiff’s version of events, therefore showing disloyalty to the client by deviating from their shared reality. Crying could therefore jeopardise the team performance and the performance of loyalty to the client (Goffman, 1959).

We therefore see that sadness is often talked about as being ranked high on the hierarchy of inappropriate emotions for defence lawyers in the courtroom (cf. Schuster & Proppen, 2011). Sandra talks about how the client could interpret their defence lawyer getting upset by the plaintiff’s version of events. She tells me,

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

The social awkwardness of making someone cry can be emotionally accounted for by justifying one’s actions based on one’s professional role (M. B. Scott & Lyman, 1968, 1970). For instance, towards the end of this chapter I present an audio-recording from a trial where the defence lawyer’s examination of the plaintiff makes the plaintiff cry and remark that she finds the situation “terribly unpleasant”, to which the defence lawyer responds, “I apologise if it can feel like that but I’m trying to investigate your recollection and then I have to be able to ask these questions.” In this way the defence lawyer is explaining that his performance is appropriate and implies that any face attacks, which could be classed as deviant in another context, are an acceptable aspect of courtroom interaction - providing they are courteous and in line with the ceremonial order – and consequently they are unintentional (Archer, 2011a). This is another example of using one’s legal position to account for one’s emotional



performance which may lead to socially inappropriate emotions in the other interactant.

### **“Fun at the office”**

We have seen that there are a number of inappropriate emotions in need of management in order for defence lawyers to accomplish their role. As I mentioned in the chapter on theory and concepts, the emotional regime of law provides the framework for emotions in legal interactions taking place in different settings, for instance, the courtroom (which is the focus of my study), other areas of the courthouse, and law offices. These spaces can be discussed in terms of being frontstage, where the team performance takes place, and backstage, where the performance is prepared and problems or frustrations may be ventilated (Goffman, 1959). The law offices can consequently be seen as backstage: a place where the frontstage performance of the trial is prepared – both lawyer face and team face are worked on. Although it should be noted that the law offices can also be seen as both frontstage as lawyers may still be performing in their role of defence lawyer when meeting clients there, I would still argue that, even in the lawyer-client meeting there is a relaxation of the rules of emotional interaction, particularly in contrast to the stricter rules to be followed in the courtroom.

The backstage nature of the law offices with its relaxed emotion rules is described here by Vera who tells me that an intern at her law firm once remarked that it was sometimes like a “playground” at the law offices as there was so much laughing and joking. Vera says,

we work with tough things every day and therefore it’s incredibly important to have fun at the office. That you can admit if you have made a mistake. That you can go and ask for help. I mean, all of that, you have to have something easy-going and we always have fun here and laugh and joke, and like, laugh every day. We have had interns who have said, “sometimes it’s like a playground here”. You see, they come with a completely different seriousness and don’t understand that you need this contrast, so that when you do the important stuff, you can go out in the corridor and joke a bit, kid each other and tease each other and then go and work again. (Vera)

Vera presents the law offices as a place where she can relax and have fun which she sees as a vital aspect of being able to fulfil her professional role and obligations.

This backstage emotional space is also a place where professionally inappropriate emotions can be vented which arise from working with “other

people's shit or society's or whatever you want to call it" as Andrew says (cf. Clark, 1987; Fineman, 2006; Goffman, 1956c; Korczynski, 2003). Returning briefly to the "crying taboo" (Lively, 2000, p. 39) in the courtroom, whilst this is unacceptable for litigators in the USA in both backstage and frontstage areas - both the law offices and the courtroom - in Sweden the crying taboo only pertains to display rules in the courtroom.<sup>84</sup> Crying is therefore acceptable in the backstage setting of the law offices which can constitute an emotional refuge from the stricter emotion rules of the courtroom (cf. Reddy, 2001, pp. 128-129).

The law offices can thus provide a safe haven where the rules governing frontstage interactions are relaxed, permitting different emotions. Losses of face can be dissected: embarrassments and mistakes revealed and processed and face given to colleagues - even pride from successfully questioning a witness can be shown, a display that is strictly prohibited in the courtroom (Goffman, 1956c).

The backstage office is therefore a place where potentially disruptive emotions are encapsulated and segregated from one's ongoing role of defence lawyer thus showing the hierarchy of emotions (Ahmed, 2004; Ashforth & Humphrey, 1995, p. 104; cf. Roach Anleu & Mack, 2005). This is a place where colleagues can reciprocally support each other in order to ensure that they can continue to perform their role requirements appropriately (Hochschild, 1983; Lively, 2000; Wharton & Erickson, 1993).

The "emotional buffering" (Scarduzio & Tracy, 2015) as presented by the lawyers I spoke to, differs to that found in studies in the USA which showed that the need for such emotional support results from one's position in the occupational hierarchy (Lively, 2002). In contrast, the lawyers I interviewed talk about the stressors that arise from their occupational role in the legal system, that is, it is predominantly their client contact which leads to the need for buffering (cf. Lively, 2000).

It should be noted that such buffering systems are not taken for granted as an important part of professional life for defence lawyers, as both Daniel and Sandra had experience of working at law firms where "communities of coping" (Korczynski, 2003) were absent. It appears as though the emotional climates are different at different law firms, with some firms encouraging the display of emotions that may be deemed inappropriate such as sadness. Others appear to

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<sup>84</sup> However, it should be noted that on occasion it would be permitted for a defence lawyer to cry, particularly if it is the client's version of events that has been moving, or in a case where the client has confessed to the crime. Thus, as we will soon see with empathy, the trigger of the emotion is the deciding factor.

follow the pattern found in the USA where “acknowledging the role of emotion may brand one as not merely weak, but downright unlawyerlike” (Bandes, 2006b, p. 5). I see this in terms of differences in the legal settings that constitute backstage and frontstage settings which, in turn, shows how strict and how encompassing the societal emotional regime of law is (cf. Bergman Blix & Wettergren, 2015, p. 3). In Sweden, the emotional regime may be deviated from in the refuge of the law offices where display rules permit the expression of otherwise inappropriate emotion, whereas in the USA the display rule prohibits such expressions, both in the frontstage of the courtroom and the backstage of the law offices.

### **“I have to be able to have empathy”**

Empathy is presented by the defence lawyers I interviewed as a vital tool of lawyering. My analysis of the way in which they talk about this - their empathy talk – shows that it upholds a traditional approach to empathy as constituting two separate processes: cognitive empathy which is presented as understanding the other’s feelings and which is associated with rationality, whilst affective empathy is talked about as emotionally engaging in the other (feeling their feelings). Accordingly, their empathy talk upholds the emotional regime of law by reproducing the dichotomy between rationality and emotionality. This stands in contrast to the emotion sociological approach which sees empathy as inherently and simultaneously cognitive and emotional (see also Clark, 1997).<sup>85</sup>

Defence lawyers also talk about using empathy to achieve specific goals. I will now present a typology of this “strategic empathy” (cf. Davis, 1997; Wettergren & Bergman Blix, 2016) and explore their empathy talk.

#### *Relational empathy*

Empathy is presented by the lawyers I interviewed as being used to create a relationship to the client. This type of empathy which I have termed “relational empathy” entails understanding the situation and emotions of the client by

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<sup>85</sup> Empathy is thus a social construction - an interactional and interpretive process whereby the “empathizer imagines and shares the thoughts and feelings of the empathy recipient” (Ruiz-Junco, 2017, p. 6; Cooley, 1922). Empathy can be automatically activated when we perceive an emotional other, however it is also possible to control empathy by cognitively re-framing one’s perception, or by not thinking about the situation (suppression), or by avoiding emotional situations (Hodges & Biswas-Diener, 2007; Hodges & Wegner, 1997; Singer, Seymour, O’Doherty, Dolan, & Frith, 2004 cf. Maroney, 2011a). Empathy thus entails a clear division between self and other, that is, one is aware that the source of emotion is someone else (Cuff, Brown, Taylor, & Howat, 2016).

taking his or her role in order to build the lawyer-client relationship (see also Bandes, 2006b). Empathy is thus used to build the defence team.

Defence lawyers present the empathy work of teamwork as requiring the management of inappropriate emotions and the display of emotions appropriate to an empathic demeanour when talking to clients as Lena explains,

I try to show clearly that I don't think it's tough listening, I mean, I listen, you can tell me anything, I won't be emotionally affected by it. Because then I have, or at least, I've understood and tried to learn through the years, that if you think it's tough then they eventually notice that, and they try and gloss over the truth and that's why I try and say that you can tell me anything, I don't think it's tough, and that I, yes, that I'm here, I don't judge anyone. (Lena)

Lena is saying that displaying empathy when meeting the client, may involve managing away personal emotions of discomfort, dislike, disgust or surprise in order to encourage them to tell their story. Lena also says, "I try and show that I really understand their feelings because otherwise I don't think they're going to open up if I just sit there." By managing these emotions, she believes that she is able to produce the appropriate countenance and produce feelings of trust in the client.

Lena is also saying that an important aspect of this relational empathy is communicating to clients that she does not morally judge them which she accomplishes by "showing clearly" which I interpret to mean that she uses emotion work. This means that teamwork may also entail the performance of the suspension of moral judgement in order to convey the joint identity and in order to be able to unite behind a shared reality (Goffman, 1956c). In this way, the relationship of these teammates differs from other relationships where moral suspension is not required (cf. Jacobsson, 2008; Goffman, 1972).

Relational empathy is also presented by the lawyers I interviewed as an important tool not just to one's client but to others during a trial. Lo, another criminal defence lawyer I interviewed, describes how this is important as she "needs to create a relationship to [others] in court, even if it's just for the short time you're in there."

Defence lawyers talk about other legal professionals sometimes lacking relational empathy. In particular this failure in judges is talked about disparagingly. For instance, all the defence lawyers I interviewed present themselves as understanding that a trial is not just about the law, rather it may be a life-changing event or the culmination of months of worry and may constitute a social situation filled with uncertainty and emotional strain for defendants.

Lo also tells me that she can get irritated at judges who she perceives as not understanding that participating in a trial can be very difficult, for elderly people in particular. Judges are also criticised by Lo as well as Lena for not being able to understand the emotional despair and life experiences that can lead to a crime being committed. Lo says that,

in criminal cases there are so many situations to understand. I mean, many of the people we represent are young people who see things in a completely different way than the older judges see them perhaps, so I think that's probably quite important, and I think that they, they have perhaps a bit of a sheltered life in court. As I say, we meet the clients more. (Lo)

The empathy of judges is thus questioned at times, in particular, their inability to be able to place themselves in the shoes of those from a different socioeconomic background.<sup>86</sup> Judicial emotional understanding is therefore expected by Lo and Lena (Bandes, 2009). Defence lawyers, on the other hand, present themselves as being able to understand their clients' situations more easily due to the nature of their role which demands client contact, unlike judges (and prosecutors). This supports my claim that the emotion work demands on defence lawyers are higher than for other legal professionals.

