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What to look for and how to act in the courtroom: A sociological perspective

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The law is unemotional, right?



Wrong.

- It's about displaying the "right" emotion in the "right" way in the courtroom
- And it's about performing your legal role in the "right" way in the courtroom.
- It's about understanding what is *actually* going on.

This may not be taught on law programs as focus is on law-in-the-books, not law-in-action.

Sociological framework

Emotion work

“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.” (Hochschild 1983, p. 7).

- Rules breaks are sanctioned

Face work

Strategies used to control the images of ourselves we convey = tactical displays of information = impression management (Goffman 1959)

- Also used to help others convey a certain impression.

How are emotions discussed on a law program?

“You lay all the bricks but the mortar is missing” (Student)

Lisa: When do you talk about emotions on the law program?

Law lecturer: I suspect that it comes up during, for example, Criminal Law, when we talk about intent and, the more *sensitive* crimes, like sex crimes (...) then I suspect that it also comes up in Family Law when one talks about questions of custody.

Flower, L. (2014). “The (un)emotional law student” in *International Journal of Work Organisation and Emotion*. 6(3): 295-309.

District courts in Sweden



Nothing is happening!

A theatre of subtle emotions

The court is like a living theatre. When you come to court you 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. I think this is the facade you should have. (Peter)

Anger

The defence lawyer looks up sharply and says, very quietly but very forcibly “what?!” The defence lawyer looks at the prosecutor, the judge and his client whilst shaking his head. Later on when it’s 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 outraged when hearing the report. (Fieldnotes)

Killing them with kindness

I can declare you an 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!
Andrew

It's also about questioning the plaintiff, if I appear to be unpleasant, or am very hard on him or her, it could go the wrong way and go against the client. It's a balance about how tough you should be (...) if you ask the plaintiff a question and they start crying and it reinforces how terrible it was, perhaps you don't want that if you're there as a defender. Lydia

Client's expectations

Client expects



But gets...



But what is actually happening is
Rambo Bambi



Using stoneface

The prosecutor asks the defendant how he came to be in possession of the stolen items and he claims that he bumped into an acquaintance who gave them to him. When asked to describe the acquaintance, the defendant claims he doesn't remember what the acquaintance looked like or what he was wearing. When asked what the acquaintance is called, the defendant thinks a while and says, "Hmmm, Erving." Coincidentally, this also happens to be the (very unusual) name of the defense lawyer. When asked why he was wearing plastic gloves at the time of his arrest, he replies that it was because he thought that the items could possibly be stolen and he didn't want to get his fingerprints on them, therefore "Erving" gave him his plastic gloves along with the items. The prosecutor points out to the accused that in his police statement he stated that the acquaintance he bumped into was called Danny Diamond. The defendant has a neutral facial expression and is unable to explain this discrepancy. Throughout all of this, the defense lawyer stares (almost without blinking) at the prosecutor. There is no movement of facial features: no raised eyebrows, no shake of the head. He is still: glasses in hand, body turned fully towards the prosecutor, not looking at his client.

Frontstage direction

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” said in a soft tone of voice. 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 “yes.” (Fieldnotes)

Producing appropriate emotions in the client using direct eye contact = eyework

Directing the defendant.

Backstage direction

To avoid the "wrong" emotion and to present the "right" impression

- Write a note: "quiet", "poker face"
- Kick them in the leg (not recommended)
- Preparing for trial

Performing loyalty by using props

The witness details one instance where the defendant attempted to smother the plaintiff by placing a pillow over her head. It is a particularly moving testimony. Halfway through 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.
(Fieldnotes)

Drawing attention away from something
Constructing/deconstructing facts

Appropriate emotions, eyework & rule reminders

Defence: I hope that it's ok with you, I am going to ask some questions about what your version of events. And it's my job to do it, just so that you understand that. I wrote down that, 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 defender 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 defender for 10 seconds. Jaw clenched. No reply].

Defence: Or you can change your statement if you want.

Plaintiff: [Stares at the defender for 11 seconds. Jaw clenched. No reply].

Counsel for the plaintiff: Can you tell us what you remember?

Plaintiff: I think this is just incredibly unpleasant [starts to cry].

Defence: I apologise if it feels like that but I'm trying to find out what you remember so I have to ask these questions. The judge can interrupt me if it is not relevant, and I have full respect for that [looks at the judge who is beginning to look a little irritated].

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.

Eyework - blinking

When the film sequence showing the theft is shown, 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 after. (Fieldnote)

Looking professional

The 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.

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. Suddenly there is a loud noise from a walkie talkie which appears to be 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.

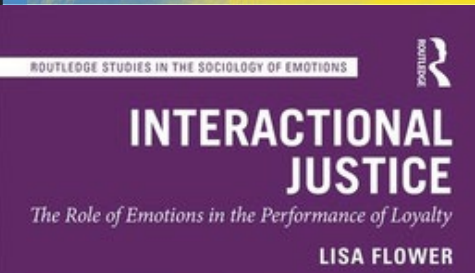
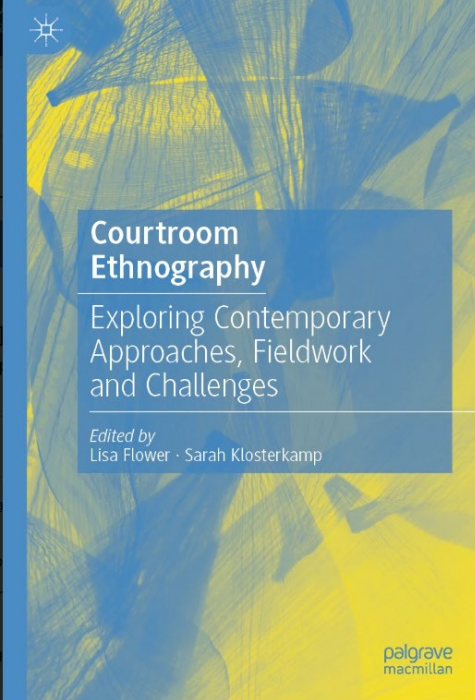
(Fieldnote)

Things to look for in the courtroom

- How is eyework used (strategic eye contact, blinking, avoidance)?
- How is anger or aggression performed?
- Is stoneface used and if so, when?
- Which strategies are used to look professional?
- Is frontstage direction used and how?
- How does the judge sanction rule deviations?

Thanks for today!

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