

## The Emotional Interaction of Judicial Objectivity

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### Abstract

Like other Western legal systems, the Swedish legal system constructs objectivity as an unemotional state of being. We argue that the enactment of objectivity in situ relies on objectivity work including emotion management and empathy. Building on qualitative interviews and observations in Swedish district courts, we analyse courtroom interaction through a dramaturgical lens, highlighting tacit signals and interprofessional emotional communication aimed to secure objective procedures, while sustaining the ideal of unemotional objectivity. By analytically separating objectivity from impartiality, we show that judges' objective performances balance empathic attunement and restrained expressions to uphold an impartial presentation. Prosecutors take pride in maintaining objectivity in spite of being partial, fostering the ability to switch between engagement and disengagement depending on the strength of the case. The requirement for legal professionals to be autonomous demands skillful inter-professional emotional attuning. Thereby, collaborative professional emotion management achieves the ideal of justice as being objective.

### Key words

Emotion management; empathy; objectivity; impartiality; Swedish courts; legal professionals; tacit signals; emotional communication

### Resumen

Al igual que otros sistemas jurídicos occidentales, el sueco construye la objetividad como un estado del ser no emocional. Argumentamos que la aplicación de la objetividad *in situ* se apoya en un trabajo de objetividad que incluye la gestión de las emociones y la empatía. Basándonos en entrevistas cualitativas y en observaciones en juzgados de Suecia, analizamos la interacción que se da en el tribunal, destacando señales tácitas y comunicación emocional interprofesional destinada a asegurar procedimientos objetivos, a la vez que a sostener el ideal de objetividad no emotiva. Al separar analíticamente objetividad de imparcialidad, mostramos que las

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actuaciones objetivas de los jueces suponen un equilibrio entre la sintonía empática y la contención expresiva para defender una presentación imparcial. El requisito de que los profesionales del derecho sean autónomos demanda una sintonía emocional interprofesional. Por tanto, la gestión emocional colaborativa de los profesionales cumple con el ideal de justicia objetiva.

**Palabras clave**

Gestión de emociones; empatía; objetividad; imparcialidad; tribunales suecos; profesionales del derecho; señales tácitas; comunicación emocional

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## 1. Introduction

Abidance by law requires a widely shared trust in the function of the judicial system to uphold objectivity. However, the legal “positivist” definition of objectivity as abstract, disembodied, and unemotional is problematic (Heuman 2007, Bladini 2013, Kjelby 2015). In daily legal practice positivist objectivity is an ideal to be approximated through individual and collective adaptations to real-life situations imbued with emotions (Rogers and Erez 1999, Jacobsson 2008, Wettergren and Bergman Blix 2016). In this article, we build on data from Swedish courts to show how judicial objectivity requires situated emotion management and empathy when performing within “the emotive-cognitive judicial frame” (Bergman Blix and Wettergren 2018; see also Roach Anleu and Mack 2017). In our analysis we adopt a dramaturgical lens (Goffman 1959) to direct attention to objective justice in the courtroom as a cooperative collective achievement (Bergman Blix and Wettergren 2016) that builds on distinct professional role performances coordinated via tacit signals and emotional communication (Bergman Blix and Wettergren 2018). The interactional analysis also demonstrates that while the positivist notion of judicial objectivity assumes the *same* kind of objectivity ideal applied to prosecutors and judges, the different tasks and situations of prosecutor and judge require very different types of emotion management in the practical everyday “objectivity work” (Jacobsson 2008).

Scandinavian law adheres to the civil law system. The pre-trial features are largely inquisitorial, while the trial itself is adversarial (Forsgren 2014, 219ff.). The district courts are the first instance of the general court and presiding in most district court trials is one professional judge and three lay judges. Lay judges have no formal legal education; they are selected from the political parties and are appointed for four years with possibility for re-election. The lay judges act as neutral and passive listeners during the hearings; if they have questions, they forward them on a note to the presiding judge. The verdict and the sentence is decided through a simple majority vote by the professional judge and the lay judges, but since the lay judges are required to heed the judicial expertise of the professional judge their power is deemed to be limited in practice. For these reasons, our analysis leaves the lay judges out. The role of the professional judge follows common law procedures in that the judge presides in court and is in charge of order and security but is not active in choosing or presenting evidence and abides to norms of dispassion (Dahlberg 2009, Maroney 2011). In contrast to the common law system, the civil “code” however lessens the room for interpretation; the judge has to follow the written law. During preliminary investigations, the Swedish prosecutor is required to be objective; in court, the prosecutor takes the role of the accusing party while remaining objective in terms of respecting and presenting new evidence that potentially might favour the defendant’s case.

We will now continue to review the literature on objectivity and emotions in court, then proceed to outline our theoretical framework and our method. Thereafter we present an analysis of our own data, followed by a concluding discussion.

## 2. Doing justice objectively

The legal systems of Western modern democratic states are governed by the notion of objectivity as conceived through the emergence of modern science (von Wright 1986) and the modern bureaucratic state (Weber 1995). This notion of objectivity, which we call positivist objectivity, considers objectivity a “point zero” position in which persons by the use of instrumental or pure rationality free themselves from all physical and social affiliations and acquire knowledge through independent empirical observations and evidence (Daston and Galison 2010, Bladini 2013). While the positivist notion of objectivity has been questioned within the social sciences generally the past decades (for instance Luntley 1995, Seidman 1997) in the domain

of the law, positivist objectivity remains a tenacious ideal (Lange 2002, Maroney 2011).

Rogers and Erez (1999) demonstrate that the ideal of positivist objectivity – objectivity as a disembodied state of being – persists and is itself emotionally charged. Yet interviewees gave different and subjective answers to the question “who and what was objective” (Rogers and Erez 1999, 282) When objectivity was translated into working practice, it was operationalized in terms of standardization and typification, as ways to signal that the decision process was free of bias and personal standpoints. Such strategies however, also obscured subjective bias in legal decisions and thus undermined objectivity. Instead, Rogers and Erez argue, objectivity, should be seen as “a symbol of possibility, a process or semiosis of meaning” (Rogers and Erez 1999, 285) that can only be achieved by balancing multiple conflicting narratives. In our research, we show that objectivity as “a symbol of possibility” is in fact enacted in legal practice, even when the discursive notion of positivist objectivity is sustained. In other words, there is a gap between what legal professionals’ say that they do and what they actually do when they *do objectivity*. In the actual work of legal professionals, objectivity is not a state but an ongoing process – a situated and contingent “objectivity work” – of balancing engagement and disengagement, commitment and detachment (Jacobsson 2008, see also Roach Anleu and Mack 2019).

Research has also demonstrated that judges are aware of and deliberately manage their personal emotions in order to display impartiality and fairness before the public (Roach Anleu and Mack 2005, Darbyshire 2011, Scarduzio 2011, Herzog-Evans 2014). Roach Anleu and Mack (2005) found that magistrates regard emotion management an essential aspect of their work, not only in relation to own emotions but also to managing lay people’s emotions. In situations where the defendant is unrepresented, for instance, empathetic engagement with the defendant’s emotions becomes part of the fair and impartial demeanour of justice (Roach Anleu and Mack 2005, Moorhead 2007, Darbyshire 2011).