Relational empathy is presented as pertaining to a rational understanding of the client's situation and emotions, but without emotionally engaging in the client: without feeling their feelings. Here, it should be noted that defence lawyers do present themselves as engaged in client's cases in terms of wanting to attain the best possible outcome, however, they present themselves as emotionally unengaged in the client's feelings (cf. Kemper, 1978a). The beneficial aspects of emotional engagement are not talked about in the interviews, with perhaps the exception of discussing how liking a client can lead to increased motivation (cf. Bandes, 2006b, p. 24). There is thus a resistance to talking about the beneficial aspects of emotional engagement, such as helping to build trust between lawyer and client (Genty, 2000; Gerarda Brown, 2012; Westaby & Jones, 2017). Defence lawyers' relational empathic talk thus reproduces the traditional emotional regime of law by presenting it as possible to separate rationality and emotionality.

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<sup>86</sup> This suggests the need for empathy education in order for judges to be able to understand a defendant's background (cf. Bandes, 2017; see also Brunero, Lamont, & Coates, 2010).

### *Preparatory empathy*

Empathy is also presented by lawyers as being used to understand how others, such as the judge and the prosecutor, will view the case. I have called this “preparatory empathy” as it is used in preparing for trial. Andrew tells me, “I think that you have to have empathy (...) to put yourself in someone else’s shoes in order to be able to see the case from all sides.” Andrew talks about empathy as a necessary lawyering emotional tool, similar to the way in which prosecutors use empathy (cf. Wettergren & Bergman Blix, 2016). Both prosecutor and defender need to be able to determine the strength of the case which, for the prosecutor, leads to the decision to press charges or not and for the defender, leads to them determining which parts of the client’s version should be over-emphasised or under-emphasised (cf. Lehrberg, 2014, pp. 28-29).

Consequently, preparatory empathy highlights a time dimension to the concept of empathy as defence lawyers should use their empathic imagination to understand how the prosecutor and judge will view the case at a future point (see Cooley, 1922). Similar to relational empathy, preparatory empathy is talked about in rational, cognitive terms in order to anticipate how others will understand the case at trial.

### *Strategically directing empathy*

Empathy is also talked about as being strategically directed by defence lawyers during the trial in order to manage the emotions of others in the moment (cf. Bandes, 2006b). An example of this can be seen in the following excerpt from my fieldnotes where the defendant is accused of assaulting a civil servant. We join proceedings during the closing speech, after the defendant has left the courtroom having reacted strongly to evidence given by the plaintiff:

The defence lawyer says his client is diagnosed as having problems with social interaction and communication, and therefore easily feels threatened. The plaintiff’s evidence led to his client feeling threatened, which is why his client reacted so strongly. The defence lawyer states that this is obviously not the best thing that could have happened, but that it can also be used to explain the assault that his client is accused of, as his client also felt threatened at that time. He asks the court to use his client’s behaviour in the courtroom to try and understand how his client must have felt when being confronted by the civil servant – his client felt threatened and had to defend himself. His actions should therefore be seen in terms of self-defence. (Fieldnote)

We see here that the defence lawyer is directing the court to put themselves in the shoes of his client, implicitly saying: “you saw how he reacted here when

he experienced being under pressure, imagine what he must have felt during the incident itself.” The defence lawyer is encouraging the judges to emotionally engage in his client’s feelings at the time of the assault. This in turn may lead to the charges against the client being viewed as a less serious crime. This strategic direction of empathy is therefore also a form of factwork – a dramatic production aimed at directing the judge’s attention to certain facts (cf. Dershowitz, 1986; Ebervall, 2002; Goffman, 1972; Potter, 1996).

My findings thus partly support previous research indicating that “empathic communication is a critical dimension of lawyering.” (L. Fletcher & Weinstein, 2003, p. 135; see also Westaby, 2010; Westaby & Jones, 2017). I say it only partly supports this, as emotional engagement with the client is not openly acknowledged by the lawyers I spoke to indeed, the successful use of empathy is talked about as entailing the separation of emotion from cognition and is also discussed as necessary to control as I will now show.

### *Controlling empathy*

My analysis up until now shows that defence lawyers depict their work in a way that uncouples emotional understanding from emotional engagement. Rationality and emotionality are thus separated. Emotional understanding is presented as a beneficial lawyering tool however even this should remain under control as Andrew says, “I have to be able to have empathy (...) but at the same time I have to control it so that it doesn’t take over.” Andrew says that too much emotional understanding can lead to him becoming emotionally engaged which then risks “taking over” - becoming overly-involved with the client (Clark, 1987; Cooley, 1922; L. Fletcher & Weinstein, 2003; Goffman, 1957; Ruiz-Junco, 2017; Wettergren & Bergman Blix, 2016). This, as we have already seen in the previous chapter, can lead to one being viewed as a deviant interactant. Such a break in the empathy rules is consequently considered unprofessional.

Sandra also talks about controlling herself from taking the client’s role *too* much, saying,

I need to stay cool, I can’t give way, and somehow burst into floods of tears and think about my own children and all the other terrible things, because it’s a lot - another person showing you their feelings - that you enter into something and it’s like, there’s no room for that. It’s not why I am there, to share all of these feelings. I am there to take care of my client’s interests and the best way of doing that is not by me bursting into floods of tears. (Sandra)

What is interesting is that Sandra tells me in this excerpt that she has to do emotion work in order to not cry – she describes how she has emotionally engaged in the client’s feelings and appraised that she should not react on them (Maroney, 2011a). Sandra is describing the constant simultaneous presence of emotionality and rationality whilst, at the same time, denying it. I argue that this emotional control and resistance to the acknowledgement of emotions stems from the emotional regime of the law which encourages and reproduces the divide which supports strict emotion management and focuses on rationality. Linked to this is the finding that defence lawyers talk about the need to “control” empathy. This, in itself, implies emotion work.

Defence lawyers thus present themselves as having “empathic walls” (Hochschild, 2016) in place which protect against what they consider to be the wrong type of empathy: affective rather than cognitive, which, as we have now seen, they present as being separate capacities.

### *Mapping empathy*

Empathy should therefore be “selectively” (Bandes, 2006b) directed towards certain people, in accordance with institutionally determined “empathy maps” (Hochschild, 2013, 2016). These maps lay out the distribution of empathy in relation to the specific situation, interaction and interactants. In this case, whom defence lawyers should use empathy towards, which type of empathy should be used (remember, they distinguish between cognitive and affective empathy), and the amount of empathy (in order to avoid becoming overly-involved) (cf. Hochschild, 2016; Ruiz-Junco, 2017, p. 426).

My focus however is not on whether the recipients of empathy are morally deserving as both Hochschild (2013, 2016) and Ruiz-Junco (2017) use the term, rather I argue that in this context, the determining factor for who should receive empathy is based on one’s particular professional role (cf. Ruiz-Junco, 2017). For example, defence lawyers talk about how they should not feel empathy for the plaintiff as this may risk conveying disloyalty to the client. Martin explains this when I ask him about which emotions can get in the way of doing a good job as a defence lawyer:

You have to perhaps not be too emotionally affected by the person sitting on the other side, the person who has been subjected to the crime. That’s probably something you have to be careful with. It goes back to the fact that it’s the client sitting on my left that I’m backing 100 percent now. Then it can also be the case in rape trials, when you come in, and [the judges] have had their deliberation and they release your client, that is, that he is going to be freed, then, in that same moment, you look over and see the girl sitting over there who, of course,



in some cases, has been raped, but, in that moment that the guy is freed, she is, not a liar, but many think that maybe, then, in that moment, emotions, or at least in my case, are connected to her. (Martin)

Martin begins by talking about how he, as a defence lawyer, should not emotionally engage with the plaintiff's feelings during a trial but he finishes by saying that after the trial, when the plaintiff is no longer a plaintiff, rather someone who has made a false accusation of rape, then it is acceptable for him to emotionally engage in the "person sitting on the other side" (see also Bandes, 2006b; Bitsch, 2018b). That is, when no longer performing in the role of defence lawyer, he may follow a different empathy map. The end of the trial signals a shift in roles from professional to personal and thus a shift in professional emotions to everyday emotions, navigated by the appropriate empathy map. After the trial it is possible to act as a fellow human, as Peter tells us in chapter five.

I suggest that there is not only a contextuality to empathy, but also a temporality as Lena says, "you have to also be able to leave it of course, when you're not working any more." Empathy rules thus encompass how long one should empathise with a client (or plaintiff), not just how much (cf. Hochschild, 2016). Once the case is closed the empathy should cease. Similarly, when the defence lawyer leaves work at the end of the day, empathy for the client should not follow them home.

I therefore extend "empathy maps" (Hochschild, 2013, 2016) to include not only the amount of empathy to be given to the appropriate recipient, but also a temporal aspect - when empathy may be elicited. Furthermore, my analysis suggests that what is permitted to elicit empathy is also charted - legitimate "empathy triggers" as I would like to call them.<sup>87</sup>

This further complicates defence lawyers' presentation of empathy towards the plaintiff as inappropriate as I have just depicted. It is more accurate to say that there are certain facets of the plaintiff's role in a trial that permit the defence lawyer's empathy. For example, defence lawyers say it is acceptable to show understanding for the plaintiff's emotional experience of the interactional situation at hand - taking part in a trial - as recounting one's personal life in public can be a traumatic experience.<sup>88</sup> However, as Martin talks

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<sup>87</sup> Research on prosecutors indicates that they also have empathy triggers (Törnqvist, 2017; Wettergren & Bergman Blix, 2016).

<sup>88</sup> Whilst in the USA, defence lawyers often "abstract or distance themselves from the pain their clients may have caused and the pain the trial and its outcome may cause to victims and survivors" (Bandes, 2006b, p. 11) I would argue that the defence lawyers I interviewed

about above, empathy towards the plaintiff's version of events may be inappropriate as this may be a version of events that the defence lawyer is refuting. This aspect is not deemed to be "empathy worthy" (Ruiz-Junco, 2017) therefore empathy should not be triggered.

My data therefore suggests that competing versions of reality do not trigger empathy. The observant reader may have noted that I have already presented other instances of this, such as in the previous chapter where we saw a defence lawyer using throat sweets when faced with a version of reality in contrast to the defence team's thus conveying a lack of empathy. This means that empathy triggers can be used to explain the cultural preconception of lawyers being "cold" or without feelings.

### *Professional empathy*

We therefore see that defence lawyers talk about professional empathy in terms of emotional understanding. Professional empathy differs to everyday empathy as the latter also permits emotional engagement. In this way, defence lawyers talk about empathy as a cognitive process, denying the inherent and inseparable emotional component (cf. Cuff et al., 2016). Professionalism is once again associated with rationality whilst unprofessionalism is linked with emotionality. Navigating these empathic waters is an important aspect of lawyering and a source of professional pride (Bandes, 1996, 2009, 2015a; Westaby, 2010; Westaby & Jones, 2017; Wettergren & Bergman Blix, 2016).

I thus support previous research finding that empathy performances are institutionalised and situated responses to empathy rules which are aimed at ensuring that one's role in the justice system is performed, communicated and upheld (Ruiz-Junco, 2017, p. 424). It is based on the defence lawyer's position in the justice system: as a loyal lawyer one should build the defence team which demands the strategic use of empathy. This social situatedness is apparent in the way in which defence lawyers talk about empathy and the ways in which it should follow the "emotive-cognitive" (Wettergren & Bergman Blix, 2016, p. 1) framework of the criminal trial. Empathy should therefore be felt in the right amount, at the right time and towards the right person (cf. Hochschild, 1983; Maroney, 2011a).

