

Direct from the courtroom: live-reporting from trials and its emotional challenges

Lisa Flower

Department of Sociology, Lund University, Sweden

Professional expectations for lawyers, prosecutors and judges in Nordic courtrooms promote calm and composure - strong emotional expressions do not belong, however, this contrasts with the expectations of the public who may expect fiery arguments and aggressive questioning. The suggested project will explore this clash of courtroom expectations and the role of a new digital practice - live-reporting – in this process.

With the recent introduction of digital reporting direct from the courtroom, journalists can, in real-time, describe and broadcast depictions of the gestures, actions, facial expressions and emotions of legal professionals and lay participants in dramatic terms in order to grab the readers' attention. These reports are published and continuously updated on news websites and are then instantly discussed and evaluated by online audiences. This raises challenges regarding which emotions are reported along with whose emotions and how they are depicted. This is important as such digital reports, which are becoming more common, may constitute the most direct contact the public has with the justice system. Questions which arise in this clash of emotional cultures include: are trials live-reported in overly-dramatized terms in order to appeal to the public? How do audiences interact with this new form of courtroom reporting and what expectations do audiences have of a trial and its participants? The way in which legal professionals relate to this new digital practice becoming a part of courtroom culture is also relevant to explore. This suggested project therefore explores the implications and impact of the courtroom being opened to a wider audience and the role this new digital technology has on courtroom cultures, with particular focus on the emotional cultures of courtrooms.

Aim of the study and research questions

This project aims at analysing how today's live-reporting interacts with Nordic courtroom cultures as the production and employment of digital reports from trials typically diverge from calm and composed courtroom cultures. Three research questions stand at the centre:

- 1) How is reporters' digital live-reporting accomplished?
- 2) How is digital live-reporting responded to by the public?
- 3) How do legal professionals relate to live-reporting?

The first two questions concern what reporters write about, who they write about as well as how readers and viewers comment and in other ways respond to live-reports (Skilbrei, 2012; Wästerfors, 2006, 2008). The third question looks at how legal professionals whose performances are depicted relate to this new digital practice. The idea is to carefully analyse instances of live-reporting, as well as narratives produced around it, in order to clarify what live-reporting "does" with courtroom culture, and vice versa.

Theoretical framework

Legal professionals are typically associated with neutrality, objectivity and impartiality and an absence of emotion (Bandes, 1999; Bladini, 2013; Maroney, 2011). Research shows that legal professionals use "emotion work" (Hochschild, 1983) to ensure that their emotional displays are in line with these professional expectations. For instance, judges, prosecutors and defence lawyers in the Swedish courtroom follow implicit rules to display emotions that are appropriate

to the courtroom (Bergman Blix & Wettergren, 2015; Flower, 2016a, 2016b, 2018; Jacobsson, 2008; Törnqvist, 2017). This research also shows that these rules promote the subtle expression of emotions and that this restraint is required in order to uphold the façade that the law is based on rationality – the understated display of emotions quietens their role in law (Flower, 2018). However, research also shows that the expectations of lay participants are often in contrast to these professional expectations (Flower, 2018; Westlund & Eriksson, 2013).

Although the research field of law and emotion is booming, the “emotionalization of law” (Karstedt, 2002, p. 299) has focused in particular on the emotions of legal professionals, hence we do not currently know how digital reporting interacts with the emotion rules of the courtroom (see Bandes, 1999; Bergman Blix & Wettergren, 2019 for an overview). This is important as during conspicuous and highly publicised trials the courtroom’s audience is dramatically enlarged to a wide set of readers who may get quickly engaged in the reporter’s descriptions and perspectives. Thus, how the emotions in a trial are depicted in the media is a phenomenon of contemporary importance. Linked to this, because journalists “frame” trials – making certain aspects more salient or meaningful to the audience (Entman, 1993; Goffman, 1974) and because emotions are “social things” (Doyle McCarthy, 2017, p. 116), constructed, shaped and reproduced in all interaction – direct live-reports can construct the emotions and associated emotional expectations of trials. It is therefore relevant to study how trials and their participants are depicted, presented and imprinted in the public’s perception of the judiciary. This suggested project therefore builds on and expands previous research identifying frictions between courtroom culture and the public’s perception of this (Bondeson, 1979, 2003).