Jacobsson’s (2008) interview study has shown that prosecutors in practice translate objectivity as a governmental ideal into other highly valued notions such as rules/regulations, duty, and professionalism, the meaning of which do not clarify what objectivity is but brings it closer to everyday work life. At the same time translation suggests an implicit interpretive dimension to the notion of objectivity; rules, duty, and professionalism are not in themselves objective concepts but subject to workplace agreement and/or negotiation. Echoing Rogers and Erez, Jacobsson found that the prosecutors were strongly emotionally invested in the positivist notion of objectivity as an achievable disembodied state of being. Such strong and emotional professional defences of the discursive notion of positivist objectivity indicate that the mismatch between ideal and practice is backgrounded and habituated<sup>1</sup> (Bergman Blix and Wettergren 2018). Goodrum demonstrates that rather than undermining the objectivity of prosecutor’ work, empathy with victims helps prosecutors achieve victim satisfaction with the prosecution and, more generally, victims’ acceptance of the judicial system (Goodrum 2013, 268). As we have shown elsewhere (Wettergren and Bergman Blix 2016), prosecutors’ extensive use of empathy and emotional attunement is fundamental for them to achieve their goals in every aspect of their work.

In this article, we continue to explore judicial objectivity in practice as a continuous and situated process, but contrary to previous research on judicial emotion management, we focus on the interactional aspects of objectivity work, based on interviews and observational data, including shadowing, of legal professionals’ work

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<sup>1</sup> In our terminology, feeling rules and behavioral norms pertaining to specific frames – e.g. the emotive-cognitive judicial frame – become backgrounded by a repetitive process of socialization that we call habituation, until the very effort to abide by the norms and rules of the particular frame goes unnoticed by the subject itself and thus is no longer reflected upon.

in court. In relation to previous studies on judicial objectivity in practice, we develop the argument about emotion and cognition as intertwined and inseparable tools of attaining objectivity. This goes both for the legal professionals' attempt to perform positivist objectivity – that is concealing the actual doing of objectivity to the public in order to present “an objective state” – and for the doing of objectivity itself. Our study thus advances previous findings with an interactional focus, and ethnographically inspired methods. It captures what is *done* with a theoretical framing of emotions as fundamental to rational and professional action.

### 3. Theory and key concepts

Our theoretical departure in the sociology of emotions entails aiming beyond the conventional separation of emotion and reason (Barbalet 1998), treating the rational context of professional life as a specific (rationalist) emotional regime (Reddy 2001). Our concept of emotion encompasses so called “background emotions” which here refers to calm and quiet emotions that sustain and orient focus on action goals external to the self (Barbalet 2011). We also work with “background emotion management” (Wettergren 2019), which refers to habituated practices that do not require the subject's conscious effort or reflection (Bergman Blix 2015). Emotion management (Hochschild 1983) includes both efforts to manage own and other's emotions, but insofar as it is backgrounded its focus is outside the self and thus mainly concerned with others' emotions, as well as attuning to the emotional atmosphere and rhythm of the situation. This understanding of emotion necessitates developing concepts that underscore its non-separation from reason, pinpointing the simultaneous enactment of emotion and cognition. “The emotive-cognitive judicial frame” is a concept we employ for this purpose (Bergman Blix and Wettergren 2018), denoting the dominant, or primary (Goffman 1974), frame of reference governing the emotive-cognitive performance of legal actors, both in terms of objectivity and in all other aspects of their work. The emotive-cognitive frame is a primary framework within the overarching emotional regime of legal dispassion (Maroney 2011) governing legal institutions in the West. The discourse on emotions – for instance that emotions are disruptive of reason, shaping legal professional practice to silence emotions – feeds into the emotive-cognitive judicial frame of actual courts and prosecution offices in contingent ways. By time and work experience, the frame becomes habituated (see footnote 1) and the emotion management of adhering to its feeling rules become backgrounded (Barbalet 2011).

Our interactional approach to the sociological study of emotions emphasises the way that emotions arise and are exchanged in and shaped by social interaction (Hochschild 1990). In our vocabulary, the interactionist perspective means that the emotive-cognitive judicial frame is reproduced and sustained as well as possibly altered by legal professionals' interactions in and around courts and offices. Objectivity work in practice is thus relational and contingent on the ways that the emotive-cognitive meanings and practices of objectivity are circulated in professional interactions. In our analysis we will focus on the interactional achievement of objectivity in court, i.e. how the different legal professional roles perform their parts to arrive at a whole, which is the objective rule of law, not only as a state but as an unemotional state. To do so, the legal professionals rely on overt (displays of emotion targeting the audience) or tacit emotional communication (subtle displays meant to be picked up primarily by other legal professionals). Tacit signals are often used to either keep up the display of impartiality (the judge) or to keep up objectivity despite being a party in the court proceedings (the prosecutor).

### 4. Method and material

This article draws from data collected 2012-2016 at four strategically selected Swedish district courts and their respective prosecution offices. In order to capture the background emotions and emotion management we intended to study, we needed methods of data collection that allowed us to bring these barely conscious

habituated processes to the fore. Observations combined with interviews are one way to do this; we observed court hearings where participants in the study were involved and we undertook an in-depth semi-structured interview (about two hours long) with each participant in order to capture their general perspectives. These methods were complemented with a more fluid and interactive combination of interviews and observations; the method of shadowing (McDonald 2005). Shadowing in our case refers to accompanying judges or prosecutors for two days up to several weeks; at their offices, in and out of hearings, at lunch and coffee breaks. During this time, continuous small talk with the participant provides immediate answers to the researchers' questions and quick validation of tentative interpretations of observed events. All participant prosecutors and judges in the study were thus shadowed and also intercepted with shorter interviews highlighting specific interactions and events observed both during hearings and in their office work. Shadowing initially involves a high level of awareness of the researcher's presence, but potential awkwardness tends to subside by time and habit, which is also true for our presence in the courts and prosecution offices generally (Bergman Blix and Wettergren 2015). We assume that our presence made the participants conscientious to show themselves from their best sides.

We shadowed and conducted 120 interviews with 84 people, 43 judges (including clerks)<sup>2</sup> and 41 prosecutors evenly distributed over the four courts and prosecution offices. Ages range from the early 20's to early 70's. Age is the only characteristic given weight in the analysis since it tends to reflect work life experience well in these high status career works where one qualifies in different strictly defined steps (Bergman Blix and Wettergren 2018). We strived for an even distribution of male and female participants (47 women and 37 men) but our gender analysis is limited to the observation that adherence to the emotive-cognitive judicial frame is not gender-specific; indeed it is one of our points that both women and men are required to submit to it and both women and men were interested in talking about professional emotions as participants in our project. We observed about 300 trials ranging in length from five minutes (when adjourned) to eight days (when completed). All formal interviews were recorded and transcribed.

During court observations focus was on the ritual (of the hearing) noting body language, facial expressions, glances and gazes, explicit emotion words, tone of voice, management of ritual transgressions, and so on. Observations relating to the shadowing, such as small talk, preliminary analysis, and our own emotions, were noted in a separate field diary.

The data was anonymised and coded in a software program for qualitative data analysis, NVivo. The codes derived from a combination of inductive themes and deductive codes, relating to our theoretical frame of emotion theory and research. When the data had been coded, each theme was analysed separately with a more stringent theoretical approach (Wolcott 1994, Alvesson and Sköldberg 2009).

All excerpts have been translated from Swedish to English by the authors. In order to secure the participants' anonymity we use pseudonyms (first name). Age of the prosecutor or judge cited or shadowed is given in fives (35+, etc).

## 5. Objectivity in interaction

Before we go on to analyse the situated production of objectivity as an interactional achievement in court, we will give a brief example of the way that doing objectivity is different for judges and prosecutors. The example demonstrates the usefulness of the analytical separation between impartiality and objectivity in relation to court work. Impartiality, in this definition is primarily concerned with display, while objectivity is primarily concerned with an internal dialogue where the self critically

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<sup>2</sup> In Sweden court clerk is a two-year career position and a first step for both prospective prosecutors and judges. More experienced clerks preside in petty crime trials.

engages with the self (Archer 2000), it is a reflexive state of mind (Burkitt 2012). Although impartiality and objectivity are often treated as synonymous, the analytical separation enables us to conceptualize these various ways of doing objectivity.