We see also that it is not merely the case that, as Andrew says earlier, "you have to have empathy" as a defence lawyer. The rules regarding empathy are more nuanced than this. This can explain why George found it difficult to

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show an understanding for the difficulty of a trial. This suggests a difference in feeling rules in the USA and Sweden.

answer my question regarding the role of empathy. He responds that he was about to say that he didn't understand the question before going on to explain,

I mean, the question is damned difficult to answer because, first, I can never know what my client actually experienced and uh, and, uh [sigh] I mean, it [sigh], it links together a bit with what we talked about earlier, about getting carried away with your feelings whilst at the same time, you should do your job. (George)

For George, the concept of empathy was slippery: should he try and understand the client's version of events if the client doesn't even understand it? Or should he empathise with the client's current situation?

In this section I have shown how defence lawyers' use their professional role and sense of justice to emotionally account for their emotions. I then went on to show how inappropriate emotions can be buffered before presenting a typology of empathy. Empathy is seen as a vital lawyering tool, but defence lawyers' empathy talk and emotion talk also upholds the dichotomic relationship between emotionality and rationality. The focus has been on showing how defence lawyers talk about and perform emotions along with revealing some of the emotion rules guiding their performances and the emotion management strategies used to accomplish this.

## 7.2 Managing others' emotions

In the previous chapter I showed how the defence lawyer is expected to prepare his or her client, with the focus on preparations on the personal front – clothing and appearance. This section will now show how the defence lawyer also has to manage the client's emotional expectations by initiating them into the emotional order of the criminal trial.

### **Expectation management**

I will begin this section by showing that defence lawyers do a type of emotion management which I have called expectation management. By explaining the procedure of a trial and the role of the defence lawyer and others along with how these roles should be performed, in particular how emotions will be performed, the defence lawyer is attempting to align the client's expectations with what they may experience in the courtroom (Barbalet, 1996; Roach Anleu

& Mack, 2005; Simmel, 1950; Westlund & Eriksson, 2013). Expectation management thus involves explaining to the client what will happen during the trial, not just juridically, but also with regards to the performances given.<sup>89</sup> This is needed for several reasons, many of which stem from the client's uncertainty surrounding the social expectations and obligations attached to participating in, what may be, the alien social interaction of a trial (Goffman, 1956c; Hochschild, 1983).<sup>90</sup> Expectation management is therefore a form of pre-emptive or preventive cooling out in order to produce the appropriate emotion in the client and avoid him or her "flooding out" (Goffman, 1961a, 1967) during and after the trial. This calibration of expectations has three goals.

Firstly, the alignment of expectations and experience is a form of building trust – trust work - both trust in the defence lawyer and also trust in the justice system (Thelin, 2001; Tyler, 1988, 2003, 2006). This is central in building the client-lawyer relationship and is consequently a form of teamwork (cf. O'Keefe, 1990).

Linked to this, if the client's experience is in line with his or her expectations, it can also lead to feelings of satisfaction with the defence lawyer and the trial. If expectations are misaligned, this could lead to the client questioning the quality of his or her defence and, in extension, the legitimacy of the justice system (Ojasalo, 2001; Thelin, 2001; Tyler, 1988, 2003, 2006). Expectation management thus also reduces the likelihood of anger or disappointment, which may need to be managed by the defence lawyer at a later stage (Wettergren, 2009).

Finally, expectation management is also aimed at aligning the client's emotional performance with the emotional regime of the criminal trial, thus avoiding the client displaying inappropriate emotions in the courtroom (Goffman, 1961b). It should be noted that, whilst defendants may have more emotionally expressive leeway than the legal actors in the courtroom, their emotional performances should still be appropriate.

My focus will be on the last of these, on the strategies used by the defence lawyer to align the client's social and emotional expectations with the emotional regime of the criminal trial. This entails preparing the client's expectations regarding the procedure, the defence lawyer's performance, the client's own performance and the verdict.

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<sup>89</sup> An important aspect of ensuring the flow of interaction is the cost of a criminal trial (see Lindström & Malmberg, 2010).

<sup>90</sup> This difference in expectations can also be seen in terms of insiders and outsiders: the legal professionals have insider knowledge whilst the outsiders are the lay participants who are uninitiated into the ritual of a trial (Becker, 1963; Jacobson et al., 2016; Rock, 1993).

### *The procedure*

A study by the Swedish National Council for Crime Prevention (Westlund & Eriksson, 2013) found that there is uncertainty regarding various aspects of participating in a trial for those who have never done so before (for example, how to find the court, how a trial works, and who will be there). Many of the defence lawyers I spoke to confirmed this finding, saying that clients are often unsure as to what happens during a trial therefore they have to explain trial procedure, for instance, that there are only certain opportunities for the defendant to speak (Aronsson et al., 1987).

### *The defence lawyer's performance*

However, the defence lawyers I interviewed add that defendants' lack of knowledge regarding trial procedure also pertains to the role and performance of the defence lawyer. Vera tells me that some of her clients,

think that it's really tough: why am I not saying anything? "We've sat here half a day and the prosecutor is still talking and you're not saying anything!" They have trouble understanding at times that, "yes, but we're still on the presentation of facts" [both Lisa and Vera laugh]. (Vera)

This could lead to the client questioning the performance of the lawyer during the trial, which may lead to a disruption in the presentation of team face they are attempting to uphold. It also risks leading to a disruption of the trial if the defence lawyer misses evidence or testimony which may then have to be repeated, a time-consuming and costly interruption. It may also lead to the defence lawyer becoming distracted and losing concentration if the client's comment is not relevant to the specific context (Gould, 2014).

Defence lawyers thus perceive themselves as having to explain to the client the invisible rules that pertain to their – the defence lawyer's - role performance. Like Vera, Lena tells me that she explains what will happen in the courtroom, for instance, that she may not say much (including that she avoids posing the fatal question as discussed in the previous chapter),

Lena: Because otherwise they think that you haven't done enough. Because then it can be, "why didn't you ask that question?" and "why didn't you say, why didn't you say it" and all that. You usually have to say that to them, because otherwise I think that they can get the impression that you have been far too passive and you aren't doing anything for their [case].

Lisa: Do they ask these questions during the trial?

Lena: Yes

Lisa: What do you do then?

Lena: Then I usually say to them that I ask the questions that I think need to be asked. It's preferable to never pose a question that you don't know the answer to, but they don't understand that because they say, "but [the plaintiff] is lying", "yes, maybe you know that, but it's not something that [the plaintiff] is going to say here." I think some clients want a lawyer who is more vociferous (*högljudd*).

Daniel also tells me that he has to explain what he will do during the trial, a performance which may include doing nothing, or stoneface. He says,

you have to be clear towards the client about what they can expect and explain to them that, "it might well be the case that I don't say anything and that's not because, I mean, it's because I think that it's in your best interests". I think that as long as you prepare them and are clear towards the client what they, I mean, what my role is, what they can expect, how the trial will go, then I find that most of them buy this. (Daniel)

We see that defendants have expectations according to the lawyers I interviewed, not only of trial procedure, but also regarding the defence lawyer's performance. Accordingly, they also have expectations regarding how the defence lawyer's teamwork will be performed, which uses the client's version of events as the basis for the performance ("she's lying!"). As the invisible emotional order and its subtlety, the interaction order and its strictness, and the ceremonial order and its civility may be unknown to the client, doing nothing is perceived to be exactly that: doing nothing, rather than the strategic doing of something (S. Scott, 2017).

Many of the lawyers I interviewed thus present their clients as often being uninitiated into the ritual of a criminal trial. Clients therefore experience doing nothing as doing nothing, and, as I will soon come back to, they perceive unintentional face threats as malicious – in need of retribution as would be expected in many other interactions. The socially-situated interaction order of the criminal trial should thus be explained to them.

It became apparent in my interviews that defence lawyers say that many clients have unrealistic expectations regarding the defence lawyers' role performance (and indeed, their own performance), often drawing assumptions about Swedish trials from interactions they have seen in depictions of American courts (see also Adelswärd, 1989). I asked Andrew about the

difficulties this can lead to and he picks up on this shared cultural knowledge regarding both the trial and his trial performance,

Lisa: Do you prepare your client before you go in [to a trial], that it won't be like "objection!"?"

Andrew: Yes, yes, and I can tell you that it's become more and more common that clients, that they damn well believe that it's like on TV, and not just that, but they think it's like on crime shows, they think it's like CSI<sup>92</sup>, they took my DNA yesterday, why isn't it ready now? (...) And then we have the trial performance, that you should be aggressive, that you should really, you know, give 'em hell! Exactly like you said, "*objection!*" like this! Then I try and explain that, first of all, TV is TV and reality is reality (...) You also have to say that, "we have the prosecutor there and the judge and the lay judges there and they think you should be found guilty and blah, blah, blah and they don't give a shit which way it goes. They go in like small baby birds and we're going to feed them. The prosecutor knows exactly and we know exactly and if we go in and appear aggressive and threatening and really difficult then they are going to think a little bit less about you aren't they?" "Yes, yes, that's true." "So we maybe want to have a nice trial with a good atmosphere instead of making a fuss." "Yes, that sounds wise." A bit like that you see. Then you get a better climate for the hearing too.

Andrew talks about how clients may expect him to be a "Rambo litigator" (Pierce, 1995): aggressive, fierce and intimidating. We have also just read Lena's comment that some clients want a more vociferous lawyer, something that is also mentioned by many of the other lawyers I interviewed. I suggest this expectation stems from medialized representations of criminal trials that clients have seen on American (and other) TV shows shown in Sweden, which depict defence lawyers as aggressive (cf. Fielding, 2006).<sup>93</sup> Such sensational, aggressive lawyering may also be what is reported in the media regarding Swedish trials (Barthe, Leone, & Lateano, 2013).<sup>94</sup>

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<sup>91</sup> I used the English word "objection" in this Swedish-speaking interview indicating that it is an immediately recognizable term which, as we see in the interview, brings with it associations of film and TV.

<sup>92</sup> CSI is an American TV show based on crime scene investigators in the USA.

<sup>93</sup> The law and lawyers are often portrayed in films in unrealistic or unrepresentative way leading to unrealistic expectations of American-film-style trials in European countries (Greenfield & Osborn, 1995; Machura & Ulbrich, 2001).

<sup>94</sup> For instance, "Södertäljemålet" as described in chapter six.

In short, the client may expect a performance of aggression which is prohibited by the emotional regime of the criminal trial. There may thus be a clash of emotional expectations, specifically regarding how aggression may be displayed and its role in the criminal trial. Defence lawyers therefore have to negotiate the different agendas, expectations and senses of justice that the lawyer and the client may have in order to calibrate the client's expectations with their experience of the defence lawyer's performance (Sarat & Felstiner, 1986). For instance, the client's agenda and sense of justice may be linked to showing that the plaintiff is lying as Lena talks about at the start of this section. This leads the client to expect and want his or her defence lawyer to be "hard", as Daniel says, on the plaintiff. The defence lawyer must thus explain the emotional order and the ceremonial order of the criminal trial in order to ensure that the client's expectations are calibrated with the actual performance.