The theoretical underpinnings view emotions as integral to today’s “emotional society” (Hochschild, 1983; Illouz, 2007), to a greater extent than before (Elias, 1994). Furthermore, the new digital age sees the digitalisation of immediacy: we no longer want to wait until the evening news or the following morning’s paper to read about what happened in a trial, we want to know – and react upon it – now (Bauman, 2007).

Criminological relevance

Live-reporting has implications for witnesses as in many countries such as Sweden and Denmark, witnesses should not attend the trial before they have been questioned (SFS, RB 36, §1; Gomard & Kistrup, 2013). Furthermore, although a trial should be public in both countries, the introduction of live-reporting means witnesses can follow the trial they are about to attend in real-time (Gomard & Kistrup, 2013; SFS, RB kap 5). There is therefore a risk that witnesses are influenced by what has been reported, similar to the effect that pre-trial publicity has been shown to have on jurors (Fein, McCloskey, & Tomlinson, 1997). Whilst questions regarding rule of law stemming from this are outside the scope of the current project, witnesses may nonetheless constitute part of the audience who engage with live-reports. To reiterate, it is the immediacy of the reporting that brings novel dilemmas, diverging from those arising from the traditional, delayed reporting.

This gap in the criminological field becomes even more urgent to fill as studies show that live reporting is considered to be more balanced and/or factual than traditional articles (Thurman & Walters, 2013). Furthermore, live reporting is thought to increase transparency in the criminal justice system (Winnick, 2014) whilst research in Denmark shows that live updating news pages are a popular news format, engaging readers for a longer time compared to visits to other online news formats (Thurman, 2015). If we also consider that journalists should hunt for emotional details that can grab the reader (Wennstam, 2006, p. 24), it leads to questions as to whether the immediacy of this form of reporting has added challenges when attempting to hook the reader (Hewett, 2015). It also raises questions as to how trials and their participants are constructed, represented and discussed. This format of reporting trials thus

deserves more criminological attention. Further support for this can be found in studies showing that viewers' perceptions of trials may be influenced by medialised depictions in TV programs (Barthe, Leone, & Lateano, 2013; Fielding, 2006) with one study describing how hashtags, links and photos were used on a microblog reporting a murder trial (Knight, 2017) – however how trials are depicted in live-reports direct from the courtroom has not been explored.