The prosecutor is supposed to be a party in the trial, but as a state representative, must remain objective. Being objective means not being influenced “by personal feelings or opinions in considering and representing facts” (<https://en.oxforddictionaries.com>).<sup>3</sup> It is thus possible to “be” objective but act partially. We argue that this is the case for prosecutors when they act as if they are convinced of the defendant’s guilt (and satisfied there is sufficient evidence to prove the case beyond a reasonable doubt), or else the case would not be prosecuted in the first place. Yet prosecutors also highlight evidence that speaks to the defendant’s innocence. In the excerpt below, prosecutor Linus explains how he will highlight a weakness in the evidence against the defendant knowing that the defence will use that weakness in the trial:

Prosecutor Linus flicks through the domestic abuse file and shows the researcher a police interview where the victim says that she had had all her injuries documented at a hospital. ‘But on one of these occasions, we didn’t find any medical records that supported her claim’, Linus says, and he continues: ‘So we are transparent. I will point out that it says in the investigation that the victim went to a hospital but there’s no medical record’. (Fieldnotes, Linus, prosecutor, 40+)

This way of presenting weaknesses in the evidence serves many purposes for prosecutor Linus. On the one hand, he fulfils the demand for objectivity, not the least showing the court that he is a trustworthy objective proponent of the law. On the other hand, transparency about the weaknesses in the evidence also gives him, and not the defence lawyer, control over the presentation of said weakness. In other words, Linus has demonstrated that he appears as a party in court, acting partial, on objective grounds, which is fundamental to prosecutors’ objectivity work.

In contrast, judges’ objectivity work in court is centred around the display of impartiality, to the extent that actually “being” objective becomes of secondary concern. Being impartial means “treating rivals equally”, not taking sides (<https://en.oxforddictionaries.com>),<sup>4</sup> which is vital for judges’ display, regardless of whether or not they have begun to think that objective facts speak in favour of one of the parties. As we demonstrate elsewhere (Bergman Blix and Wettergren 2018) a judge acting out objectivity, as in the example of prosecutor Linus above, might in fact endanger the display of impartiality. Judge Kajsa, cited in the excerpt below, explains:

Judge Kajsa recalls an appeal of a civil case verdict by a panel of three judges where the complainant remarked about the fact that all three judges only took notes when one of the parties talked, and it turned out to be the winning party. Kajsa says that even if the judges had all the correct reasons to only take notes when they did, they should still take notes when both parties talk, even if that would mean to just be drawing flowers. (Fieldnotes, Kajsa, judge, 45+)

As we see in this excerpt, judge Kajsa argues that it is not the objective mind nor the objective decision that is in focus during a trial, but the display of impartiality. This said, the notion of objectivity is of course fundamental to judges but since the judge’s position is constructed as objective in its very foundation, the objective state of being is taken for granted. The concern with an impartial display thus demonstrates the complication that judges’ objectivity is not necessarily taken for granted by lay people in court.

These professionally distinct ways of doing objectivity in court – the judges’ focus on an impartial display and the prosecutors’ focus on being partial but objective – are both fundamental and complementary roles in staging the objective rule of law as

<sup>3</sup> <https://en.oxforddictionaries.com> Search word was “objective”.

<sup>4</sup> <https://en.oxforddictionaries.com> Search word was “impartial”.



disembodied and unemotional. We will now continue to analyse how these roles act and interact with each other, highlighting the interactional and at times even collaborative conditions for objectivity work.

### 5.1. *The dramaturgy of objectivity*

For this intricate interactional achievement to run smoothly, the different actors need to be highly mutually sensitive; this is to say that in order for the legal professionals to stage the court ritual as objective in the positivist sense – without bodies and emotions – a great deal of sophisticated background emotional exchange and emotional attunement is necessary.

The court procedure builds on elaborate rules<sup>5</sup> and it is common that the legal professionals talk about the court hearing as a ritual or play where they play different parts, and all the set characters know what is expected of them and how the ritual will evolve (cf. Goffman 1959):

It's a theatre taking place in the courtroom (...). The Code of Judicial Procedure sets the frame somehow, but during all this play, or all this process, the lay judges, the clerk, the defence lawyer, the prosecutor, often the defendant, sometimes the victim, sometimes the witness – everyone knows roughly what it will lead to (...). When I say theatre, I mean a theatrical situation, because it's not make believe, it's certainly real. (Interview, Asger, associate judge, 30+)

As judge Asger notes, the matters taken to court are “certainly real”, and to some extent, the strictness of the ritual is a way to manage the complexity and messiness of reality. The rules of the procedure help demarcate the matter deemed relevant for objective evaluation and decision-making from extra-legal issues that would take the front seat in an actual theatre, such as emotional interactions and relations. In this way, the court process is set up to fulfil two functions: to guarantee a fair trial and to restrain the emotions that in many cases lie beneath the event that led up to the parties being called to court in the first place.

We argue that in order for the legal professionals to steer the court ritual in accordance with the rules, including the sometimes difficult management of potentially disruptive emotional outbursts or interactions, the legal professionals' respective roles and role-play depend on each other's role performances, just as in a theatre performance. Although judges in particular commonly say that they do not expect to have “friends” at the trials, judges and prosecutors often emphasize the importance of a good work atmosphere where all professional actors perform their roles as expected. Judge Simon describes it as teamwork: “Hearings are to some extent teamwork, at least if the prosecutors and defence lawyers are ambitious and serious; then it becomes a three-man-job. That's my opinion (...) everyone illuminates the case from their different perspectives” (Interview, Simon, judge, 60+). The judges' sense of objectivity is not threatened by the idea of “teamwork”; the judges rely on the two parties' in court presenting their perspectives of the criminal event to get a comprehensive examination of the case. As we will see later, the prosecutor's or defence lawyer's failure to provide a thorough (and timely) examination of a case is a common source for judicial anger and frustration (see also Maroney 2012).

In line with the theatre simile, the opposing parties, the prosecutor and defence lawyer, also depend on one another to play their respective roles. In the everyday common cases that make up most of court work both professional parties routinely perform the ritual and know the “lines” of the opposing party. Courteous exchange of mutual recognition backstage confirms this shared understanding, as described by prosecutor Lara:

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<sup>5</sup> In Sweden, the Code of Judicial Procedure guides the hearing, including detailed instructions on how to move the process forward, when the different parties can talk, and about what.

I sometimes say to the defence lawyer backstage 'I understand that you will take that stance and I do think it's the correct one', and they tell me sometimes: 'You do understand that we will have to deny this'. So we might have a greater understanding for the other side than we pretend in the courtroom, because we know our respective roles. (Interview, Lara, prosecutor, 30+)

Backstage preparation of lay people is also part of the respective roles and, if performed properly, lawyers and prosecutors "help each other out". Lara continues:

Like when I go over to talk with the suspect, I usually ask them if someone has explained the court process for them, and I say, 'you have your lawyer', and then they usually say, 'yeah yeah' and nod, so of course the defence lawyer helps me with that (...). I guess we help each other out. (Interview, Lara, prosecutor, 30+)

As we can see, Lara, as a presumably objective state employee, feels responsible for the defendant's sense of familiarity and safety in court, making sure that the defence lawyers do their job. This play behind the scene, preparing both co-actors and lay people for the court ritual, assists the judge in running a smooth procedure while emphasizing the strict frontstage quality of the courtroom. In order to run an objective ritual, emotional concerns and confirmations need to be put aside. This means that even though the professional actors collaborate and exchange recognition as signs of mutual respect and sympathy backstage, their role in the frontstage performance demands a presentation of distance between them.

