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The Loyal Defense Lawyer

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The loyal defense lawyer

The role of defense lawyer has particular emotional demands that are not as prevalent for other legal professionals such as prosecutors or judges. Defense lawyers may represent clients accused of heinous crimes – defending the indefensible - leading them to face moral suspicion. Their work may require close contact with clients who are in distress and despair (unless they practice in jurisdictions where paralegals or solicitors perform this intermediary work)¹. It can include looking at upsetting or gruesome images. All of these emotionally-charged situations should nevertheless be dealt with in a professional manner, ensuring the conveyance of loyalty to one's client whilst maintaining loyalty to one's role in the legal system.

In this chapter I explore how defense lawyers' performance of loyalty is central to their work, particularly, the emotional performance of loyalty. One of the biggest challenges is that lawyers' performances must remain emotionally appropriate within what I refer to as the "emotional regime of law" – an overarching framework that guides emotional performances and upholds the illusionary division between rationality and emotionality. Professionalism requires complying with emotional norms.

This chapter presents some of the findings from my research on defense lawyers in Sweden, drawing on ethnographic fieldnotes from observations of over 50 criminal trials and interviews with defense lawyers. I find a criminal trial to be an inherently emotional and interactional accomplishment with the reproduction of defence lawyers' loyalty to their clients a crucial component. The Swedish context is particularly interesting as it calls for subtle drama with understated performances. This chapter begins with a brief overview of previous studies on the emotions of defense lawyers before presenting the role of loyalty for lawyers in Sweden and showing how defense lawyers can be seen to do a kind of dirty work. I then discuss how loyalty can be sociologically studied, using the performance of disloyalty to depict this. Specific emotions such as dislike, disappointment, disgust, anger, happiness and pride are then considered before the chapter concludes with a closing argument.

Studies on lawyers, emotions and loyalty

Previous research on defense lawyers has explored their emotions from various angles. For instance, Harris² shows that barristers in England manage their emotions in different ways, depending on the Goffmanian³ stage on which the performance is played out. Their "emotion work," as described Hochschild⁴ describes – feigning an emotion by "surface acting," or bringing forth the appropriate emotion by "deep acting" – was linked to whether the performance was frontstage, in the courtroom, or backstage, in law offices, waiting rooms or

¹ Lloyd C. Harris, "The Emotional Labour of Barristers: An Exploration of Emotional Labour by Status Professionals," *Journal of Management Studies* 39 (2002). Kathryn J. Lively, "Client Contact and Emotional Labor: Upsetting the Balance and Evening the Field," *Work and Occupations* 29, no. 5 (2002).

² Harris, "The Emotional Labour of Barristers: An Exploration of Emotional Labour by Status Professionals."

³ Erving Goffman, *The Presentation of Self in Everyday Life* (Harmondsworth: Penguin Books Ltd, 1959).

⁴ Arlie R. Hochschild, *The Managed Heart: The Commercialization of Human Feeling*, 2nd ed. (Berkeley: University of California Press, 1983).

courthouse corridors . In the U.S., Pierce⁶ presents the ways in which defense lawyers attempt to convey a certain impression to juries, which she presents in terms of aggressive lawyering and strategic friendliness. Bandes⁷ also focuses on defense lawyers, exploring, “how, in an emotional sense” defense lawyers defend clients and the emotional toll placed on them. Studies from England have also described the emotional displays lawyers must use to develop trust and show empathy⁸. This research also discusses defense lawyers’ vulnerability – a controversial claim that others in the criminal justice system besides defendants and plaintiffs, the traditionally vulnerable, face risks and difficulties⁹. In this view, criminal legal aid lawyers’ vulnerability stems from austerity, forcing them to compromise their standards due to financial restraints - which in turn leads to an increased vulnerability for defendants¹⁰.

What all of these studies have in common, yet do not mention, is that the conveyance of loyalty is integral to these performances. Furthermore, these studies illustrate how legal actors must ensure that their performances remain appropriate to the “emotional regime of law”¹¹. This regime is an overarching framework structuring emotional appropriateness which is aimed at stifling the role of emotions in law and ensuring the law’s smooth, consistent, and rational execution¹². Effective legal performances call for dexterity in managing one’s professional role and with ensuring that clients and other legal professionals uphold their roles, particularly in conveying appropriate impressions and doing so in an emotionally adequate manner.

The defense lawyer’s role is all the more complex as the criminal trial is a place of predictable unpredictability: clients may change their versions of events when a prosecutor questions them, expert witnesses may change their testimony, or a witness may say something surprising. Defense lawyers are consequently expected to retain a façade of stone-faced calm in such moments of crisis, conveying an impression of control and composure in a demanding situation.