References

- Bandes, S. (Ed.) (1999). *The Passions of Law*. New York: New York University Press.
- Barthe, E. P., Leone, M. C., & Lateano, T. A. (2013). Commercializing success: the impact of popular media on the career decisions and perceptual accuracy of criminal justice students. *Teaching in Higher Education*, 18(1), 13-26.
- Bauman, Z. (2007). *Konsumtionsliv* (S.-E. Torhell, Trans.). Göteborg: Daidalos.
- Bergman Blix, S., & Wettergren, Å. (2015). A Sociological Perspective on Emotions in the Judiciary. *Emotion Review*. doi:10.1177/1754073915601226
- Bergman Blix, S., & Wettergren, Å. (2019). *Professional Emotions in Court*. London: Routledge.
- Bladini, M. (2013). *I objektivitetens sken: en kritisk granskning av objektivitetsideal, objektivitetsanspråk och legitimeringsstrategier i diskurser om dömande i brottmål*. Göteborg: Makadam.
- Bondeson, U. (1979). Det allmänna rättmedvetandet - en legal fiktion. In U. Bondeson (Ed.), *Rationalitet i rättssystemet*. Stockholm: LiberFörlag.
- Bondeson, U. (2003). *Nordic Moral Climates: Value Continuities and Discontinuities in Denmark, Finland, Norway, and Sweden*. Transaction Publishers: London.
- Doyle McCarthy, E. (2017). *Emotional lives: Dramas of Identity in an Age of Mass Media*. Cambridge: Cambridge University Press.
- Entman, R. M. (1993). Framing: Toward Clarification of a Fractured Paradigm. *Journal of Communication*, 43(4), 51-58.
- Fein, S., McCloskey, A. L., & Tomlinson, T. M. (1997). Can the Jury Disregard that Information? The Use of Suspicion to Reduce the Prejudicial Effects of Pretrial Publicity and Inadmissible Testimony. *Personality and Social Psychology Bulletin*, 23(11), 1215-1226.
- Fielding, N. (2006). *Courting Violence: Offences Against the Person Cases in Court*: Oxford Scholarship Online.
- Flower, L. (2016a). Doing Loyalty: Defense Lawyers' Subtle Dramas in the Courtroom. *Journal of Contemporary Ethnography*. doi:DOI: 10.1177/08912416166646826
- Flower, L. (2016b). *Dramatic Subtlety: Exploring Anger and Strategic Niceness in the Courtroom*. Paper presented at the Scandinavian Research Council for Criminology, Bifröst, Iceland.
- Flower, L. (2018). *Loyalty Work: Emotional interactions of defence lawyers in Swedish courtrooms*. (Doctorate), Lund University, Lund. (120)
- Goffman, E. (1974). *Frame Analysis: An Essay on the Organization of Experience*. Cambridge, Massachusetts: Harvard University Press.
- Gomard, B., & Kistrup, M. (2013). *Civilprocessen*. Copenhagen: Karnov Group.
- Hewett, J. (2015). Live Tweeting: The Rise of Real-Time Reporting. In L. Zion & D. Craig (Eds.), *Ethics for Digital Journalists: Emerging Best Practices*.
- Hochschild, A. R. (1983). *The Managed Heart: The Commercialization of Human Feeling* (2nd ed.). Berkeley: University of California Press.
- Illouz, E. (2007). *Cold Intimacies: The Making of Emotional Capitalism*. Cambridge: Polity.
- Jacobsson, K. (2008). "We Can't Just Do It Any Which Way" - Objectivity Work among Swedish Prosecutors. *Qualitative Sociology Review*, 4(1), 46-68.
- Karstedt, S. (2002). Emotions and criminal justice. *Theoretical Criminology*, 6(3), 299-317.
- Knight, M. (2017). The accused is entering the courtroom: the live-tweeting of a murder trial. *Journal of Media Practice*, 18(2-3), 186- 211.

- Maroney, T. A. (2011). The Persistent Cultural Script of Judicial Dispassion. *California Law Review*, 99, 629-681.
- SFS, S. f. Rättegångsbalken.
- Skilbrei, M.-L. (2012). Sisters in crime: Representations of gender and class in the media coverage and court proceedings of the triple homicide at Orderud Farm. *Crime Media Culture*, 9(2), 136-152.
- Thurman, N. (2015). Real-Time Online Reporting: Best Practices for Live Blogging. In L. Zion & D. Craig (Eds.), *Ethics for Digital Journalists: Emerging Best Practices*. London: Routledge.
- Thurman, N., & Walters, A. (2013). Live Blogging - Digital Journalism's Pivotal Platform? A Case Study of the Production, Consumption and Form of Live Blogs at Guardian.co.uk. *Digital Journalism*, 1(1), 82-101.
- Törnqvist, N. (2017). *Att göra rätt: En studie om professionell respektabilitet, emotioner och narrativa linjer bland relationsvåldsspecialiserade åklagare*. (Doctoral Dissertation in Criminology), Stockholm University, Stockholm. (38)
- Wennstam, K. (2006). Journalistens fördomar. In O. Petersson (Ed.), *Medieetik Under Debatt*. Stockholm: SNS Förlag.
- Westlund, O., & Eriksson, A. (2013). *Bemötande i domstol*. Stockholm: Brottsförebyggande rådet.
- Winnick, J. K. (2014). A Tweet Is(n't) Worth A Thousand Words: THE Dangers of Journalists' Use of Twitter To Send News Updates From The Courtroom. *Syracuse Law Review*, 64(1), 335-355.
- Wästerfors, D. (2006). Skandalösa pengar. In M. Persson & T. Linné (Eds.), *Pengar. Människan och hennes betalningsmedel*. Lund: Studentlitteratur AB.
- Wästerfors, D. (2008). Skandalen och publiken. In M. Åkerström (Ed.), *Medier, brott och den aktiva publiken*. Malmö: Bokbox förlag.