In this section we have employed the metaphor of the theatre to analyse how performance of objective justice frontstage relies on emotive-cognitive processes backstage (Goffman 1959), illustrating that objectivity in court relies on distinct and emotionally distanced role performances from the respective legal professionals. The objective performance depends on all legal professionals to play their part in court and can benefit from joint preparation back stage.

The fact that emotionality is invisible in the courtroom does of course not mean that emotion is not active in orienting behaviours and interactions. In the courtroom, mutual understanding and recognition between the legal professionals is instead enacted through tacit signals (Bergman Blix and Wettergren 2018). Indeed, tacit signals require a heightened sensitivity in order to work as intended; as ways of knowing what the other professionals might imply.

### *5.2. Tacit signals and emotional attunement*

As described above, the Code of Judicial Procedure turns the court hearing into a strict ritual, with clear boundaries of what to do and what not to do. With the minds oriented towards "way-points" of the ritual – e.g. when the victim or the defendant is allowed to speak – even lay people get an emotive-cognitive focus that helps manage strong emotions like fear or nervousness. For the legal professionals, the ritual may become routine, but even though the roles are the same across hearings, the repetition of the court ritual with new participants for every new case, requires adaptive improvisation. Emotional attentiveness and sensitivity is then crucial, informing the situated self about its status and the quality of its evolving relationships (Clark 1990). This is to say that the legal professionals cannot break the ritual by asking questions about how the other professionals read and interpret persons, situations, narratives, or evidence presented in court. The prosecutor, for example, has to be sensitive to whatever subtle signals that are given by the judge or the defence, in order to determine if they have understood the evidence the way the prosecutor intends. Chief prosecutor Karl explains: "I can't ask the judge: 'Do you get it? Do you understand that the fingerprints on the inside of the bag belong to the defendant? Do you understand what it means that the fingerprints are on the inside? It means that he put his hands *into* the bag'" (Interview, Karl, chief prosecutor, 55+). To minimise the risk of misinterpretation, prosecutors can formulate questions during examinations that in fact serve the purpose to clarify their main points to the judge. In technically complicated cases, prosecutors may thus exaggerate their points so it

becomes obvious that they are trying to do just that, and the judge gets bored or annoyed. Any chosen strategy demands tuning in emotionally with the judge, seeing things from the judge's perspective (Wettergren and Bergman Blix 2016).

Preparing for a detention hearing, prosecutor Linus in the excerpt below wants the judge to accept his plea of putting a suspect in pre-trial detention, but does not want to "spoil" his best piece of evidence. When talking to a police investigator just before the hearing, he describes the importance of emotionally tuning in with the judge to sense if he will get his way without the "good evidence" or not:

Prosecutor Linus: Now, I really need to read the situation; does the judge buy my version of the situation? Because I do have more evidence that I could present. I want the accused to be detained and if [the judge] starts to squirm...

Police Investigator: Doesn't the judge say so?

Linus: No! It's up to me to tune in [to sense] if she does or not. That's what we do in this job. (Fieldnotes, Linus, prosecutor, 40+)

In this excerpt we see the multidimensional emotional process at play involving prosecutor Linus' excitement about his good evidence and his anticipated triumph of keeping it up his sleeve until comes the strategically right moment to present it; worry about having to "spoil" this plan if the judge does not follow but "starts to squirm" – an expression revealing that such a reaction by the judge will provoke Linus' contempt –; and his keen attention to "read" the judge's signals in this regard. As we see, Linus considers such reading part of "what we do in this job".

The detention hearing Linus talked about in the excerpt was postponed due to technical problems, and when it took place the next day the judge in fact did decide to put the defendant in detention without the prosecutor "spoiling" his good evidence. The shadowing researcher noted a shift in Linus' performance between the two occasions and, after the hearing, inquired about Linus' reflections:

I sensed it was going my way already yesterday when she put so much effort into trying to make the technique work (...) and then she said that she had read the detention order. [The researcher comments that prosecutor Linus seemed more at ease in the hearing today. Linus answers:] Yes, and I think it matters that I had the police investigator there with me today too. I trust him completely! When there was an issue I just looked at him to get a confirmation, and he nodded. (Fieldnotes, Linus, prosecutor, 40+)

As we see, although the hearing was postponed the first time, prosecutor Linus already felt assured the judge would follow him, inferring this from the judge's "effort to make the technique work" and that she "had read the detention order". As isolated incidents, however, these two observations do not explain why Linus felt that way. Instead we have to imagine these "signals" embedded in the unfolding situation where Linus was attentive towards picking up and sensing non-verbal cues – looks, gestures, and mimicry – from the judge.

When Linus reflected on the hearing it also became clear how his tuning in with the judge had guided his own performance. The first day he was visibly nervous, but that changed into self-confident performance when he sensed the judge's sympathy for his case. As we see, Linus also pointed out the reassuring support of a trusted investigator to explain his new-found ease.

Tacit signals and emotional attunement with the judge is inherent to the court procedure in order for the prosecutors to drive the process forward. Prosecutors commonly talk about the importance of emotionally tuning in to the judge in more general terms to notice signs that the judge wants to speed up the process, or for the prosecutor to be more thorough in the presentation of evidence. On the other hand, this sensitivity to the signals of others cannot show; they must perform as independent and self-confident. This independent self-confidence nevertheless

depends on information from other professionals, such as the police, as well as interprofessional trust (see also Poder 2010).

The judges are generally aware that prosecutors send signals to the court, particularly when these are common and rather standardised, such as when prosecutors end their final summary by stating that they “leave it to the justice to decide” (Bergman Blix and Wettergren 2018, 160). This phrase is used when the prosecutors during the hearing make the assessment that the presented evidence may or does not hold for a guilty verdict, but do not want to withdraw the case themselves. This signal includes a verbal expression, but still functions as a tacit signal since its implications are not intended to be noticed by the lay people present. As judge Naomi reasons: “In most cases, when prosecutors leave the question of guilt for the justice to decide, it means that they believe the defendant should be acquitted. They realize they don’t have enough [evidence], but they don’t want to say it out loud” (Interview, Naomi, chief judge, 50+).

Prosecutors take pride in their capacity to withdraw charges if new information undermines their case in court, but, as indicated by judge Naomi in the above quote, since they cannot go against a colleague’s decision to prosecute, in reality their option to withdraw the charges is limited, and they cannot tell the court straight out to acquit. Furthermore, prosecutors rely on several other professional actors to do their work, as seen in prosecutor Linus’ reliance on the police investigator earlier, and they are reluctant to jeopardize collaborative relations by bluntly making potentially offending arguments in court. For prosecutors, doing objectivity is in many ways a matter of preventing damage to professional relationships.

Below, chief prosecutor Karl describes his difficulties as a young prosecutor, trying to do what he thought was right in a large drug case, without risking his relationships with the other prosecutor and the police involved. The wife of a suspect was detained during the investigation, but the prosecutor was certain that although she might have been aware of her husband’s criminal affairs, she was not involved in the crime itself. He could not defend having her in detention. However, he also knew that the investigating police, who was present at the detention hearing, would be furious if he let her go:

Chief Prosecutor Karl: At that stage, as a prosecutor I have two options. I can say, ‘No, I withdraw the detention’. And if I did that, I would have to face the unanimous condemnation of the police’s narcotics team. I would have to put up with that as a rather new prosecutor. And my older very respected colleague would say, ‘What the hell are you doing?!’