The role of loyalty

Loyalty is the foremost principal for lawyers in Sweden¹³ and in the U.S.¹⁴. In Sweden, this duty of loyalty must nevertheless remain within certain constraints, set by law and good lawyering praxis¹⁵. Loyalty is thus limited by legal and ethical guidelines: the lawyer cannot

⁵ Vincent R. Waldron, "Relational Experiences and Emotion at Work," in *Emotion in Organizations*, ed. S. Fineman (London: SAGE Publications, 2000).

⁶ Jennifer L. Pierce, *Gender Trials* (Berkeley: University of California Press, 1995).

⁷ S. Bandes, "Loyalty to One’s Convictions: The Prosecutor and Tunnel Vision," *Howard Law Journal* 49, no. 2 (2006): 3.

⁸ C. Westaby and E. Jones, "Empathy: An Essential Element of Legal Practice or 'Never the Twain Shall Meet'?", *International Journal of the Legal Profession* (2017).

⁹ Roxanna Dehaghani and Daniel Newman, "'We’re Vulnerable Too’: An (Alternative) Analysis of Vulnerability within English Criminal Legal Aid," *Oñati Socio-Legal Series* 7, no. 6 (2017).

¹⁰ Ibid.

¹¹ Lisa Flower, "Loyalty Work: Emotional Interactions of Defence Lawyers in Swedish Courtrooms" (Lund University, 2018).

¹² Terry A. Maroney, "Angry Judges," *Vanderbilt Law Review* 65, no. 5 (2012).

¹³ Flower, "Loyalty Work." Lars Heuman, *God Advokatsed: Rättsbildning Och Disciplinsnämndens Motiveringar* (Stockholm: Jure AB, 2013).

¹⁴ ABA, "American Bar Associations Criminal Justice Standards for the Defense Function," in *Part 1 Standard 4-1.3*, ed. American Bar Association (2016).

¹⁵ Board of the Swedish Bar Association, *Code of Professional Conduct for Members of the Swedish Bar Association*, ed. Swedish Bar Association (Stockholm: Swedish Bar Association, 2008). Claes Borgström, *Advokaten I Brottmålsprocessen* (Stockholm: Norstedts Juridik AB, 2011). Heuman, *God Advokatsed: Rättsbildning Och Disciplinsnämndens Motiveringar*.

break the law or act unethically even if it is in the client's best interests, however loyalty is still the principle that guides the defence lawyer's role¹⁶.

My research on defense lawyers in Sweden shows that their loyalty talk upholds this principle. In my interviews, lawyers talk about loyalty as the client's "absolute right," "the most important thing – the foundation for everything", "the first thing that is impressed upon law students." Loyalty means "working based on the client's best – no other interests should be considered." However, lawyers should have "professional loyalty," not "personal loyalty." This professional loyalty is a contractual loyalty, binding the defense lawyer to the client. This leads to additional questions. How is loyalty accomplished, and how is it performed in the courtroom. Relatedly, how do we know when we are seeing defense lawyers perform loyalty?

The dirty work of loyalty

In 2017, Rakhmat Akilov drove a truck through a pedestrianized shopping district in Stockholm, the capital city of Sweden, killing five and wounding many more in a terrorist attack. Akilov's lawyer, Johan Eriksson, who was well-experienced in representing stigmatized defendants such as murderers, rapists and pedophiles, said in a newspaper interview that never before had he faced such criticism nor been the target of so many threats and moral questioning as after he took Akilov's case¹⁷. Eriksson stated that others believed that he supported liked terrorism - a moral suspicion that defense lawyers may face, not only in Sweden but also, for instance in the U.S.¹⁸.

It is not only high-profile defense lawyers that face such moral suspicion. Many of the criminal defense lawyers I interviewed in my study in Sweden also talk about experiences similar to Eriksson's. For instance, several have faced the inevitable how-can-you-defend-a-rapist question at social gatherings. This question implies they are defending not a suspect, but the crime of rape itself; as Sandra remarked, "almost like I think that rape is good, that I put an 'equals sign' between them." Other lawyers confessed they tried to avoid revealing what they do for a living, as their job title can "trigger" these common criticisms as Linda, another of the lawyers I interviewed tells me. Relatedly, as a researcher who examines defense lawyers' emotions, I have often heard the remark, "Do defense lawyers have feelings?"

Defense lawyers' work may therefore be seen as a kind of "dirty work"¹⁹, defined as performing a role that goes against our conceptions of what is moral and thus causing disgust. Dirty work provides a glimpse of an underlying "moral division of labor"²⁰ within law, because prosecutors and judges are not tainted in this manner. Sandra noted that she often felt that her professional role was questioned, but that her friends who are judges have not faced such doubt. In some situations, she has even noticed "an almost hostile attitude – that defense lawyers are

¹⁶ Jori Munukka, *Kontraktuell Lojalitetsplikt* (Stockholm: Jure, 2007).