Here, it is possible to not only see defence lawyers' presentations of their clients' expectations of justice, but also the emotional expectations the client has regarding the emotion rules: that it is permitted to be "hard" towards a plaintiff or witness, and that this "hardness" should be displayed or performed by being "a very American type of defender" as Daniel says, denoting aggressiveness.

Other emotional expectations that clients have include the assumption that the defence lawyer should display anger by using his or her voice as Vera tells me that some clients ask "aren't you going to raise your voice?" However, this is not permitted as I presented in the previous chapter. According to the observations I have conducted, the Rambo lawyer is a much subtler performance in the Swedish courtroom: the Rambo lawyer does not jump up and shout "objection!", instead he or she may give a slight frown or a quiet utterance, or indeed, not say anything at all (Flower, 2016a, 2016b) (this will be discussed in more detail shortly).

### *The client's performance*

Expectation management also entails explaining the client's role and performance in order to pre-emptively cool the client out and avoid "flood outs" (Goffman, 1961a, 1967) during the trial. This involves explaining what the client is supposed to do (and not do), both with regards to interactions (for instance, when they are permitted to speak and courtroom etiquette), and also pertaining to emotional displays. This also encompasses explaining how others can be expected to emotionally perform towards them.

Inappropriate emotions may be shown by the client backstage (for example, in the waiting room, outside the court or in the confines of the lawyer's office)



which may help to ensure that the performances given in the courtroom remain within emotionally and socially approved limits (Goffman, 1952; see also Booth, 2012). Frontstage performances in the courtroom however should conform to the emotional regime of the criminal trial. For instance, the defence lawyers I interviewed tell me that they advise their clients not to get too angry as I have already described. This is a warning that defence lawyers talk about as being important for two reasons. Firstly, breaking emotion rules is considered to risk displeasing the court (N. Feigenson, 2016; Lerner & Tiedens, 2006), and secondly, breaking an emotion rule such as displaying aggression risks playing into the hands of the prosecutor.

The latter of these reasons relates to situations where the prosecutor has attempted to intentionally and strategically produce an emotion in the client in order to provide support for prosecution's case as I have already shown in the previous chapter. Siri tells me she prepares her client to expect "provocative" questions, that is, that her client may be the target of strategic emotion management at the hands of the prosecutor. Charles tells me that he prepares the client's performance in the courtroom beforehand by asking him or her questions during their meetings, questions that the prosecutor might pose. He explains that,

clients are emotional and you have to try and get past that. You know, when they come to me, the clients, then I have to ask lots of work-questions to them, and then, eventually, I see how they react (...) "I'm asking you these questions because you're going to get these questions from the prosecutor". It's also a way of keeping the client's feelings in check as well (...) I'm asking them for purely tactical reasons so that they know that this is what you're going to get, you're going to get these questions and then I can flare up a bit towards the client, I can say, "yes, but it can't be like that!" (Charles)

Clients are presented by Charles as inherently emotional and thus in need of management. By explaining what to expect from the emotional performances of others, Charles is preparing clients for the eventuality that they may need to manage their own emotions at a future point, during the trial. All of the lawyers I spoke to say that they explain that their role is to ask uncomfortable questions to witnesses, plaintiffs, and at times, even their own client. Explaining this to the client may enable him or her to stay in face during the trial, and in particular, the cross-examination where the client has limited ability to sustain a sense of self that is in line with the basic values of society (Goffman, 1961a; K. Tracy & Tracy, 1998).

This is an important part of the client's performance that should be explained as the strategy of asking questions in order to produce emotions is talked about

by all of the lawyers I interviewed. Lydia says that if she has evidence that she needs to bring forth, for example, showing that a witness is lying, the only tool she has at her disposal is “asking questions, I can’t do much else.” Questions are therefore used as an emotion management strategy by the prosecution and defence but the client should also be prepared to expect the opposite – that the prosecutor remains quiet, as George tells me,

it’s not a completely unusual technique, sometimes, being quiet, in order to try and produce a feeling in the witness that they haven’t answered enough or that he has answered wrong or that he is stupid which can like, get him going. (George)

Emotions can therefore be “produced” by the prosecutor or defence lawyer in the recipient of their emotion work by ostensibly doing nothing – “an active commission” (S. Scott, 2017; cf. Scheffer, 2010, p. 184 for a discussion on avoidance when arguing cases). Not asking questions is therefore also a form of managing emotions aimed at producing or encouraging emotions such as nervousness.

Expectation management is also aimed at preventing inappropriate emotions from arising as a result of the routinised way in which a trial may be conducted. For the professional legal actors in the courtroom, a trial is part of a day’s work, recumbent with specific roles and role expectations. The performance of these roles becomes mundane which risks being perceived as nonchalance as Kate says, by outsiders who are uninitiated in the display rules being performed (cf. Jacobson et al., 2016; Leidner, 1993; Schütz, 1971).

The lawyers I interviewed also talk about advising clients to focus on the facts of the case rather than the emotional content such as how they felt leading up to the crime. This separation of the client’s emotional experiences from instrumental issues which highlight the legal argument ensures that the lawyer is able to focus on what is legally relevant (the facts of the case), however it also enables the lawyer to avoid dealing with the client’s emotional situation which they are not trained for (cf. Sarat & Felstiner, 1986). This separation is seen clearly in the courtroom as, on numerous occasions I observed a client becoming upset but receiving no comfort from the lawyer, no hand on the shoulder, glass of water poured or comforting words. On one occasion, the defendant asked for a tissue to wipe his tears and was handed a pen by his lawyer.<sup>95</sup> I was intrigued by this and asked Martin if he comforts his client in

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<sup>95</sup> This also shows that the focus of the defence lawyer during the trial is on the evidence being presented with the client constituting at times a “side-involvement” (Goffman, 1957, p. 47) – a distraction to be dealt with to avoid breaking the ceremonial order of the courtroom.

the courtroom to which he replies “of course!”, and that he gets “scared” to hear things like this (this is comparable with the avoidance of eye contact discussed in the previous chapter which is also a rather unacknowledged aspect of performances). However, such “relational work” (Stacey, 2011) – providing comfort or companionship – is often talked about as belonging to the backstage and even in this region, the emphasis should be on legal support rather than on emotional support according to the lawyers I spoke to (which, the reader may remember, is also discussed in the section on eye contact).

I argue that this separation and promotion of the legal client whose case is fact-based, over the emotional client, the latter referring to an emotionally-framed and driven version of events, also ensures adherence to the emotional regime of the criminal trial. It is not just about protecting the defence lawyer from emotional contagion (Hatfield, Cacioppo, & Rapson, 1993) – catching the other’s emotions – but it is also aimed at avoiding the display of unwanted emotions and disruptions in the flow of interaction.

### *The worst-case scenario*

Defendants often have expectations of “winning” the case, seen in terms of being found not guilty, but as we have already seen almost all trials lead to conviction, therefore it is almost inevitable that the client will be convicted and should thus be prepared for this eventuality (Borgström, 2011; Nordén, 2015). In order to ensure that the client’s expectations regarding the outcome of the trial are in line with the verdict, defence lawyers may present the “worst-case scenario” as Andrew says. In this way the client is pre-emptively cooled out so that he or she can accept the verdict (Gasser, 1963; Goffman, 1952; G. M. Thomas, 2014).

This form of expectation management involves explaining “what is at stake” as Kate says and can be used as a guide for which future emotions can be managed. Lo explains that she tells her clients,

what can be the worst-case scenario or, I mean, if the prosecutor’s charges stick the whole way, what are you risking? So, you can give a prognosis, and then, for example you can discuss, in the choice between prison and probation, then probation is a milder sentence and the client is in agreement that, yes, I would rather have probation than prison and then you get a sentence with probation then the client is usually satisfied with it, if you, so to speak, have had, that the outcome could have been worse. (Lo)

By presenting such a worst-case scenario, it is possible to align the client’s expectations with a less favourable outcome. If the court then finds in favour of the client or sentences to a lower than expected penalty, the actual verdict

appears in a more positive light thus making the client more satisfied with the outcome - it could have been worse. The defence lawyer is thus cooling the client out – preparing him or her for the inevitable, however, unlike Goffman's (1952) use of the term, it does not involve misrepresenting events, rather presenting them in the worst possible light.

If the defence lawyer has succeeded in calibrating expectations, it is possible to prevent or at least diminish the client's feelings of disappointment or anger at the outcome of the trial, emotions which may need to be managed by the defence lawyer after the verdict (Wettergren, 2009). Lydia says that she does this, and consequently,

I've rarely had someone get mad because of the result. I'm usually quite clear that it could go this way or that way. I don't know. And I never promise anything that I can't be sure about, I'm pretty careful. Then they don't get mad with the result if I have said to them that there is a risk that it might end up like this. (Lydia)

Preparing the client for a possible "loss" is therefore an emotion management strategy aimed at aligning "anticipatory emotions" (hope of acquittal) with "consequent emotions" (anger at conviction) (Kemper, 1978a, p. 49). This differs to the emotion work conducted in many other professions where the aim is to produce a direct feeling in other: the passenger will immediately feel calmed and welcomed by the friendly air attendant. Here, the client's future emotions are being managed by the lawyer. I therefore propose a time dimension to the theory of emotion management: managing future emotions.

In cooling the client out beforehand, the lawyer is also proactively and pre-emptively defending against claims of an inadequate defence based on dissatisfaction with the outcome. This pre-emptive strategy of cooling the client can thus be seen as a form of facework performed by the lawyer in order to protect his or her own face (cf. S. Scott, 2017). Failure to cool the client out could lead to the client becoming "personally disorganized" and as Goffman (1952, p. 459) so eloquently puts it, "raising[ing] a squawk" that is, making a complaint, either to the law firm or even to the Swedish Bar Association.

Another way in which the client can be pre-emptively cooled out is by informing them of the possibility of appealing, thus giving the client "another chance to qualify for the role at which he has failed" (Goffman, 1952, p. 458).

We therefore see that the role of defence lawyers, according to their descriptions, entails managing the client's expectations in order to create stable interactions within the defence team and between other interactants in the trial. This is done, they explain, by ensuring that there are congruent expectations

regarding how the situation should be defined and the performances therein, thus reducing uncertainty regarding the emotional regime to be followed (cf. L. C. Harris, 2002, p. 563).

This section has shown that the defence lawyer is expected to emotionally prepare clients for a criminal trial and depicted how this is done and why. In the next section I highlight focus on teamwork, and thus loyalty.

## 7.3 Managing own and others' emotions

I have already discussed how the client is initiated into the emotional regime of the criminal trial beforehand. However, during the trial, clients' emotions may need to be managed in order to ensure that their emotional display is in line with the overall impression the defence team is attempting to accomplish. This demands that the defence lawyer manages his or her own emotions contemporaneously which I will show by returning to the drink-driving excerpt.

I will then draw together the emotional and dramaturgical threads of this dissertation to show how the emotional regime of the Swedish criminal trial shapes defence lawyers' performance of anger.