Researcher: He would have wanted her to remain in detention?

Karl: Yes, without doubt. And then, I did it the other way around. I did it in code. During the hearing I brought up everything, by asking her questions and so on, everything that spoke to her advantage, and then, in my final plea I said: ‘On the one hand one can see [why she should remain in detention], but on the other hand, and on the other hand, and on the other hand’. So I said all that, and then, ‘and I leave it to the justice to decide’, and that means, as you know by now: ‘I give up’, kind of. And she was released. But that judge, he told me afterwards, ‘well, that was a difficult [decision], that was really hard’. And I thought, ‘Difficult in what way? I told you to let her go’ [loud laugh]. But he thought it had been difficult, so the code didn’t work all the way. He got it eventually, but he hadn’t got all the signals I sent him. I thought I had been so clear, but at the same time, I didn’t want the police sitting beside me to get the impression that I tried to let her go (...). (Interview, Karl, chief prosecutor, 55+)

As we can see in Karl’s reasoning, his objective evaluation that the woman should be set free, is associated with a strong moral stance; he needs to do what is right from his objective evaluation of the case, but he needs to effectuate objectivity in a way that does not collide with his colleague’s and the police’ evaluations. The phrase of leaving it “to the justice to decide”, as well as the strategy of highlighting everything that talks to the suspect’s advantage serve the purpose of showing loyalty to rules

and colleagues in public, while remaining objective in practice. As we can see, Karl employed shrewd emotion management, emotionally displaying the loyal way of reasoning while verbally emphasising the opposite. This said, the use of tacit signals can be problematic; there are few ways of knowing if the judge understands (“the code didn’t work all the way”), and the required strategic emotion management when colleagues are present in court may cause insecure prosecution performances.

This section has focused on the importance for prosecutors to tune in emotionally with the judge to sense how the court interprets the strength of the evidence. We have also seen how the prosecutors’ impression of the judge may influence their sense of security and confidence in the case. Furthermore, we have demonstrated how prosecutors use tacit signals to convey their objective evaluation of a case, when this evaluation goes against those made by colleagues. This parallels studies on barristers or defence lawyers who use tacit signals to show the court that they do not believe in the arguments that their clients request them to present (Harris 2002, Flower 2018). However, while the prosecutors in our material covertly signalled objectivity while overtly performing collegiality, the barristers in Harris’ and Flower’s studies covertly signalled collegial status, while overtly displaying loyalty.

Next, we will focus on how the judge’s impartial demeanour is upheld by transferring some necessary interventions to the other legal professionals. These interventions are necessary to achieve an objective court ritual but if performed by the judge they might adventure the performance of impartiality. When objectivity is transferred, it requires covert emotional communication between the parties to make sure that there is a shared understanding of what needs to be done.

### *5.3. Transferring objectivity by (non-)emotional communication*

In the Swedish criminal procedure, the judge initiates the examination of the defendant and usually starts with a short question: “Can you tell us about what happened?” However, it is rather common that defendants question, reject, or respond in too talkative a way, to this invitation. When this happens, the judge can hand over the examination to the prosecutor. It also happens that the judge hands over to the prosecutor immediately. Judges do not have a common strategy here, but make individual judgements based on the defendants’ age, intellectual capacity, and the general impression they form of the defendant. A basic form of judicial empathic attuning is thus essential for deciding how to manage interactions with defendants. It also means that when judges hand over the start of the examination to the prosecutor they transfer the demand to perform objectivity; the prosecutor should now orient the defendant to tell their own story, before beginning with the examination. A different but also common situation is when the prosecutor feels that the judge’s responsibility to lead an impartial trial is implicitly transferred to the prosecutor because the judge is too passive and does not fulfil their obligation to be in charge of the order and atmosphere of the hearing. Prosecutor Saga explains: “If the judge is passive [in his/her presiding capacity], well, then the prosecutor needs to be in charge of the discipline. That’s a role I must take. It’s like, if not the one state authority does the job then the other has to do it [laughs]” (Interview, Saga, prosecutor, 35+).

Prosecutors clearly identify with being state representatives and, as depicted by prosecutor Saga in this quote, take pride in upholding the objectivity of the state by moving the court ritual forward in a procedurally correct way. When they feel the need to do this because the judge is passive, they may first try to signal the need to intervene to the judge by facial expressions or gestures, intended to communicate concern and urgency, but these are sometimes not picked up by the judge.

From the perspective of the judge, their requirement to be impartial can make it problematic to intervene, for instance when one of the parties disrupt the ritual. Performing impartiality to a large extent involves balancing emotional display equally to both sides. If the judge expresses concern for distraught victims or disciplines

defendants they put their performance of impartiality at risk (Roach Anleu and Mack 2017). In one trial, the judge tried to avoid emotional tension by creating physical distance between the defendant and the victims, the relatives in a murder case, and instructed the family to sit in the second row of the audience seats. However, when the mother of the victim expressed strong emotions during the hearing, the judge remained passive:

Suddenly, the mother screams out loud and becomes 'hysterical'. The court remains stone faced while looking at her outburst. The prosecutor's mouth is slightly open, which makes her look compassionate. She tells the brother that he and his mother should switch seats with his sister, this way moving the mother as far away from the defendant as possible. The defendant looks calm and unaffected by the episode. (Court observation, murder, Charlotte, prosecutor, 40+)

As we can see in this example, the judge first tried to foreclose potentially disturbing emotions by placing the victims at a distance from the defendant. However, when the mother expressed strong emotions, he remained stone faced and in effect transferred the responsibility to handle the outburst to the prosecutor. The prosecutor could display compassion with the mother because the prosecutor is partial but trying to soothe the emotional outburst of the mother also served the overarching goal of an objective trial (cf. Goodrum 2013). In the same way, judges depend on defence lawyers to manage their clients so that the judge does not have to correct them. If the judge needs to interrupt or discipline a defendant, the judges feel that they jeopardize their impartial display. Judges in our study commonly referred to the importance of the prosecutor, the victim's counsel,<sup>6</sup> or the defence lawyer to manage emotional outbursts or other forms of disturbances by the lay parties. A frequent source of judicial anger was the negligence or failure by prosecutors or defence lawyers to do so. The judge's impartial display thus depends on the other legal professionals' managing of lay people's emotions, as well as safeguarding the judges need to display (partial) emotions themselves.

In the above examples, the judge remained passive so as not to jeopardize an impartial display. Their emotional communication was clear in that it contained no emotional expression; a stone face and passivity signalled a need for the other legal professionals to intervene. However, we also have examples of judges who actively collaborate with the other legal professionals to move the ritual forward.

#### *5.4. Curbing lay emotions through collaborative emotional communication*

So far, our focus has been on inter-professional tacit interactions that serve to influence or provide assistance from the other legal professionals in managing the goals of objectivity and the display of impartiality. We will now turn to inter-professional emotional communication that serve to curb lay people's emotions during hearings by a joint and situated understanding that collaboration is necessary. In previous studies with Australian legal actors, a valuable characteristic according to the legal professionals themselves is to demonstrate compassion and patience (Rogers and Erez 1999, Roach Anleu and Mack 2017). As we will see, these emotions are also demonstrated in our observations, but they often demand inter-professional collaboration to influence the process in the desired way.