¹⁷ TT, "Akilovs Advokat: "Ifrågasatt Som Aldrig Förr", *Aftonbladet*, 12 February 2018 2018.

¹⁸ Bades, "Loyalty to One's Convictions: The Prosecutor and Tunnel Vision." Flower, "Loyalty Work."

¹⁹ Robert M. Emerson and Melvin Pollner, "Dirty Work Designations: Their Features and Consequences in Psychiatric Setting," *Social Problems* 23, no. 3 (1975). Linda Haller, "Dirty Linen: The Public Shaming of Lawyers," *International Journal of the Legal Profession* 10, no. 3 (2003). Everett. C. Hughes, "Good People and Dirty Work," *Social Problems* 10, no. 1 (1962); *Men and Their Work* (London: Collier-Macmillan Limited, 1958). Cyrus Tata, "A Sense of Justice: The Role of Pre-Sentence Reports in the Production (and Disruption) of Guilt and Guilty Pleas," *Punishment & Society* 12, no. 3 (2010).

²⁰ Hughes, *Men and Their Work*, 71.

just a pain – that they ruin the police’s work.” This perception of defense lawyers as difficult also finds support in police research²¹.

Perry, another defense lawyer I interviewed, –revealed that, even though people may respect his profession, they have a preconception that defense lawyers “earn a lot of money and are dishonest.” This opinion may be found not only amongst the general public, but even amongst other legal professionals such as prosecutors²². A typical example that defense lawyers representing members of criminal gangs are often faced with suspicion, although a study on criminal defense lawyers in the U.S. reveals that cases of misconduct occur more commonly amongst lawyers specializing in civil law rather than criminal law²³. The defense lawyer’s unique position – combining respectability and reliability with the legal and financial knowledge to launder money - that makes them attractive to members of organized crime groups, and the object of suspicion²⁴.

Defense lawyers often feel as if they are expected to explain their role in the criminal justice process. To do so, they use their position in the legal system to explain, justify, create meaning and make sense of their work – that is, they give “accounts”²⁵. These accounts legitimize their role in the criminal justice process and revolve around the principle of loyalty and fidelity to legal principles – such as the right to representation. One defense lawyer told me that “every individual who is suspected of a crime deserves to have their case heard - they deserve a fair trial and they have the right to a defense.” Another described how, although he might have to represent a client accused of murdering their child, that client “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.” Other lawyers paint themselves in the role of David, battling against Goliath. For instance, Daniel stated,

defense lawyers have a very important role to play, and, even if this sounds pretentious, it can often be the case that we are the only ones who actually stand up for the small – the individual.

Similarly, Lo found her work as a defense lawyer interesting because she felt she can “make a difference for someone who needs help.” These defense lawyers present themselves as being motivated by justice, which drives them to fulfil their role obligations and provides an explanatory framework for their dirty work²⁶. They draw on their position in the juridical

²¹ Mikael Björk, "Känslok kontroll i kritiska situationer: Mikrosociologiska perspektiv på modernt polisarbete," in *Social kontroll - Övervakning, Disciplinering Och Självtreglering*, ed. B. Larsson and O. Engdahl (Malmö: Liber, 2011).

²² Nina Törnqvist, "Att Göra Rätt: En Studie Om Professionell Respektabilitet, Emotioner Och Narrativa Linjer Bland Relationsväldsspecialiserade Åklagare" (Doctoral Dissertation in Criminology, Stockholm University, 2017).

²³ Hans Nelen and Francien Lankhorst, "Facilitating Organized Crime: The Role of Lawyers and Notaries," in *Organized Crime: Culture, Markets and Policies*, ed. D. Siegel and D. Nelen (New York: Springer-Verlag, 2008), 130.

²⁴ Ibid.

²⁵ Carolyn D. Baker, *Ethnomethodological Analyses of Interviews*, ed. J. F. Gurbium and J. A. Holstein, Handbook of Interview Research: Context & Method (Thousand Oaks: SAGE Publications, 2002). Charles J. Ogletree, "Beyond Justifications: Seeking Motivations to Sustain Public Defenders," *Harvard Law Review* 106, no. 6 (1993). Jens Rennstam and David Wästerfors, *Från Stoff Till Studie: Om Analysarbete I Kvalitativ Forskning*, Greppbar Metod (Lund: Studentlitteratur, 2015). Marvin B. Scott and Stanford M. Lyman, *The Revolt of the Students* (Columbus, Ohio: Charles E. Merrill Publishing Company, 1970); Marvin B. Scott and Stanford M. Lyman, "Accounts," *American Sociological Review* 33, no. 1 (1968).