### **“Of course, you regret that you drove?”**

The following excerpt was discussed in the previous chapter, but I will also present it here in order to highlight interactional emotion management in the courtroom by depicting how the defence lawyer manages his own emotions *and* those of his client. The excerpt is from the trial regarding 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”. His head is tipped slightly to one side and his voice is softer when he says this. (Fieldnote)

This production of regret in the client requires the simultaneous management of the defence lawyer's own emotions because, as we have already learned, emotions are always present, not just irritation, disgust, anger and sadness, but also feelings such as boredom which the lawyers I interviewed said can arise in such straight-forward cases (see Cowen & Keltner, 2017; Neu, 2000 for a

discussion on boredom as an emotion). All of these feelings should be managed in order to shape the appropriate emotional display of loyalty thereby communicating to the client that they are a team supporting the client's version of events, whilst simultaneously generating an emotional display of regret in the defendant.

This is the phase of the trial where the defence lawyer is supposed to be questioning his client, but as we see, the defence lawyer is asking questions as a way of managing the client in order to display regret. Indeed, the questions are more like statements: "you regret that you drove?"<sup>96</sup> The defence lawyer is actively directing the client's emotions in line with the emotion rule which states that a perpetrator of a crime should show regret, thus presenting the client in a positive light to the court (cf. Bandes, 2015b; Dahl et al., 2007; Goffman, 1956c; Kaufmann et al., 2003; Wessel et al., 2006). Emotion work is used here as another form of factwork (cf. Potter, 1996), in this instance it is aimed at building up emotional facts: the client regrets that he drove.

I would like to highlight that, in this case, the defence lawyer manages both parts of the interaction into emotion *norms*: loyal lawyer and regretful defendant. This finding differs to previous research which tends to focus on either the management of one's own emotions in line with the norm, or management of other's emotions in line with the norm. Remember Thoits' (1996) study on support groups focused on bringing the participant's emotions in line with how they were expected to feel and express, but the emotion norm guiding the group leader's performance was neglected. In Hochschild's (1983) study, the emotions of the flight attendants are managed in line with the emotion norms of capitalism but less is noted regarding the normative goal of the passenger's emotions - they should be satisfied with the service and be willing to use the company again, but a specific emotion norm is not discerned. I show here that the goal of interactional emotion management can be to ensure that the emotions of both the manager and managed are in line with an emotion norm: loyal lawyer and regretful defendant.

This excerpt thus introduces a third category of emotion management, namely interactional emotion management which includes both interactants - it does not solely focus on the management of one's own emotions (intrapersonal or individual) or the management of others' emotions (interpersonal) (Flam, 1990b; Hochschild, 1979; Lively & Weed, 2014; Morris & Feldman, 1996; Niven, 2015). I use the drink-driving excerpt here to show

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<sup>96</sup> Having presented these findings to judges, all of them have stated that they would not have allowed this type of leading question in the form of a statement.

that there is a tendency to over-simplify emotion management and that the management of others' emotions demands the contemporaneous management of one's own emotions.

## **Rambo-Bambi in the courtroom**

I will now draw together the various threads presented in this dissertation by showing how the ritual expression of anger in the courtroom should be accomplished, and how emotional and dramaturgical performances navigate the emotional regime of the criminal trial as well as the consequences of deviation. I depict a "deviant case" (Strong, 1988, p. 236) where the defence lawyer's performance reveals the otherwise invisible rules.

The excerpt is taken from the audio recording of an assault trial that I observed which proved to be the most aggressive cross-examination of a plaintiff that I have seen. The excerpt combines the transcript from the audio-recording with my fieldnotes written during the trial. The defendant is accused of assaulting his partner, the plaintiff, in their home. We join proceedings when it is the defence lawyer's turn to question the plaintiff. The plaintiff's version of events is central to the case as there were no other witnesses at the time of the assault:

Defence: I hope that it's ok with you, I am going to ask some questions about recollections, mainly your recollections. And it's my job to do it, just so that you understand that (...) I wrote down: "in answer to the prosecutor's question, she goes towards [the defendant] and asks him to go and lie down." Is that correct, what I wrote down? [Looks quickly at the judge].

Plaintiff: [Stares at the defence lawyer for 8 seconds. Jaw clenched. No reply].

Defence: I mean, that's what you said in answer to the prosecutor's question [looks quickly at the judge again].

Plaintiff: [Stares at the defence lawyer for 10 seconds. Jaw clenched. No reply].

Defence: Or you can change your statement if you want, it's, it's.

Plaintiff: [Stares at the defence lawyer for 11 seconds. Jaw clenched. No reply].

Counsel for the plaintiff: Can you tell us what you remember?

Plaintiff: I think this is just terribly unpleasant [starts to cry].

Defence: I apologise if it can feel like that but I'm trying to investigate your recollection and then I have to be able to ask these questions and then the judge can interrupt me if I stray from the facts of the case and I have full respect for that [looks at the judge) but, take your time.

Plaintiff: [Crying and sniffing for 5 seconds].

Defence: And if it's the case that you can't remember, then say so. That's important.

Counsel for the plaintiff: Do you want the defence lawyer to repeat the question?

Plaintiff: It's just impossible to answer the question either with "no" or without "no" if you see what I mean. I don't know.

Defence: No, ok, well then, I'll note that and leave that situation there.

The plaintiff continues to cry and blows her nose.

Defender: Do you remember that you have talked to the police?

Plaintiff: Yes.

Defence: Yes, it wasn't my intention to sound patronising at all, just.

Plaintiff: No, but now that's precisely what you were.

Defence: Yes, I apologise for that. Do you remember if you told the police about the event?

All of the defence lawyer's questions were posed in the same tone of voice, each question asked clearly and slowly. He made eye contact with the plaintiff with only a quick look down at his papers every now and then or glances to the judge. His facial expressions are relaxed and neutral throughout, no headshaking, no frowning.

At the end of the defence lawyer's questioning, both the prosecutor and the counsel for the plaintiff shake their heads. The counsel for the plaintiff does a bigger shake of the head and several shakes compared to the prosecutor who just does one shake. (Audio-recording and fieldnote)

The defence lawyer begins his cross-examination by giving an account for the intentional politeness to come: that he is going to question her recollection but that, "it's my job to do it". He is justifying the emotions he may produce in the plaintiff, emotions that, in another context, would be considered inappropriate



to produce in someone. He is thus also explaining that the ensuing face threat is not intended to be malicious and therefore within the remit of his role (Archer, 2011a, p. 3222; M. B. Scott & Lyman, 1968). In this way he is presenting the cross-examination as one of his role obligations aimed at uncovering evidence, ergo, his actions should not be seen as an intentional face attack - he even apologises when the plaintiff accuses him of being patronising (Goffman, 1956c; Lakoff, 1990). We see too that he uses eyework as a form of factwork – as I presented in chapter six - glancing at the judge when building up facts (“is that correct, what I wrote down?” and “that’s what you said in answer to the prosecutor’s question”). He also makes the professionally expected eye contact with the plaintiff throughout questioning and his tone of voice is in accordance with the professional expectations I outlined in the previous chapter (Blomkvist, 1987; Mellqvist, 1994).

### *Rule reminders*

However, we see from the response of the plaintiff that she perceives his actions as malicious. Indeed, we also see from the responses of the prosecutor and counsel for the plaintiff – the social community who are wise to the emotional regime of the criminal trial – that he is perceived to have conveyed disrespect (K. Tracy & Tracy, 1998, p. 227; Archer, 2011a).

The plaintiff’s response - “I think this is just terribly unpleasant” and telling the defence lawyer that he was patronising her - shows that she has perceived him as rude (cf. Westlund & Eriksson, 2013). The plaintiff thus responds in a way similar to an explicit “rule reminder” (Barrett Cox, 2016; Hochschild, 1979, 1983; S. J. Tracy, 2000). This implies that there may be a difference between how reminders may be administered by legal professionals and lay participants as we will shortly see. However, it may also be a reflection on the plaintiff’s lack of initiation into the order of the courtroom. She may not be aware of the rules and may therefore apply a different set of external emotion and interaction (including ceremonial) rules. This indicates an alternate frame of understanding of the situation based on an interaction order different to that of the criminal trial, leading her to interpret the situation as a malicious face threat (Adelswärd et al., 1988; Archer, 2011a).<sup>97</sup>

The performance also appears to have breached professional expectations for how a cross-examination should be conducted as we see in the head shaking by the prosecutor and counsel for the plaintiff which indicate that the rules of

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<sup>97</sup> Bandes (2006b, p. 45) describes how the “habitual detachment” of seasoned criminal lawyers may lead to cross-examinations being experienced as brutal by those on the receiving end.

interaction have been violated. Head shaking thus acts as an implicit reminder of the normative practices that should be adhered to in the emotional regime of the criminal trial - in this case that the cross-examination of a witness should be carried out politely and non-aggressively. By using subtle gestures such as head shaking, the prosecutor and counsel for the plaintiff communicate to the judge that the lawyer has deviated from the emotional order and the ceremonial order and intentionally threatened the face of the plaintiff, by performing in an inappropriate way. This is not only a breach in the emotional regime of the criminal trial, but it also constitutes a breach in the defence lawyer's official guidelines which, you may remember, state that the defence lawyer should not scandalise or threaten an opposing party or make degrading comments (Association, 2008, p. 28). We see too that this reminder is administered more subtly than the open rebuke by the plaintiff.

The defence lawyer appears to be aware that his performance is balancing on the line of acceptability as he glances at the judge when there is a risk that his performance could be perceived as crossing it ("the judge can interrupt me if I stray from the facts of the case and I have full respect for that"). He is therefore looking at the judge to ensure that his performance has stayed within the boundaries of "reasonably hostility" (K. Tracy, 2011b), a breach of which constitutes a threat to lawyer face as it can be perceived as unprofessional. He is thus managing and adjusting his emotional performance based on the response of the judge to ensure that he stays in face and that the interaction flow continues unhindered (Goffman, 1956c).

His glances at the judge also show that it is the judge who is the "emotion supervisor" (Hochschild, 1983) on hand, sanctioning deviant performances with "rule reminders". These reminders are therefore a form of immediate "back-channel feedback" (Goffman, 1981, p. 14) on one's performance. In this case, the judge conveys whether or not the defence lawyer's performance is interactionally and emotionally acceptable to the social situation at hand by administering, for instance, a stern glance. Eyework can therefore be used as a subtle sanction – a rule reminder. This is described by one of the lawyers I interviewed, Hilda, who tells me about a situation from the start of her career when she laughed at the opposing counsel to show that they were wrong, "I remember that the judge looked at me and I noticed straight away that he didn't like it and I was so ashamed afterwards, ugh, I'm still ashamed when I talk about it [laughs]." Hilda realised that she had broken an emotion rule when she saw the judge looking at her in a sanctioning way and we can therefore assume that the defence lawyer in the above excerpt is also looking to the judge to see if he is being implicitly sanctioned.

In Hilda's example, the judge's reaction revealed an emotion rule stating that contempt (seen here as a form of anger) should not be displayed in the courtroom using laughter - a rule that she had not yet been socialised into. Rule reminders thus constitute an "interpersonal ritual" (Goffman, 1967, p. 168-9) aimed at bringing performances in line with expectations. This led to Hilda feeling shame as she perceived herself to have not lived up to the role expectations placed upon her and that she had broken the ceremonial order of the courtroom (Goffman, 1956c; Scheff, 2000). She had consequently discredited herself (Goffman, 1967, p.51).