If the prosecutor was at the centre of attuning and sending signals to the judge, and taking responsibility when the judge was too passive, inter-professional collaboration is usually initiated by an active judge who takes the lead. An active judge trying to move the ritual forward does not necessarily imply strictness; when prosecutors describe "good" judges they often give examples of judges that flexibly adjust to the situation and the people involved. Prosecutor Wenche reflects on such an example, after a trial with a defendant who was mentally ill. In trials with mentally ill or disabled

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<sup>6</sup> In Sweden, certain crime types or other reasons pertaining to the vulnerability of the victim, gives them the right to legal counsel.

defendants as well as in youth trials, the professionals often agree that collaboration is necessary to achieve a fair trial:

The judge was really good in making him feel at ease. They connected, and he probably felt that the judge understood him. And the judge asked some questions and then I felt that I didn't need to upset him so I don't ask more questions if it's not absolutely necessary. You keep it to a minimum. And so we moved on and the defence lawyer also tried to cosy up to him, nice and easy. You don't gain anything by (...) with someone who is mentally ill, what would you gain by calling him to account for all that he's done or put pressure on him? That's just stupid. (Interview, Wenche, prosecutor, 35+)

This quote describes how the defence lawyer, the judge and the prosecutor worked "together". They used empathic attuning with the defendant ("cosying up to him") and communicated emotional concerns with each other, to move the trial along. In the assault case described below, the judge and the prosecutor both took on the responsibility to further a procedurally correct and smooth trial. The defendant had confessed to assaulting a man who allegedly flirted with his girlfriend, and when the prosecutor examined the defendant, the latter turned to the victim with a question:

The judge and the prosecutor interrupt the defendant instantly. The judge: 'Now, the prosecutor does the questioning'. The prosecutor starts, but the judge interrupts again: 'Wait a little, prosecutor [turns to the defendant]. Now, the prosecutor will ask you questions, and you are not to ask any questions to the victim'. [She shows with her hands that the defendant should only look at the prosecutor]. The prosecutor continues. (Court observation, assault, Naomi, chief judge, 50+)

Particularly in assault cases, it is rather common that the defendant and the victim looks at or talks to each other when giving evidence, and in most cases, the judge or prosecutor interrupts to avert their gaze, questions or accusations. The evidence should be given to the court, so the correction ("you are not to ask any questions to the victim"), is in line with the procedure, but also serves the purpose of toning down or avoiding intensified emotional exchanges between the parties. In the excerpt above the prosecutor and the judge both interfere immediately but chief judge Naomi, remains in charge and takes over and corrects the defendant with words and gestures.

In the two cases above, the prosecutor and judge took turns in being the active disciplining agent or emotion manager, demonstrating that an impartial performance does not necessarily result in a passive stone face. In the first example, all three legal professionals needed to collaborate to make the hearing possible with a fragile defendant, and in the second example, the effort to avoid emotional exchanges between the parties, while comprising a clear display of authority, furthered a calm and correct ritual. These examples of collaboration include empathic attuning with defendants or victims and the inter-professional communication of worries and concerns, to distribute responsibility for furthering a humane and efficient ritual. As we have seen, the organization of the court ritual requires empathic attuning and inter-professional emotional communication between judge and prosecutor. As we will see from a case described below, a lack of emotional attuning can jeopardize an objective procedure. In this case, all legal professionals collaborated to keep up an objective presentation by avoiding empathic attuning with the lay people involved. The trial included two young defendants, a couple who did not at all follow the procedure; they mainly concentrated on each other, flirting and blowing kisses to each other. Defendant 2 was a woman who participated in the trial via video link and when it was time to start examination with defendant 1, her boyfriend, who was present in the court, defendant 2 could see his face on her screen too:

Defendant 2 starts to flirt with defendant 1 by twirling her hair around her finger and looking straight into the camera for the first time, smiling. While the prosecutor asks questions, defendant 1 keeps his eyes on the video screen and sticks out his tongue towards defendant 2 several times (...). The lay judges clearly notice the ongoing flirt, but the judge and the court clerk seem not to notice. They keep a steady look in their

papers, taking notes. Defendant 1 accepts responsibility for a theft that his girlfriend claims that he did: 'Yeah, she is right, what she said is true'. Defendant 1 looks at defendant 2 whose jacket now has slipped down to expose her bra-strap. When the prosecutor states the next charge, the defence lawyer looks at his client who sits smiling at his girlfriend. The lawyer immediately looks down in his papers again. (Court observation, multiple crimes, Sixten, judge, 45+)

In this trial, the professionals collaborated by ignoring the defendants' emotional expressions all together. The prosecutor presented her case using bureaucratic language and a swift tempo; the defence lawyer did not pretend to see when his clients flirted; and the judge kept looking at his papers. It was noticeable that all legal professionals observed the flirting couple and afterwards the judge said that the defendants were "immature". However, the defendants' lack of focus on the matters at trial was not addressed during the hearing. The emotional communication between the legal professionals was not so much an active attunement, as an habituated agreement to pretend to see nothing and to move along. In collaborating not to notice that the defendants were busy with other things, the professional actors could all present an objective front by surface acting ignorance.

#### *5.4. Failing collaboration by tacit signals and emotional communication*

In order not to jeopardise an impartial display, the judge has a limited repertoire of actions to manage lay people's emotions. When a display of empathy is appropriate, as when a witness or a victim begins crying, the judge usually offers a glass of water or a break. From the prosecutor's perspective, these ways to display (non-emotional) empathy can be just another way to dump the necessary emotion management on the prosecutor, as described by prosecutor Agata: "When an upset witness or victim weeps, the judge says, 'let's take a break', and out you go, and then I am the one standing there with the crying witnesses who feel that for example the defence lawyer treated them very badly" (Interview, Agata, chief prosecutor, 45+).

On their part, judges can feel that their emotional communication efforts to concert the legal professionals' empathic engagement with lay people in court does not get picked up by the other professional parties. As we have seen above, in trials involving defendants with different kinds of disabilities or illnesses, the judges may adapt the procedure to the intellectual or emotional state of the defendant. In a trial with a defendant who had a severe disability, the judge continuously made efforts to create a calm atmosphere and described all the details of the procedure in plain words. However, both the prosecutor and defence lawyer acted as if these descriptions were intended for them and kept replying that they had already understood. At one point, they were going to show a CCTV-film and had to take down the curtains to shut out the light:

The defendant, who persistently sits looking down at his table, abruptly looks up when he hears the noise from the electric curtain. The judge comments: 'We need to turn down the lights a little [with a concerned voice]. Oh, now it became very dark, is that ok?' He looks up towards the defendant. The prosecutor replies: 'Yes, it's ok... at least for me'. (Court observation, assault, Mikael, judge, 35+)

In this trial, judge Mikael continuously had such misunderstandings with the other legal professionals and his adaptations to enable the defendant to follow and feel safe lost their intended effect. The judge could thus not bolster the defendant because the other legal professionals did not pick up his concerns.

As indicated earlier, tacit signals are more precarious for the judge than for the prosecutor, due to judges' obligation to remain impartial. Nevertheless, the trial judge can have several reasons to send such tacit signals – hinting something – to the parties. One such situation is when a witness fails to show up and the trial may need to be postponed. The judge can then ask if that particular witness is necessary for the case. However, asking this question, can also serve as a tacit signal to the



prosecutor that the judge has already made up her mind, as explained by judge Margareta:

Then I can say: 'Do we need to hear this witness?' That is a somewhat leading question. 'Does the prosecutor really think it's necessary?' I perhaps wouldn't say it like that, but (...) [almost whispering] I think that they notice anyway, if I feel that we don't need this witness, then I might ask that question, but if I feel that the prosecutor really needs this witness, then I might say, 'Well, we might need to continue this trial another day'. So even though I don't express myself exactly in that way, I still do (...). It's the way I ask the question, I think, which reflects if I feel that the case is clear or not. (Interview, Margareta, judge, 40+)

The above quote shows the difficulty for judges to even talk about sending tacit signals regarding the direction in which the judge, in this case judge Margareta, "feels" a case might be heading. The urge to send such signals has to do with the judges' operational responsibilities – if the prosecutor can be made to understand what is missing or not missing from the case, according to the judge, the handling of the case will be more cost-efficient and effective. But sending these tacit signals puts judges in impartiality's grey zone; Regardless of the judge's objective goals, if the tacit signals are picked up by the lay people the latter will doubt the judge's impartiality and thereby objectivity.