²⁶ David Schweingruber and Nancy Berns, "Shaping the Selves of Young Salespeople through Emotion Management," *Journal of Contemporary Ethnography* 34, no. 6 (2005).

system to manage the skepticism they face and give meaning to the dirty work they perform. This role is based on loyally and competently representing the client. A distinction is therefore made between the individual accused of the crime and the crime itself; while the crime is irrelevant, the accused is central. As Akilov's defense lawyer, Johan Eriksson says, "I represent people who are suspected of rape, of abusing children, murder. I don't sympathize with criminal acts."²⁷

This division is the first step in lawyers' performance of loyalty; it protects the defense lawyer from taking both a moral stand and an emotional stance towards the crime. Performing loyalty is also a way that lawyers can integrate the dirty work into their legal roles, so that it becomes instead a badge of prestige²⁸. While defense lawyers may represent individuals accused of heinous crimes, they perform a key role in ensuring justice for all. Defense lawyers thus not only explain and give meaning to their legal role but also more specifically for the associated emotional performances and experiences. I have termed this latter form of accounting "emotional accounts"²⁹. While an accused rapist might awaken feelings of disgust or dislike in individuals outside of their role as defense lawyer, when they are 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.

Seeing loyalty

It is therefore the legal professional's position that determines her appropriate orientation to legal work (i.e., "loyal" lawyer, "objective" prosecutor or "impartial" judge) which, in turn, guides the legal practitioner's symbolic representations in courtroom interactions. Sandra describes the contrast in these orientations, stating that, as a defense lawyer, she has "no duty or obligation to be objective," in contrast to a prosecutor. These symbolic representations in turn shape the practitioner's actual performance whilst simultaneously reproducing the emotional boundaries – the "emotional regime of the criminal trial"³⁰.

So how can we observe these principle performances? In a sociological study of loyalty, we can use an interactionist starting point, the central premise of which is that we act on the basis of how we define a situation and how we interpret others' actions and meanings, which are communicated via symbols³¹. We do this by taking the other's perspective, and we begin from the premise that another person perceives us, and has formed an opinion of us. We therefore view and conduct ourselves based upon how we believe others perceive us. It is through a process of socialization and shared interactions that shared meanings arise, producing expectations regarding how we are supposed to interact with each other, and making us aware of the shared meanings attached to symbols³². In order to see how loyalty is conveyed, it is

²⁷ Flower, "Loyalty Work."

²⁸ Hughes, *Men and Their Work*, 52.

²⁹ cf. Katarina Jacobsson, "'We Can't Just Do It Any Which Way' - Objectivity Work among Swedish Prosecutors," *Qualitative Sociology Review* 4, no. 1 (2008). Scott and Lyman, "Accounts."

³⁰ William M. Reddy, *The Navigation of Feeling: A Framework for the History of Emotions* (Cambridge: Cambridge University Press, 2001). Flower, "Loyalty Work."

³¹ Herbert Blumer, *Symbolic Interactionism* (Englewoods Cliff, NJ: Prentice-Hall, 1959). Charles H. Cooley, *Human Nature and the Social Order* (New York: Scribner, 1922). Erving Goffman, *The Presentation of Self in Everyday Life* (Edinburgh: University of Edinburgh Social Science Research Centre, 1956). Herbert Mead, *Mind, Self, and Society from the Standpoint of a Social Behaviorist* (Chicago: Chicago University Press, 1934).

³² Peter Berger and Thomas Luckmann, *The Social Construction of Reality* (London: The Penguin Press, 1966); Susie Scott, *Negotiating Identity: Symbolic Interactionist Approaches to Social Identity* (Cambridge: Polity Press, 2015).

necessary to reveal the shared meanings so as to make sense of what we experience³³. By conducting ethnographic observations of over 50 criminal trials, I have been able to see patterns of interaction emerging, and watch underlying meanings being conveyed. These patterns are the rules of interaction, normally invisible, which are exposed when they deviate from the norm, what one would expect to happen. Deviant interactions show what has been systematically excluded³⁴. Loyalty is therefore displayed when we encounter the deviant interaction – the performance of disloyalty. This, in turn, reveals the underlying professional expectations for the appropriate performance of loyalty.

Disloyalty

Defense lawyers endeavour to perform and sustain their professional role. However, situations may arise when the defense lawyer deviates from her role and exposes unmanaged or inappropriate emotions, conveying the “wrong” impression³⁵. In short, the lawyer looks disloyal.