Hilda goes on to say that she realised that she had to try and show that the prosecutor was wrong "some other way". This is what emotion work is about: trying to show emotions in a way that is appropriate to the emotional regime - performing one's role and legal position whilst still remaining within the boundaries of acceptability.

It is therefore not only judicial objectivity that is oriented by shame, but also defence lawyers' performances of loyalty and indeed, teamwork (cf. Wettergren & Bergman Blix, 2016). This indicates that the emotion work of defence lawyers is self-perpetuated - via socialization - and externally monitored (cf. L. C. Harris, 2002, p. 575).

Rule reminders thus reveal emotion rules and can be used as an intentional face threat, controlling the conduct of others hence they serve to reveal the emotional regime which such sanctioning is designed to enforce (Goffman, 1956c; Hochschild, 1983; Reddy, 2001).

As I mentioned before, the lawyer in the excerpt discussed under the sub-heading "Rambo-Bambi in the courtroom" performs an aggressive cross-examination, this is despite the absence of shouting, exaggerated facial expressions or gestures. His performance still breaks the rules of acceptability as visible in the responses of others. I argue therefore that he has performed an angry and aggressive "Rambo litigator" (Pierce, 1995). This leads to two questions: why is this performance deemed to be deviant and how should the appropriate performance of anger be accomplished?

### *Anger or annoyance?*

We have already seen that anger is talked about in the interviews as an inappropriate emotion – in the section on presentation of self, I showed that the lawyers in this study distanced themselves from Rambo lawyers or "Stockholm lawyers". Anger is seen as something to be handled with care or avoided (cf. N. Feigenson, 2016; Lerner, Goldberg, & Tetlock, 1998; Lerner & Tiedens, 2006; Litvak, Lerner, Tiedens, & Shonk, 2010). One explanation

for this is the perception of anger as an emotion that arises when one's self (or someone near) has been offended or injured (Litvak et al., 2010). This means that displays of anger by a defence lawyer could risk being viewed by the court as the defence lawyer acting on everyday emotions, or worse still, the emotions of the client (like you were his or her twin as Peter said previously). In showing anger one risks one's performance as being perceived as over-involved, losing self-control and thus unable to sustain the interaction (Goffman, 1957). One is unprofessional.

Anger is therefore talked about as an everyday, "unbecoming emotion" (Averill, 1994, p. 265) - incompatible with rational or normative action. In line with this, I find that rather than presenting themselves as becoming angry, defence lawyers talk about becoming indignant, annoyed, or worked-up in court. We have also seen this in my fieldnotes from the animal-in-the-car trial - the defence lawyer states that he became "quite annoyed". Indignation and annoyance are consequently talked about as acceptable acts of anger, sparked by a rule violation and the ensuing injustice (for example, if a prosecutor is perceived to be non-objective or a witness is suspected of perjury) but, importantly, without the defence lawyer being personally affronted (cf. Flam, 1990b, p. 232). Accordingly, for the defence lawyers I interviewed, anger is associated with personal offence, whilst annoyance and indignation are linked with injustice. Good lawyers don't get angry, they get annoyed.

Rare admissions of anger did occur during my interviews, admissions that were never made in the courtroom – not once did I hear a lawyer stating that they were angry. Those defence lawyers who did mention becoming angry described it as stemming from a perceived gross injustice. However, this anger was associated with a loss of control by many and, like disgust, in need of transformation, for instance into relevant questions, as Lydia tells me.

The reservation of defence lawyers regarding the open acknowledgment and acceptance of anger, preferring instead the perhaps milder form of annoyance as reflected in my interviews and fieldnotes, reinforces my position that defence lawyers' emotion talk upholds and reproduces the emotional regime of law. This also means that the appropriate rule for displaying anger - showing aggression (Averill, 1982) - in the Swedish courtroom demands even more subtlety than depicted in the previous excerpt, in order to uphold the illusion of rationality and unemotionality (Bergman Blix & Wettergren, 2015).

### *Subtle anger*

So how should anger – or annoyance – be shown? We now know that the Rambo lawyer is talked about and interacted with as a deviation – displays should be subtle and in line with the emotional order and ceremonial order of the criminal trial (cf. Rock, 1993; Archer, 2011a). My data shows that the Rambo performance should be tailored to a softer, less threatening approach, more akin to the Disney cartoon character Bambi. However, I argue that hiding beneath the Bambi-surface is the hard, aggressive Rambo, a film character known for his aggression, strength and determination. I therefore present this performance as “Rambo-Bambi”.<sup>98</sup> Defence lawyers’ emotional displays are therefore adjusted to the emotional order and the associated ceremonial order and are linked to their legal position and role obligations which also means that it is the defence team’s version of events that is the basis for this performance. Rambo-Bambi is consequently a professional expectation which, as we have already seen, risks clashing with the social “Rambo” expectation of clients.

The Rambo-Bambi strategy is talked about by many of the lawyers I interviewed. For instance, Andrew says,

I can declare you a complete idiot and saw you off at the kneecaps but if I do it in such a way so that everyone smiles at the same time and thinks “that was a nice lawyer”, and “that was a nice question”. Then I come back to it in the closing argument and say [to the court], “well you heard it yourselves didn’t you?” (Andrew)

Perry also talks about the Rambo-Bambi approach telling me,

I would say that the most stupid thing you can do is to be aggressive or mean, or “why are you saying this?” rather, yeah, I follow a very friendly line, like, no aggressive tone at all, nothing like that. I just ask questions every now and then and they answer a lot better if they like me than if they hate me. (Perry)

Like Perry, George describes some of the reasons for using this strategy,

I think that you get a good answer from a witness who feels secure when you ask questions, and then it’s better to try and formulate them in a way so that you get what you want and the witness doesn’t even notice that he is saying the things I want him to say. (George)

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<sup>98</sup> Of course, sometimes Bambi is just Bambi, that is, sometimes, there is no underlying instrumental gain from being kind and polite. Many of the defence lawyers discuss how difficult a trial can be for plaintiffs, defendants and witnesses, therefore part of the role of legal professionals is to make the process as pain-free as possible.

Such an approach, preferring to kill the plaintiff or witness with kindness rather than killing them with aggression is a strategy that all the defence lawyers I interviewed talked about using – an approach found to be useful in other interrogation situations (Alison et al., 2014). I also observed it in all of the trials I attended. I saw no instances of aggression along the lines of “going for the jugular”, rather the shows of anger I saw were subtle and toned down (see Bergman Blix & Wettergren, 2015; Flower, 2016a).

The Rambo-Bambi emotion management strategy thus combines Pierce’s (cf. 1995, p. 72) “Rambo litigator” and “strategic friendliness” and constitutes a form of strategic emotion work for instrumental purposes. It follows a Goffmanian (1967, 1972) “line” that is friendly and combines verbal emotives – for instance by saying “I was really surprised by the witness’ statements today” (similar to prosecutors’ use of emotives (Törnqvist, 2017)) – with subtle nonverbal displays such as shifting in one’s chair. The rule appears to be: “say it more than show it”, a rule that is learned during legal education in Sweden (Flower, 2014; see also Coupland et al., 2008).<sup>99</sup>

This form of emotion management differs to Hochschild’s (1983) theory as it is a hidden form of emotion management. The emotional goal of her theory is to make the customer relaxed, whilst the intended goal is to entice the passenger to fly with the airline again. I argue the purpose of the Rambo-Bambi emotion management strategy has another emotional layer to it. On the surface, the emotion being conveyed by the performer is aimed at producing a certain emotion in others, for example, a defence lawyer showing niceness which has the superficial goal of encouraging the plaintiff to feel at ease so as to freely be able to give their account of events thus ensuring the interaction flow and emotion flow of the courtroom. However, this niceness may be a “strategic niceness” (Flower, 2016b) which has the fundamental emotional goal of lulling the witness or plaintiff into a false sense of security thus achieving the ultimate goal of them giving a less credible version of events which, in turn, may help the client’s defence (see also Kilduff, Chiaburu, & Menges, 2010).

Rambo-Bambi differs to Hochschild’s (1983) theory and much of the work afterwards, which is based on the assumption that there is no clandestine motive behind the emotion conveyed, I argue here that the Janus-face aspect Rambo-Bambi has a hidden emotional and ultimate goal (cf. Dellwing, 2012).

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<sup>99</sup> I suggest that an explanation for this unofficial rule is based on the official principle of orality – that all evidence must be orally presented at trial, therefore the emotional expression of an emotion would not be included in the official proceedings unlike a spoken expression.

I suggest that the difference between the American “Rambo litigator” (Pierce, 1995) and the Swedish Rambo-Bambi is a difference in display rules. The emotional regime in Swedish criminal trials sets the frame for how aggression may be displayed. Both are dramatic, aggressive performances and both are in line with the “societal emotional regime” (Bergman Blix & Wettergren, 2015, p. 3).

The interactional accomplishment of Rambo-Bambi requires skill in finding the right balance between Rambo and Bambi. As Lydia says,

it’s about being able to interrogate the plaintiff and if I act unpleasantly or if I am too hard on the plaintiff then it can turn, it can go against my client so it’s a balance all the time between how tough you should be. (Lydia)

Lydia points out that being too Rambo on a plaintiff may inadvertently lead to the plaintiff’s version of events being viewed as *more* credible. George also describes this telling me,

you have to be careful because it can be the complete opposite. Before you know it, witnesses gather themselves and become incredibly certain about their testimony and then you’ve made a mistake (...) It’s like walking a tightrope. (George)

Walking this emotional tightrope is described by many of the lawyers interviewed, not least with regards to ensuring that one does not displease the court. Rambo-Bambi is thus an interactional emotion management strategy used by defence lawyers in order to “read people and see which buttons to push to get a certain reaction” as Kate says. Again, we see that this is a performance accomplished by taking the role of other and adjusting one’s approach thereafter.

In this chapter I have shown that the accomplishment of the defence lawyer’s role takes place within an interaction order that is highly ritualised and formal with clear roles to be performed and principles to be conveyed. Included in this is the ceremonial order which ensures that the performances within remain polite and courteous. Finally, the emotional order forms how these performances can be emotionally accomplished. All of these three orders are intertwined.

My focus has been firstly on defence lawyers’ emotion talk and I find that it upholds the emotional regime of law, and, secondly, I have looked at how the role of defence lawyer involves preparing the client’s emotional expectations of a trial. I then showed how defence lawyers ensure that their performances

and those of their teammates remain interactionally and emotionally appropriate which is accomplished by a range of strategies. I have therefore shown that the performance of loyalty and teamwork entails emotion work and facework. Lastly, I depicted the Rambo-Bambi performance for the appropriate conveyance of anger.

By showing the invisible rules of the interaction order, ceremonial order and emotion order, we see how defence lawyers accomplish their role - in particular, that the appropriate performance of emotions is associated with sustaining the ceremonial order.





# Chapter 8: The Subtlety of Loyalty Work

When I first began gathering material for this dissertation, I was struck by the mundaneness of a trial. Where was the action? Where were the fiery cross-examinations and passionate closing speeches that I had expected? This, I thought to myself, is going to be a long (and dull) four years.