The basic idea of impartiality, to display an open mind until all evidence is presented, demands delicate verbal and emotional balancing in real life court interaction. Judge Margareta in the above quote suggests that, whether she intends to or not, she always somehow reveals and signals her attitude towards the evidence (cf. Goffman 1959), at least to legal professionals who know her and are familiar to her way of asking questions. On this note, an obvious problem with tacit signals is the risk of misinterpretation. Misinterpretation can happen in several ways, as when judges do *not* send a tacit signal but simply mean what they say, or when they misuse a signal for their own benefit, as described in the following quote by a judge who formerly worked as a prosecutor:

When I was a prosecutor, I had this judge who asked: 'Is it really necessary to hear this witness?' Ehum... and I said no. The witness wasn't there, so we would have to postpone the hearing if I insisted. And I thought that the judge would convict; he thinks the evidence is enough. Then he acquitted, and in the verdict, he wrote, 'Since the prosecutor did not assert other evidence'. I was furious! (...) If he expresses himself that way, he has told me that the evidence is enough. But he tricked me. (Interview, Monika, judge, 45+)

In this case, Monika was certain that she did not misunderstand the judge's hint, but that he had used a tacit signal in order to trick her to withdraw the witness, so he could dismiss the case and get less work.

In this section, we have seen that the emotional communication and tacit signals conveyed by the judge need to be even more subtle than those used by the prosecutor, due to the requirement on the judges to always remain impartial. As we saw in the previous section with the example of the hysteric mother, inter-professional emotional communication by the judge can comprise a visible lack of emotional display, the stone face, to signal a pending threat to their impartial presentation. Consequently, judges, although they have the formal power and responsibility to govern and chair the legal procedure, depend on the other legal professionals' direct and indirect support when staging the objective rule of law. To avoid endangering their impartiality, judges must sometimes transfer their own responsibility to the prosecutor; for instance the management of lay peoples' emotions.

## 6. Concluding discussion

By analysing how objectivity and impartiality are actualized and performed in real life court interactions, this article confirms previous studies showing that the enactment

of objectivity in court relies on situated work; *doing objectivity* by balancing engagement and detachment (Jacobsson 2008, Roach Anleu and Mack 2019). Nevertheless, it is also clear that the positivist ideal of objectivity as a state of pure reason still prevails (Lange 2002, Maroney 2011, Bergman Blix and Wettergren 2016), and our results show that the sustenance of this ideal requires professional collaboration, emotional attunement and situated empathy; interprofessional as well as with lay people. This double goal of doing objectivity and displaying impartiality while keeping up the image of objectivity as non-emotional and disembodied can be traced by analyzing the hearing through a dramaturgical lens (Goffman 1959). This highlights backstage preparation, front stage emotional attunement, tacit signals and interprofessional emotional communication, communicating concerns and shared responsibilities between the legal professionals.

To sum up, the objective presentation of the court process demands the feeling of “perfect fluency” (James 1879, 318) in the emotional exchange between the legal professionals. The fact that the legal professionals should be autonomous and follow correct procedures paradoxically demands emotional attuning between them; the defence lawyer and prosecutor need to attune with the judge to make sure that their message (presented evidence) is received, and the judge in turn needs to attune to the prosecutor and defence lawyer to secure an impartial performance.

The collaborative character of objectivity in court first and foremost relies on the state representatives, i.e. the judge and the prosecutor, whose main concerns are to present objectivity to assure legitimacy. Our analysis has showed that the performance of such an objective court ritual requires inter-professional collaboration. However, the roles of prosecutor and judge demand different but complementary ways of doing objectivity – a focus on an impartial display for the judge and an objective state of mind while acting as a party for the prosecutor.

Our analysis also identified tangible vulnerabilities in the performance of objectivity within the emotive-cognitive judicial frame that upholds an ideal of non-emotionality. First, we have seen that the joint focus of professional collaboration in court can amount to what Rogers and Erez call “a symbol of possibility” (Rogers and Erez 1999, 285), that is a concerted empathic attuning with lay people to adjust the objective performance to fit with the specificities of a particular case. Objectivity here is indeed done, step by step, continuously adaptive and perceptive of pitfalls, while the actors keep pretending that the silencing of emotions going on does not require heightened emotional sensitivity. Alternatively, professional collaboration can amount to a blunt disassociating of emotional engagement from the legal procedure, in effect isolating and rejecting the lay people, whose lives the hearing concerns, from the court procedure; a concerted ignorance of lay people’s emotional states, marginalizing their emotions as “immature” while keeping up an objective “adult” ritual.

Second, we have seen that the emotive-cognitive judicial frame’s silencing of the emotional underpinnings of the court ritual forces the actors to rely on very subtle and therefore fragile emotional exchanges, such as tacit signals and covert emotional communication, which may lead to misunderstandings and misuses. In practice, the discrepancy between positivist objectivity as a state of being and the various efforts to create the illusion of a disembodied and unemotional court procedure, discussed here, demands continuous and advanced emotion management. Just like the emperor’s new clothes, positivist objectivity as a guiding principle of the court ritual rests on a tacit and unified collective agreement about keeping up an illusion, an illusion that can endanger the ultimate goal of an impartial and objective court process.

## References

Alvesson, M., and Sköldböck, K., 2009. *Reflexive Methodology: New Vistas for Qualitative Research*. 2<sup>nd</sup> ed. London: Sage.

- Archer, M.S., 2000. *Being Human: The Problem of Agency*. Cambridge University Press.
- Barbalet, J., 1998. *Emotion, Social Theory, and Social Structure – A Macrosociological Approach*. Cambridge University Press.
- Barbalet, J., 2011. Emotions beyond regulation: Backgrounded emotions in science and trust. *Emotion Review* [online], 3(1), 36-43. Available from: <https://doi.org/10.1177/1754073910380968> [Accessed 2 April 2019].
- Bergman Blix, S., 2015. Professional emotion management as a rehearsal process. *Professions and Professionalism* [online], 5(2), 1-15. Available from: <https://doi.org/10.7577/pp.1322> [Accessed 2 April 2019].
- Bergman Blix, S., and Wettergren, Å., 2015. The emotional labour of gaining and maintaining access to the field. *Qualitative Research* [online], 15(6), 688–704. Available from: <https://doi.org/10.1177/1468794114561348> [Accessed 2 April 2019].
- Bergman Blix, S., and Wettergren, Å., 2016. A sociological perspective on emotions in the judiciary. *Emotion Review* [online], 8(1), 32-37. Available from: <https://doi.org/10.1177/1754073915601226> [Accessed 2 April 2019].
- Bergman Blix, S., and Wettergren, Å., 2018. *Professional Emotions in Court: A Sociological Perspective*. London: Routledge.
- Bladini, M., 2013. *I objektivitetens sken: En kritisk granskning av objektivitetsideal, objektivitetsanspråk och legitimeringsstrategier i diskurser om dömande i brottmål* [In the semblance of objectivity - a critical review of objectivity claims and legitimation strategies in criminal trial discourses]. Göteborg: Makadam.
- Burkitt, I., 2012. Emotional reflexivity: Feeling, emotion and imagination in reflexive dialogues. *Sociology* [online], 46(3), 458-72. Available from: <https://doi.org/10.1177/0038038511422587> [Accessed 2 April 2019].
- Clark, C., 1990. Emotions and micropolitics in everyday life: Some patterns and paradoxes of "place". In: T.D. Kemper, ed., *Research Agendas in the Sociology of Emotions*. State University of New York Press, 305-33.
- Dahlberg, L., 2009. Emotional tropes in the courtroom: On representation of affect and emotion in legal court proceedings. *Nordic Theatre Studies*, 21, 129-52.
- Darbyshire, P., 2011. *Sitting in Judgment: The Working Lives of Judges*. Oxford: Hart.
- Daston, L., and Galison, P., 2010. *Objectivity*. Paperback ed. New York: Zone Books.
- Flower, L., 2018. Doing loyalty: Defense lawyers' subtle dramas in the courtroom. *Journal of Contemporary Ethnography* [online], 47(2), 226-54. Available from: <https://doi.org/10.1177/0891241616646826> [Accessed 2 April 2019].
- Forsgren, M., 2014. Opartiska domare och effektiv resurshantering [Impartial judges and an efficient use of resources]. *Svensk Juristtidning* [Swedish Law Journal] (online), vol. 3, 217-25. Available from: <https://svjt.se/svjt/2014/217> [Accessed 2 April 2019].
- Goffman, E., 1959. *The Presentation of Self in Everyday Life*. New York: Doubleday.
- Goffman, E., 1974. *Frame Analysis: An Essay on the Organization of Experience*. Boston, MA: Northeastern University Press.
- Goodrum, S., 2013. Bridging the gap between prosecutors' cases and victims' biographies in the criminal justice system through shared emotions. *Law and*