When the lawyers I interviewed talked about their ability to stay in role, all presented themselves as accomplished performers, able to stay in their role throughout the performance, even when faced with the unexpected. This performance often uses the strategy of stoneface – sitting with a neutral expression, without outwardly reacting to surprises or disappointments. However, my observations of trials showed that moments of disloyalty occur. For instance, a disloyalty display could take the form of a large blink when a client inadvertently confesses to a crime, or when evidence is presented that is particularly damaging for the defense. Disloyalty might also be seen when a lawyer places her arm as a barrier between herself and a client, or shifts her chair away. Such glimpses of disloyalty may be over in a second, a literal “blink-and-you-miss-it” occurrence, but they nevertheless may communicate a weakness in the defense team’s case or a chink in the unity between client and lawyer. The importance of conveying a loyal impression was paramount for all of the lawyers I interviewed; indeed, all were keen to know if they unknowingly gave off such signals, thus showing their awareness of such minor gestures and the importance they placed on them.

In light of the above discussion, one’s role in the juridical system outlines which emotions are permitted and how they may be shown. So, what are the emotions behind the performance of loyalty?

Dislike, disappointment, disgust and anger

Defense lawyers make an interesting subject of empirical study due to their role in relation to their clients, defendants who may be unfamiliar with a criminal trial and not know what is expected³⁶. Furthermore, defendants are free to change their version of events during a trial. These tensions place emotional and dramaturgical demands on the defense lawyer while she is interacting with her client that peak during a trial. Inappropriate emotions should therefore be managed in-the-moment. Additionally, defense lawyers have greater direct contact with clients than prosecutors or judges. Defence lawyers are “people persons,” as Lo tells me: “You have

³³ Randall Collins, “Micromethods as a Basis for Macrosociology,” *Journal of Contemporary Ethnography* 12, no. 1 (1983). Robert. M. Emerson, Rachel. I. Fretz, and Linda. L. Shaw, *Writing Ethnographic Fieldnotes*, 2 ed. (Chicago: The University of Chicago Press, 2011).

³⁴ Paul M. Strong, “Minor Courtesies and Macro Structures,” in *Erving Goffman: Exploring the Interaction Order*, ed. P. Drew and A. Wooton (Cambridge: Polity, 1988), 236.

³⁵ Goffman, *The Presentation of Self in Everyday Life*, 33.

³⁶ Jessica Jacobson, Gillian Hunter, and Amy Kirby, *Inside Crown Court: Personal Experiences and Questions of Legitimacy* (Bristol: Policy Press, 2016).

to think that is fun to meet people (...) all different kinds of people (...) and be humble about other people's life situations." Charles also remarked on the importance of interpersonal skills; he told me that he can just as easily converse with professors as with drug addicts or clients with mental health problems. This service-like role therefore places higher demands on defense lawyers' emotional performances compared to other legal professionals³⁷.

According to the Swedish Bar Association³⁸, a lawyer's personal feelings towards a client should not influence one's performance, irrespective of what these feelings might be. One of the lawyers I interviewed, Siri, describes this succinctly: "you want to do your best even if you think the person is a real asshole." Disliking a client is presented by lawyers as something that does not hinder or inhibit their work however it constitutes another demand on their emotional performances as such a professionally-inappropriate emotion should not be displayed.

Siri goes on to describe her fear of deviating from her professional role performance if she has a client whom she dislikes. Such fears lead to an increased awareness, and increased management, of inappropriate emotions³⁹. We can also see that, for Siri, professionalism entails the separation of her everyday emotions of dislike from her role-based professional emotions. She is thus upholding law's emotional regime, which sustains an illusionary dichotomy between rationality and professionalism on the one side, and emotionality on the other. Maintaining this successful separation leads to feelings of pride in her performance.

However, whilst dislike for a client is presented as an inappropriate emotion in need of management, liking a client can be an accepted source of motivation. Another defence lawyer I interviewed, Andrew, told me that, whilst he always fulfils his professional responsibilities irrespective of how he feels about a client, he might be inclined to do a little bit extra for a client that he likes. Disliking a client is therefore presented as something that does not hinder or inhibit the defense attorney's professional role; however, liking a client is a legitimate motivator of performance⁴⁰.

Disappointment is another emotion in need of management. As the overwhelming majority of Swedish criminal trials lead to a conviction, defense lawyers must find strategies to work in a role filled with "losses"⁴¹. This is achieved by redefining "what a win means"⁴², in the words of Judy Clark, a defense attorney who has spent her career working with the "worst of the worse," including serving as lead defense lawyer for Dzhokhar Tsarnaev, one of the Boston marathon bombers. Defense lawyers thus present winning in terms of providing the best possible defense for a client, and achieving a suitable outcome. Winning does not mean acquittal; it means that one's client receives an acceptable punishment.

Disgust is another inappropriate everyday emotion that defense lawyers must engage with and transform into a professional tool. Disgust is the end result of a cognitive process whereby a person first engages with an object of emotion, for example, a defense lawyer viewing child

³⁷ cf. Hochschild, *The Managed Heart: The Commercialization of Human Feeling*.