But then I began to understand that my expectations of adversarialism were linked with extravagant and conspicuous performances and in their place was a far more nuanced and subtle drama. I began to see patterns and distinctions, similarities and differences. I saw appropriate adversarialism. I saw principle performances. I saw predictable unpredictability and the strategies defence lawyers use to manage crises-in-the-moment. I saw unemotional emotionality, for instance, doing nothing was far from that, it was an intricate performance conveying meaning. I saw that a professional role, often considered to be based on legal knowledge, is also grounded in interactional competencies.

In short, I began to see the rules of interaction and the emotionality of unemotionality.

I conclude that the role of defence lawyer entails emotional and dramaturgical challenges. Defence lawyers comprise a professional group that may face moral suspicion, distressed clients, unforeseeable situations, disturbing evidence, and emotional plaintiffs – all of which should be managed in a proper and appropriate manner, suitable to the overarching regime. This framework ensures the law's protection from emotion's influence by rationalising and subduing emotions and assisting the smooth flow of justice by providing the rules of interaction. Defence lawyers perform their formal, explicitly outlined legal responsibilities by negotiating informal, implicit professional and social expectations whilst simultaneously ensuring that performances remain appropriate to the emotionally rigid and interactionally strict emotional regime. Performances are also tailored to the stage on which they are performed. Dramatic and courteous subtlety are thus central in the appropriate performance of loyalty in the theatre of the courtroom.

## 8.1 The closing speech

In this dissertation I have shown in detail how the emotional regime of law manifests in the Swedish criminal courtroom, shaping emotions and guiding dramaturgical performances, focusing on how defence lawyers accomplish their role.

Defence lawyers' courtroom performances uphold the emotional regime by displaying emotions subtly and courteously. These performances call for dexterity in managing one's professional role, along with ensuring that other legal professionals and one's client uphold their positions – both dramaturgically with regards to conveying the appropriate impression, but also in an emotionally-adequate manner. This is made more complex due to the criminal trial being a scene of predictable unpredictability. The defence lawyer can never know with certainty what will happen next: an expert witness may change his or her testimony, the plaintiff may come with new details or one's own client may react angrily to evidence presented. The defence lawyer can never know what “the fatal question” may be that risks unleashing a face threat. Defence lawyers are consequently expected to retain a façade of stonefaced calm in such moments of crisis, conveying an impression of control and composure in a demanding situation.

Their performance requires both sounding the part and looking the part using clothing, gestures and props in order to convey the appropriate impression in a context devoid of distinct ceremonial equipment. It entails following the unwritten rules of interaction, for instance, standing up means standing out, with deviations from such rules leading to the risk of being branded as deviant. These performance rules encompassing emotional and dramaturgical aspects seem to be learned through a process of professional emotional socialisation.

Rule reminders may be used to enforce appropriateness. By analysing what it is that is sanctioned by the emotional supervisor on hand – the judge - I have set out the implicit rules being enforced and shown that performances should remain subtle. This is exemplified by showing how anger should be performed in order to follow the ceremonial and emotional order of the criminal trial. Courtroom performances are, however, not only externally monitored, they are also self-monitored with deviations leading to feelings of shame. This leads to the conformity to rules and the reproduction of non-theatrical theatrical performances.

The construction of the defence lawyers' role – lawyer face - involves a process of professionalisation, rationalisation and thus unemotionalisation as reflected in their emotion talk. Everyday emotions become professional

emotions. Emotion rules contextualise and hierarchise the appropriateness of emotions, for instance, irritation towards a client may be shown in the backstage context of the lawyer-client meeting but should not be displayed during the frontstage criminal trial performance. Disliking a client should not interfere with one's official duties, however liking a client is an acceptable motivation to work just that little bit harder. Emotional savviness is key.

Defence lawyers also have empathy in their emotional toolbox: relational empathy is used to build the defence team whilst preparatory empathy is used to build the case. Empathy should only be sparked by legitimate triggers and it can be strategically directed in others, such as the judges. Defence lawyers' empathy talk presents it as a useful cognitive tool with affective empathy talked about as unprofessional. Their empathy talk thus upholds the division between rationality and emotionality.

The emotion talk of defence lawyers also reproduces this boundary, presenting emotions as disruptive and extinguishable. My analysis shows, however, that defence lawyers' inappropriate everyday emotions such as disgust, irritation and sadness are not smothered, rather they are engaged with and transformed into appropriate professional emotions which are presented as instrumental tools. Again, we see that the emotion talk of defence lawyers upholds the emotional regime which continues to silence the importance of emotions in legal professionals' performances.

Another way in which emotions are central to the role of defence lawyers is their use of emotional accounting to give meaning to their work, in particular when faced with moral outrage, providing an answer to the how-can-you-defend-a-rapist question. Emotional accounting can also provide a source of explanation for continuing in a role filled with losses.

Central to the role of defence lawyer is the construction of the defence team which is aimed at ensuring that the client receives fair representation. The defence team is readily recognised in the Swedish courtroom as the defence lawyer and client sit next to each other thereby signalling that they are a team, a symbol which is supported by other tie-signs such as making or avoiding eye contact, writing notes to each other and exchanging comments. This close proximity may, at times, make it easier for the defence lawyer – the director – to immediately manage their client's and thus team performance, however, a considerable part of direction takes place prior to the trial, in the form of expectation management.

Expectation management is an important aspect of the defence lawyer's role as many of the defence lawyers I interviewed perceived defendants as being unsure not only of what their role as defendant in a trial entails, but also, what

their defence lawyer will actually do during the trial. Defence lawyers should therefore prepare their clients for what to expect. This expectation management involves describing what the various legal professionals in the courtroom will do and, importantly, how they will do it. Expectation management is aimed at reducing the risk of the client flooding out during proceedings which may have adverse consequences – for instance, revealing something regarding the client's character that the defence team would have preferred to stay hidden. This also reduces the risk of interactions, such as cross-examinations, being perceived as face threats. It is therefore a way of managing future, inappropriate or unwanted emotions.

Explaining a criminal trial to clients also entails preparing clients on the personal front, advising them on how to dress and behave in the courtroom. These can be seen as practices for cooling the client out, with other such strategies including pre-emptively managing emotions, for instance, by presenting a worst-case scenario in order to avert future anger.

A central aspect of this expectation management entails explaining the meaning of doing nothing. As we have now seen, doing nothing – stoneface – is actually doing something, actively pulling attention towards or away from facts presented in the courtroom. Such factwork using dramatic productions and reductions building up or undermining facts – both legal facts and emotional facts – are accomplished using bodywork and props and are an integral part of the defence lawyer's work. Accomplishing stoneface is thus an invisible emotion rule and can be used both as a form of collective facework aimed at protecting team face, but also in order to uphold the lawyer's own professional lawyer face. However, if the client does not know the underlying meaning being conveyed, doing nothing risks being taken to be just that.

Expectation management is thus aimed at building the defence team to ensure they present a unified front and to ensure that the client is aware of the rules of interaction. Collective facework strategies used by the defence lawyer are aimed at upholding this team face. For instance, defence lawyers may use vicarious facework, saving their client's face as a form of collective facework in situations where the client is unable to save his or her own face.

Teamwork is an emotional and interactional accomplishment and centres on the defence lawyer's performance of loyalty. The defence team joins behind a united front and a shared reality, an accomplishment that sees the defence lawyers guiding the performance, in particular, the client's role within, and ensuring that the team performance stays on track. The defence lawyer's role thus encompasses preparing clients for the ensuing co-ordinated conflict of the criminal trial with its inherent face threats and uncertainty.

The defence lawyers' performance is therefore a multi-faceted, emotionally nuanced task demanding management of lawyer face, client face and team face along with the face, and emotions of others. Each of these faces may have different emotion rules to be followed, thereby calling for emotional dexterity and interactional deftness in the professional toolbox of defence lawyers. This is not least due to the inherent adversarial aspect of a criminal trial which brings with it uncertainty, spontaneity, face threats and the constant risk of embarrassment.

The criminal trial should consequently be seen as a theatre of competing realities and performances rather than character attacks, and a scene which inherently demands the dramaturgical and emotional presentation of various faces – both legal professionals and lay participants.

Although a trial is inherently a face threat for the defendant, threatening his or her social standing, threats to the defence team can also come from within the defence team. Such internal face threats to the version of events and united front the defence team is attempting to portray means that a defence lawyer is always on his or her toes – should always be ready to manage their client's faux pas. The source of threat may be associated with the type of strategy used to manage the face attack, with internal face attacks often dramatically reduced. However, the manner in which external face threats arising from outside the team are managed may be more of a reflection of the team line the defence team performance is attempting to uphold.

My aim in this study has consequently been to show that the performance of a principle or legal position, namely loyalty, is an interactional accomplishment. Loyalty work thus entails teamwork, emotion work and facework. The ways in which loyalty is invoked and practically accomplished are discussed and I find that different loyalties demand different emotional performances with switches in loyalty layers visible in micro-expressions and subtle gestures.

Throughout this dissertation I have also attempted to unpack cultural preconceptions regarding defence lawyers by providing possible explanations for these assumptions.

Whilst my focus has been on the criminal trial, I argue that these findings are most likely of relevance to many other professional settings which demand that emotions are hierarchised, rationalised, neutralised and transformed in delicate discussions, meeting or negotiations. If the emotional regime determines whether an individual is performing appropriately and sanctioned accordingly, then we can see equivalent mechanisms in place in many organisations and contexts: schools, hospitals and prisons, politics, academia

and business. Professions such as police officers, social workers, medical professionals and members of the clergy should all ensure that their performance of a legal, ethical or moral principle remains emotionally and socially appropriate. Teamwork is also required in many of these professions where sensitive and crucial negotiations take place demanding competent role performances wherein subtle gestures may be pivotal. The mundaneness of this everyday work in actuality conceals a cornucopia of co-ordinated action enabling the smooth flow of interaction.

## 8.2 Implications

My study indicates that many defendants have inaccurate expectations of a criminal trial. This is important as studies show that courtroom experiences influence how plaintiffs, witnesses and defendants perceive themselves to have been treated by the courts, with perceptions of fair treatment increasing their sense of justice being served (Roach Anleu & Mack, 2017; Thelin, 2001, pp. 62; Westlund & Eriksson, 2013).

This gap between expectations and reality can be bridged by making not just the roles, but also the *performances* of each of the courtroom's actors clear as well as the associated guiding principles of the legal system (cf. Thelin, 2001, pp. 116-117). This can also combat lay participants perceiving a trial as insulting or offensive. Whilst a criminal trial inherently involves face threats, I suggest that explaining the "rules of the game" may help towards face threats being understood as an intrinsic aspect of the interaction, rather than a character attack. I therefore suggest that defendants need to be better informed as to what will actually happen during a trial, not just procedurally and practically, but interactionally and emotionally. This, in turn, contributes towards "procedural justice"<sup>100</sup> being achieved. Procedural justice thus includes interactional justice.