- Social Inquiry* [online], 38(2), 257-87. Available from: <https://doi.org/10.1111/lsi.12020> [Accessed 2 April 2019].
- Harris, L.C., 2002. The emotional labour of barrister: An exploration of emotional labour by status professionals. *Journal of Management Studies* [online], 39(4), 553-84. Available from: <https://doi.org/10.1111/1467-6486.t01-1-00303> [Accessed 2 April 2019].
- Herzog-Evans, M., 2014. *French Reentry Courts and Rehabilitation: Mister Jourdain of Desistance*. Paris: L'Harmattan.
- Heuman, L., 2007. Objectivity in Swedish criminal proceedings. *Scandinavian Studies in Law* [online], 51, 213-28. Available from: <http://www.scandinavianlaw.se/pdf/51-10.pdf> [Accessed 2 April 2019].
- Hochschild, A.R., 1983. *The Managed Heart: Commercialization of Human Feeling*. Berkeley: University of California Press.
- Hochschild, A.R., 1990. Ideology and emotion management: A perspective and path for future research. In: T.D. Kemper, ed., *Research Agendas in the Sociology of Emotions*. State University of New York Press, 117-45.
- Jacobsson, K., 2008. "We can't just do it any which way": Objectivity work among swedish prosecutors. *Qualitative Sociology Review* [online], 4(1), 46-68. Available from: [http://www.qualitativesociologyreview.org/ENG/Volume9/QSR\\_4\\_1\\_Jacobsson\\_old.pdf](http://www.qualitativesociologyreview.org/ENG/Volume9/QSR_4_1_Jacobsson_old.pdf) [Accessed 2 April 2019].
- James, W., 1879. The sentiment of rationality. *Mind*, 4(15), 317-46.
- Kjelby, G.J., 2015. Some aspects of and perspectives on the public prosecutor's objectivity according to ECHR case-law. *Bergen Journal of Criminal Law and Criminal Justice* [online], 3(1), 61-83. Available from: <https://doi.org/10.15845/bjclcj.v3i1.828> [Accessed 2 April 2019].
- Lange, B., 2002. The emotional dimension in legal regulation. *Journal of Law and Society* [online], 29(1), 197-225. Available from: <https://doi.org/10.1111/1467-6478.00216> [Accessed 2 April 2019].
- Luntley, M., 1995. *Reason, Truth, and Self: The Postmodern Reconditioned*. New York: Routledge.
- Maroney, T.A., 2011. The persistent cultural script of judicial dispassion. *California Law Review* [online], 99, 629-81. Available from: <https://doi.org/10.15779/Z38K98M> [Accessed 2 April 2019].
- Maroney, T.A., 2012. Angry judges. *Vanderbilt Law Review* [online], 65(5), 1207-86. Available from: <https://www.vanderbiltlawreview.org/2012/10/angry-judges/> [Accessed 2 April 2019].
- McDonald, S., 2005. Studying actions in context: A qualitative shadowing method for organizational research. *Qualitative Research* [online], 5(4), 455-73. Available from: <https://doi.org/10.1177/1468794105056923> [Accessed 2 April 2019].
- Moorhead, R., 2007. The passive arbiter: Litigants in person and the challenge to neutrality. *Social & Legal Studies* [online], 16(3), 405-24. Available from: <https://doi.org/10.1177/0964663907079766> [Accessed 2 April 2019].
- Poder, P., 2010. Empowerment as interactions that generate self-confidence – an emotion-sociological analysis of organizational empowerment. In: B. Sieben and Å. Wettergren, eds., *Emotionalizing Organizations and Organizing Emotions*. London: Palgrave Macmillan.

- Reddy, W., 2001. *The Navigation of Feeling: A Framework for the History of Emotions*. Cambridge University Press.
- Roach Anleu, S., and Mack, K., 2005. Magistrates' everyday work and emotional labour. *Journal of Law and Society* [online], 32(4), 590-614. Available from: <https://doi.org/10.1111/j.1467-6478.2005.00339.x> [Accessed 2 April 2019].
- Roach Anleu, S., and Mack, K., 2017. *Performing Judicial Authority in the Lower Courts*. London: Palgrave Macmillan.
- Roach Anleu, S., and Mack, K., 2019. Impartiality and emotion in everyday judicial practice. In: R. Patulny et al., eds., *Emotions in Late Modernity*. Abingdon: Routledge.
- Rogers, L.J., and Erez, E., 1999. The contextuality of objectivity in sentencing among legal professionals in South Australia. *International Journal of the Sociology of Law* [online], 27(3), 267-86. Available from: <http://www.sciencedirect.com/science/article/pii/S019465959900928> [Accessed 2 April 2019].
- Scarduzio, J.A., 2011. Maintaining order through deviance? The emotional deviance, power, and professional work of municipal court judges. *Management Communication Quarterly* [online], 25(2), 283-310. Available from: <https://doi.org/10.1177/0893318910386446> [Accessed 2 April 2019].
- Seidman, S., ed., 1997. *The Postmodern Turn: New Perspectives on Social Theory*. Cambridge University Press.
- von Wright, G.H., 1986. *Vetenskapen och förnuftet*. Stockholm: Bonnier.
- Weber, M., 1995. *Den protestantiska etiken och kapitalismens anda*. Trans.: A. Lundquist. Lund: Argos.
- Wettergren, Å., 2019. Emotive-cognitive rationality, background emotions and emotion work. In: A. Bellocchi et al., eds., *Emotions in Late Modernity*. London: Routledge.
- Wettergren, Å., and Bergman Blix, S., 2016. Empathy and objectivity in the legal process: The case of Swedish prosecutors. *Journal of Scandinavian Studies in Criminology and Crime Prevention* [online], 17(1), 19-35. Available from: <https://doi.org/10.1080/14043858.2015.1136501> [Accessed 2 April 2019].
- Wolcott, H.F., 1994. *Transforming Qualitative Data: Description, Analysis, and Interpretation*. London: Sage.