³⁸ Association, *Code of Professional Conduct for Members of the Swedish Bar Association*.

³⁹ Cooley, *Human Nature and the Social Order*. Lisa Flower, "The (Un)Emotional Law Student," *International Journal of Work Organisation and Emotion* 6, no. 3 (2014). Thomas J. Scheff, "Shame and the Social Bond: A Sociological Theory," *Sociological Theory* 18, no. 1 (2000).

⁴⁰ cf. Michael Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 1980).

⁴¹ Elisabeth Nordén, "Utvecklingen Av Personupplärade Misstankar Och Bifallna Åtal 2004-2014," in *Kortanalys* (Stockholm: Brottsförebyggande rådet, 2015).

⁴² Patrick Radden Keefe, "The Worst of the Worst," *The New Yorker*, September 14 2015.

pornography images her client is accused of possessing, and appraising it as being morally offensive. She should then reappraise the object, either by changing how it is perceived – viewing the perpetrator as a victim of sexual abuse, how it is evaluated – as evidence rather than child pornographic images, or according to the goal – focusing on finding the evidential aspects of the images⁴³. When representing the client in court, disgust for the images themselves may be displayed, however disgust for the client could be considered inappropriate. This ties back to defense lawyers defending the individual, not the crime.

The professionalisation of everyday emotions can therefore entail transforming inappropriate emotions into professionally appropriate tools. It entails engagement and transformation - not suffocation or suppression, as defense lawyers tend to present their emotions⁴⁴. The emotional regime in which law attempts to quiet emotions' role is illustrated by defence lawyers' assertions that they "switch off" rather than engage with these feelings. This process of transformation can be seen in my interview with Peter, an experienced defense lawyer who revealed that, when he reads investigation reports, he focuses on the evidence and looks for clues, such as determining that a party abuses alcohol from the number of bruises. Peter and others present the "switching off" transformation as cognitively changing the difficult subject matter to a banal legal task: finding evidence that supports or opposes one's case. Defense lawyers thus learn to redefine viewing gruesome evidence through a legal lens⁴⁵. Looking at explicit or unpleasant images thus becomes normalised - just another part of one's job. Another defense lawyer, Andrew, likens this to the normalisation process that pathologists use; he stated that he looks at gruesome images "clinically."

Here again, defense lawyers use emotional accounts to explain their (lack of) expected emotions, and how they use the law as an emotion management strategy. This is akin to the way that medical students use science as an emotion management strategy by defining contact with dead bodies and intimate patient examinations as part of scientific medicine⁴⁶. The defense lawyers whom I interviewed did not use the same strategies as medical students, who may act "as if" a body was no longer a body but rather a less troublesome object such as a cat or a toaster⁴⁷. For defense lawyers, the body remains a body, but it is transformed into evidence through a process whereby the lawyer makes discomfort with anatomical issues personally insignificant yet legally important⁴⁸. The underlying emotion rule, therefore, is that disgust is an inappropriate everyday emotion that should be managed⁴⁹.

⁴³ Terry A. Maroney and James T. Gross, "The Ideal of the Dispassionate Judge: An Emotion Regulation Perspective," *Emotion Review* 6, no. 2 (2014); Terry A. Maroney, "Emotional Regulation and Judicial Behavior," *California Law Review* 99, no. 6 (2011): 1508.

⁴⁴ Harris, "The Emotional Labour of Barristers: An Exploration of Emotional Labour by Status Professionals." cf. Susan Bandes and Jessica M. Salerno, "Emotion, Proof and Prejudice: The Cognitive Science of Gruesome Photos and Victim Impact Statements," *Arizona State Law Journal* 46, no. 4 (2014).

⁴⁵ T. A. Maroney, "The Persistent Cultural Script of Judicial Dispassion," *California Law Review* 99 (2011); Terry A. Maroney, "Emotional Regulation and Judicial Behavior," *ibid.*, no. 6. Allen C. Smith and Sherryl Kleinman, "Managing Emotions in Medical School: Student's Contacts with the Living and the Dead," *Social Psychological Quarterly* 52, no. 1 (1989).

⁴⁶ Spencer E. Cahill, "Emotional Capital and Professional Socialization: The Case of Mortuary Science Students (and Me)." *Ibid.* 62, no. 2 (1999).

⁴⁷ Allen C. Smith and Sherryl Kleinman, "Managing Emotions in Medical School: Student's Contacts with the Living and the Dead," *ibid.* 52, no. 1 (1989). Hochschild, *The Managed Heart: The Commercialization of Human Feeling*.

⁴⁸ Harold I. Lief and Renee C. Fox, *Training for 'Detached Concern' in Medical Students*, ed. H. I. Lief, V. F. Lief, and V. R. Lief, *The Psychological Basis of Medical Practice* (London: Harper & Row, 1963).