Linked to this, McMahon (2006) warns that the evident decline in professionalism in the American courtroom in the form of aggressive lawyering and discourteous behaviour risks leading to the public becoming

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<sup>100</sup> "Procedural justice" states that if "people view compliance with the law as appropriate because of their attitudes about how they should behave, they will voluntarily assume the obligation to follow legal rules... [and if they] regard legal authorities as more legitimate, they are less likely to break any laws, for they will believe that they ought to follow all of them" (Tyler, 2006, pp. 5-6).

sceptical of criminal trials. A similar risk could arise in Sweden if performances become more Rambo than Bambi.

Associatedly, scepticism to a criminal trial could also develop if one's expectations of what to expect are not met – if, for instance, one expects Rambo but gets Bambi. Expectation management is therefore a central aspect of the role of defence lawyer.

This study supports previous research I have conducted showing that emotion management is not discussed on law programs and indicates that emotion work and facework are forms of professional and emotional socialisation that are learned informally and in action (Boon, 2005, p. 229; Cahill, 1999; Flower, 2014). My study suggests that learning these strategies as part of one's legal training in law school may ease the transition from the interaction order of the classroom into the interaction order of the courtroom, thus reducing uncertainty regarding expectations of one's role performance.

Not only will this reduce uncertainty, but it will provide inexperienced lawyers with information regarding their role performance. This is important as uncertainty regarding how one's job should be done risks leading to burnout, which is characterised by exhaustion, cynicism and inefficacy (Maslach, Schaufeli, & Leiter, 2001). Burnout is also a risk-factor in jobs where there are high levels of role conflict, as may be the case with defence lawyers. A key aspect in preventing burnout is ensuring that there are buffer groups providing social support and “fun at the office”, which, as we have now seen, the defence lawyers in this study talk about as being vital for their everyday work. Another implication of this study is therefore highlighting the importance of creating a supportive atmosphere where colleagues can talk about mistakes and ask for advice. I suggest this is particularly important in a profession associated with high levels of accomplishment.

Teaching such strategies on law programs is therefore another important implication of this study. Indeed, in other countries, professions with close client contact as well as high demands on professionalism and social distance require training in interpersonal skills including nonverbal communication in order to be certified (J. D. Robinson, 2006).

Loyalty is a central aspect of many professional roles and of many types of teamwork. My argument is that professional loyalty is a social form guiding expectations, obligations and performances. The doctor may need to display loyalty to the patient – ensuring that the patient's best interests are upheld. The teacher should show loyalty to the student – ensuring that the student receives suitable education. Again, everyday emotions should be managed in order to uphold one's professional role and organisational position. The performance



of professional loyalty is probably accomplished in these professions in similar ways to defence lawyers, using various strategies to manage emotions and impressions and using the emotional regime as a way of accounting for one's performance.

I met one of the defence lawyers in a courthouse waiting room a few months after our interview and she mentioned that she is more aware of how she interacts with clients after our interview, for example, always greeting them in the courtroom, thus pointing to the interest in raised awareness and acceptance of emotions. It points also to an eagerness to ensure a client's experience of justice as positive. By highlighting these emotion work and facework strategies, it will be possible to see that defence lawyers face similar problems both within the profession and in relation to other professions. I show that defence lawyers use the same basic strategies which stem from the shared rules, laws, expectations and obligations which are used as a resource for the management of feelings and emotions (A. C. Smith & Kleinman, 1989).

The findings and conclusions of this study should therefore not be seen as context-specific, rather the conceptual insights and theoretical developments might be applicable to a number of relevant contexts. Indeed, it has been my aim to indicate that the courtroom can be seen as society in miniature. The mechanisms and interactions at play in the courtroom are also taking place in society at large wherever loyalty and teamwork are on display, even though details and circumstances vary.

## 8.3 Future research

I suggest that the ethical component of many professions adds an extra dimension to the emotional labour they should perform (see also L. C. Harris, 2002). Many of the status professions mentioned above are seen to be striving for some greater good, therefore their emotions are exchanged for a higher cause: medical care, knowledge, inner peace or justice. This places emotional demands on the person performing these roles as they are not just performing a role, they are performing a guiding societal principal or value (see Törnqvist, 2017). The consequence of such demands is an area of important future research.

This dissertation can also be used as a basis for future comparative studies. Emotions can have differing levels of importance in different emotional regimes, for example, consider the importance of shame in different cultures. Or in the case at hand, consider the role of anger in the courtroom. In this

dissertation I show that, when it comes to courtrooms, the feeling rule may permit anger however there are varying display rules outlining how much anger may be shown and in what way (Hochschild, 1983). For example in the United States, anger may be shown in the form of judicial bench-slaps and other outbursts (Maroney, 2012). The Swedish courtroom sees a far more restrained display rule (Flower, 2016a, 2016b). This also raises questions regarding how principle performances are accomplished both within the same legal culture but also between legal cultures (Church, 1985). A deeper exploration of the socio-cultural embeddings of work that influence or alter the appearance of emotions and the emotion rules utilized is therefore of import (Sieben & Wettergren, 2010, p. 11).

We have seen in international research that juries might be influenced by defence lawyers, and we see in my dissertation that there are strategies used by defence lawyers when representing their clients. This prompts the question: does the defence lawyer's performance influence the judges' deliberations? Linked to this, the differences and similarities in principle performances between different legal systems and within similar legal systems is an interesting area of future research.

With the growing interest in criminal trials being live-reported in the form of live updates in online newspapers and tweets, this raises questions regarding how this impacts on the performances given in the courtroom. As I noted in the introduction of this dissertation, medialised depictions of criminal trials may provide an inaccurate picture (Barthe et al., 2013; see also Eriksson, 2016; Pollack, 2001). Again, these are areas for more exploration.

Another interesting aspect of future research is how the various layers of loyalty we have in our lives are managed and performed. Does the performance of personal loyalty differ to that of professional loyalty?

The ways in which changes in the emotional order and ceremonial order in other situations lead to changes in the public's perception is also an interesting area to explore, along with the sources to such changes.

Future research should also focus on female lawyers (Epstein, 1981; Menkel-Meadow, 1985; A. Spencer & Podmore, 1986). In particular, the consequence of having multiple emotional roles (Wharton & Erickson, 1993) as well as exploring the possible hindrances for female lawyers becoming partners at law firms and differences in wages (Wahlberg, 2017).

## 8.4 Contributions to the field

I end by briefly summarising the main contributions to the field presented in this dissertation.

Empirically, this study is novel in providing detailed insight into how defence lawyers interactionally defend their clients in the courtroom. My focus is not on juridical representation, but interactional representation. In particular I showing the subtlety of defence lawyers' work. As shown in the previous research, there is little research that has been conducted to date (in Sweden or in other countries) on defence lawyers from an emotion sociological or dramaturgical perspective. This study thus also opens up for deeper understanding of how, not only legal roles, but also other professional roles, are accomplished.

Linked to this, I provide unique insight into the performance of loyalty and expand understanding of how abstract principles are performed. I also show ways of revealing the invisible rules guiding performances. This, in turn, will enable future comparisons in performances between different legal principles, for instance, comparing objective prosecutors, impartial judges and loyal lawyers, and also opening up for cross-cultural explorations of principle performances. This study therefore contributes to the literature on interactional justice, showing how this is a collective accomplishment performed in everyday courtroom interactions. Of course, the findings can also be used to contribute to other fields where principles are performed.

I present the use of emotions, clothing and the body in the accomplishment of one's professional role and the associated abstract principle and, in particular, I fill a gap in the literature here by applying a sociological lens to the use of props in this performance.

The emotional and dramaturgical mechanisms at play in the performance of teamwork are also shown – how teams are constructed, directed and managed, thus filling another crack in the research field. Exploring the strategies and the ways in which teamwork is interactionally accomplished in the courtroom, and in other situations, is previously undeveloped and my findings have implications for an array of other professions and everyday situations where teamwork is required.

On a conceptual and theoretical level, I present the concept of the “emotional regime of law” and show that its purpose is not only to stifle emotions' influence but also to ensure the flow of interaction. I develop this concept to show that emotional regimes consist of both an emotional order (normative emotions) and an interaction order (normative interactions) with associated

ceremonial order. Order in the courtroom thus demands interactional order, ceremonial order and emotional order. These orders simultaneously and often inseparably, sustain, shape and enable the performances of legal professionals.

Relatedly, by combining theories of emotion work with the dramaturgical approach I provide further support for the overarching framework for proper and appropriate emotions that sustain the division of rationality and emotionality within law.

Other theoretical developments include showing the dark side of emotion work – where emotional displays hide an antithetical emotional intention that deviates from the emotion rule and which should therefore be shown in another way. It is the manipulative, Janus-face side of emotion management. This differs to Hochschild's (1983) work and much of the work afterwards which assumes that the emotion conveyed is the goal, for instance, that one appears friendly in order to make the other person at ease. In contrast, I show a strategic friendliness with instrumentally aggressive goals.

I also bring forth the interactional side of emotion work which has previously focused on either one's own emotions or the emotions of other. I present this in terms of "interactional emotion management". Relatedly, I extend Hochschild's (1983) work to show how emotion work may entail managing both oneself and other not just into an emotion, but into a specific emotion norm, as Hochschild (1983) indicates but does not fully develop. Also regarding emotion work, I introduce a time aspect by showing how "expectation management" is used to manage future emotions.

Further contributions to emotion sociological theory regard empathy and emotional accounting. I build on previous studies and develop the concept of empathy to show the ways in which it is strategically used. In particular I coin the term "empathy triggers" to capture the appropriate provocation of empathy. I also present a new form of accounts, namely "emotional accounting" to depict the ways in which defence lawyers explain their emotions and emotional performances (cf. Scott & Lyman, 1968, 1970).

This dissertation provides further support for the argument that emotions need to be managed in many different organisations, institutions and workplaces, without there being a direct link to making profit as Hochschild (1983) has been presented as focusing upon. Emotions can therefore have an exchange value in the form of creating or contributing to justice (Addison, 2017; Callahan & McCollum, 2002; Wouters, 1989).

Turning to the dramaturgical approach, I expand the concept of dramatic productions by introducing the polar concept of dramatic reductions in order to show how we can actively draw attention towards or away from facts (cf.

Goffman, 1972). I also show the use of “vicarious facework” in an interaction order that does not permit the recipient of a face threat to defend his or her own face. Another key finding and theoretical development is that the source of face threats to a team performance and the strategies used to manage them can differ which I discuss using the novel concepts of “internal” and “external” face threats. Linked to this, I present the term “team face” which is managed by using collective facework strategies which are also depicted in detail.

A new time aspect is also added to Goffman’s (1952) concept of “cooling the mark out” in order to show how this may be done proactively and preemptively, rather than reactively, after the event, as in the Goffmanian use of the term (cf. Scott, 2015, p. 220).

With regards to the construction of facts, I present the concept of “factwork” which depicts how facts are nonverbally produced and responded to, reframed and damaged, undermined or strengthened (Billig, 1991, p. 143; Potter, 1996, pp. 4, 107, 121). In particular I show how this may be done using another new concept - “bodywork” – a form of facework which using gestures and movements. My work therefore also contributes to the interactionist field by showing the something of nothing as shown in my analysis of the performance of stoneface (see also S. Scott, 2017).

And last, but not least, I hope to have provided explanations for some of the preconceptions and stereotypes surrounding defence lawyers: yes, of course defence lawyers have feelings, but, at times, they might need to be emotionally unemotional!

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