⁴⁹ Smith and Kleinman, "Managing Emotions in Medical School: Student's Contacts with the Living and the Dead."

Managing disgust also has a tactical dimension. Learning to manage one's own emotions while clinically searching for gruesome evidentiary details is a vital "trick of the trade," whereby lawyers learn to look at images professionally so that they can prevent shocking images being shown in the courtroom and negatively influencing judges.

Swedish defense lawyers also talk about anger as an inappropriate emotion. Anger should be avoided or handled with care, perhaps because lawyers who display anger risk being viewed as too personally involved with a client, or as having lost self-control⁵⁰. Anger is constructed not only as an everyday "unbecoming emotion"⁵¹, but one that is incompatible with rational or normative action. In line with this, my study finds that, rather than presenting themselves as angry, defense lawyers talk about becoming indignant, annoyed, or worked-up. These are acceptable acts of anger which are sparked by injustice that follows from a rule violation (such as when a prosecutor is perceived to be non-objective, or a witness is suspected of perjury) but are *not* instances where the defense lawyer becomes personally affronted⁵². Good lawyers in Sweden don't get angry; they get annoyed.

American "Rambo lawyers"⁵³ (Pierce, 1995) who enact anger and perform aggressively are thus regarded as a deviation; in Sweden, angry displays should be subtle and in line with the courtroom's emotional expectations⁵⁴. The Swedish "Rambo" performance is softer, more akin to the Disney cartoon character Bambi, but hiding beneath the soft surface is a hard, aggressive Rambo, a film character known for aggression, strength, and determination, making for a "Rambo-Bambi" performance. Swedish defense lawyers' emotional displays are therefore adjusted to the toned-down, subtle emotional regime of law. I suggest that the difference between the American "Rambo" lawyers⁵⁵ and the Swedish Rambo-Bambi is a difference in display rules. Both are dramatic, aggressive performances, and both adhere to the locale's "societal emotional regime"⁵⁶.

⁵⁰ Neal Feigenson, "Jurors' Emotions and Judgements of Legal Responsibility and Blame: What Does the Experimental Research Tell Us?," *Emotion Review* 8, no. 1 (2016). Paul M. Litvak et al., "Fuel in the Fire: How Anger Impacts Judgement and Decision-Making," in *International Handbook of Anger: Constituent and Concomitant Biological, Psychological, and Social Processes*, ed. M. Potegal, G. Stemmler, and C. Spielberger (New York: Springer, 2010); Jennifer S. Lerner and Larissa Z. Tiedens, "Portrait of the Angry Decision Maker: How Appraisal Tendencies Shape Anger's Influence on Cognition," *Journal of Behavioral Decision Making* 19, no. 2 (2006); Jennifer S. Lerner, Julie H. Goldberg, and Philip E. Tetlock, "Sober Second Thought: The Effects of Accountability, Anger, and Authoritarianism on Attributions of Responsibility," *Personality and Social Psychology Bulletin* 24, no. 6 (1998).

⁵¹ James Averill, "Emotions Unbecoming and Becoming," in *The Nature of Emotion: Fundamental Questions*, ed. P. Ekman and R. J. Davidson (New York: Oxford University Press, 1994), 265.

⁵² cf. Helena Flam, "Emotional 'Man': Ii. Corporate Actors as Emotion-Motivated Emotion Managers," *International Sociology* 5, no. 2 (1990): 232.

⁵³ Pierce, *Gender Trials*.

⁵⁴ Dawn Archer, "Cross-Examining Lawyers, Facework and the Adversarial Courtroom," *Journal of Pragmatics* 43, no. 1 (2011); "Facework and Im/Politeness across Legal Contexts: An Introduction," *Journal of Politeness Research* 7, no. 1 (2011). Paul Rock, *The Social World of an English Crown Court* (Oxford: Oxford University Press, 1993); Thomas Scheffer, Kati Hannken-Illjes, and Alexander Kosin, *Criminal Defence and Procedure: Comparative Ethnographies in the United Kingdom, Germany and the United States* (New York: Palgrave Macmillan, 2010).

⁵⁵ Pierce, *Gender Trials*.

⁵⁶ Stina Bergman Blix and Åsa Wettergren, "A Sociological Perspective on Emotions in the Judiciary," *Emotion Review* (2015): 3.

Happiness and pride

We have seen that there are several inappropriate emotions that defense lawyers feel that they must manage to accomplish their role. The work of defense lawyers can be divided between that done frontstage – in the courtroom – and that conducted backstage – in the confines of the law offices and courthouse waiting areas. Whilst the frontstage is shaped by strict expectations regarding one's professional role performance, the backstage constitutes spaces where performances can be prepared and where problems or frustrations may be ventilated⁵⁷. It is also a place where inappropriate emotions may be shown more freely, serving as an “emotional refuge”⁵⁸ that offers a reprieve from the stricter emotional demands of the frontstage. One of the lawyers I interviewed, Vera, tells me that an intern at her law firm compared the law offices to a “playground” because everyone laughed and joked so much. Vera described the importance of creating a relaxed and fun atmosphere at work because they “work with tough things every day and therefore it's incredibly important to have fun at the office.”

The need for an emotional refuge stems not only from the strict emotional rules that govern courtroom behaviour, but also because of the gruelling nature of defense lawyers' work. Another lawyer described the job as “working with “other people's shit, or society's, or whatever you want to call it”⁵⁹. This support, or “communities of coping” as presented by the lawyers I spoke to, differs from that in U.S. studies, which links the need for emotional comfort with one's position in the occupational hierarchy, for instance paralegals' frustrations stem from litigators who are higher up the hierarchy⁶⁰. In contrast, Swedish defense lawyers need to draw support in colleagues after close client contact⁶¹.

Law offices can thus constitute a safe haven, where rules governing frontstage performances are relaxed and different emotions are permitted. It is here that potentially disruptive emotions can be encapsulated and segregated from one's ongoing professional role, enabling one to continue emotionally-demanding work⁶².

It is also in the backstage safety of the law offices that other inappropriate emotions can be displayed. For instance, successfully questioning a witness or plaintiff may lead the defense lawyer to feel pride, a feeling which arises when we accomplish a goal we have set out to achieve. However, lawyers cannot display pride in the courtroom, since displays like fist-pumping are clearly inappropriate and unprofessional, and should be confined to backstage venues. Although this example may seem obvious, it nevertheless points to the multitude of emotions defense lawyers must manage, and to the array of unwritten emotion rules that one must follow as a defense lawyer.

⁵⁷ Goffman, *The Presentation of Self in Everyday Life*.

⁵⁸ Reddy, *The Navigation of Feeling: A Framework for the History of Emotions*, 128-29.

⁵⁹ C. Clark, "Sympathy Biography and Sympathy Margin," *American Journal of Sociology* 93, no. 2 (1987).

Stephen Fineman, "Emotion and Organizing," in *The Sage Handbook of Organization Studies*, ed. S. R. Clegg, et al. (London: SAGE Publications, 2006).

⁶⁰ Lively, "Client Contact and Emotional Labor: Upsetting the Balance and Evening the Field."

⁶¹ cf. "Reciprocal Emotion Management: Working Together to Maintain Stratification in Private Law Firms," *Work and Occupations* 27, no. 1 (2000).

⁶² Sara Ahmed, *The Cultural Politics of Emotion* (New York: Routledge, 2004). Blake E. Ashforth and Ronald H. Humphrey, "Emotion in the Workplace: A Reappraisal," *Human Relations* 48, no. 2 (1995); K. Mack and S. Roach Anleu, "Performing Impartiality: Judicial Demeanor and Legitimacy," *Law & Social Inquiry* 35, no. 1 (2010).

Closing argument

This chapter has shown that defense lawyering demands interactional dexterity as well as emotional aptitude, enabling practitioners to manage inappropriate emotions. Lawyers invoke the guiding principle of loyalty to symbolise their role and courtroom performances, much like the way in which other legal professionals invoke claims of objectivity⁶³.

I conclude that the role of defense lawyer entails emotional and interactional challenges. Defense 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 explains why and how lawyers attempt to shield legal performances from emotional influences by rationalising and subduing emotions and adhering to the rules of interaction to assist the smooth flow of justice. Performances are also tailored to the stage on which they are performed. Defense 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 courtroom emotional regime.

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⁶³ Jacobsson, "'We Can't Just Do It Any Which Way' - Objectivity Work among Swedish Prosecutors." Moa Bladini, *I Objektivitetens Sken: En Kritisk Granskning Av Objektivitetsideal, Objektivitetsanspråk Och Legitimeringsstrategier I Diskurser Om Dömande I Brottmål* (Göteborg: Makadam, 2013). Linda J. Rogers and Edna Erez, "The Contextuality of Objectivity in Sentencing among Legal Professionals in South Australia," *International Journal of the Sociology of Law* 27 (1999). Gail Tuchman, "Objectivity as Strategic Ritual: An Examination of Newsmen's Notions of Objectivity.," *American Journal of Sociology* 77, no. 4 (1972). Åsa Wettergren and Stina Bergman Blix, "Empathy and Objectivity in the Legal Procedure: The Case of Swedish Prosecutors," *Journal of Scandinavian Studies in Criminology and Crime Prevention* (2016).

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