DISORDER IN THE COURT:

THE EXPERIENCE OF CRIMINAL DEFENSE ATTORNEYS

IDENTITY AND EMOTION CALLED INTO QUESTION

By

ELIZABETH ROTHROCK

B.A., University of Colorado Boulder, 2019
Disorder in the Court:
The Experience of Criminal Defense Attorneys
Identity and Emotion Called into Question

Elizabeth Rothrock
University of Colorado Boulder
Sociology Department

April 3, 2019

Honors Committee Members:
Glenda Walden, Ph.D., Sociology
Matthew Brown, Ph.D., Sociology
Garrett Bredeson, Ph.D., Philosophy
ABSTRACT

My study utilizes nine semi-structured qualitative interviews with criminal defense attorneys practicing around the Colorado Mountain University area in order to understand their experience in an occupation that is viewed as dirty work and morally condemned. This study explores the difficulties criminal defense attorneys face by “popular opinion” as blame is shifted from the client they are representing, the alleged criminal, to the attorney. Questions were asked about how the participant feels about their work, how people react when others discover the participants’ occupation and how they balance their personal life with work life, among others. Responses given by participants indicated that the practice of stigma management was highly important and crucial to their identity work as a criminal defense attorney. In interviews with participants, three themes, or stigma management techniques, were frequently recurring: the practice of distancing self from occupation, justification of occupation, and difficulty managing identity in the challenging balance between work life and personal life. Overall, this study examines the demanding nature of criminal defense as an occupation on the personal lives of participants and brings to light the “heroic” nature of the largely denounced profession.
To my parents, without which, this would not be possible; the CU Women’s Ultimate Frisbee program, who gave me the strength and help to be my best self and have given me the best community of tenacious women; to my friends who unconditionally love and support me; to the criminal defense lawyers who were kind enough to welcome and make time for me and who I one day aspire to be; and my honors thesis committee who diligently aided me in the thesis process.
“Attorneys who defend the guilty and the despised will never have a secure or comfortable place in any society. Their motives will be misunderstood; they will be suspected of placing loyalty to clients above loyalty to society; and they will be associated in the public mind with the misdeeds of their clients....There will never be a Nobel Prize for defense attorneys who succeed in freeing the guilty” (Dershowitz, 1982:417).

Nearly every Saturday night as a child, my dad would sit in front of the TV and watch what we called “creepy shows.” These were true crime shows that used actors to reenact murders; there would typically be an investigator, who explained the circumstances of the crime and would then go through the list of suspects, what leads were investigated, and who was found guilty. Although these “creepy shows” originally deterred me from watching TV with my dad, with time, I began to sit down and watch episodes with him. The episodes were extremely graphic and daunting, but the mystery of the murders and what would drive someone to commit crime began to fascinate me.

My dad is a lawyer, so, at a young age, I was exposed to the conflicts and complexities of the law. What I knew about being a lawyer was limited, but I knew that this occupation left very few opportunities for my dad to spend time with my siblings and I. My dad worked constantly and we would see him at dinner once he returned home from work; we frequently had babysitters and it remained obvious that being a lawyer was a time and effort consuming job. As I got older and began to show interest in my father’s work, he started to divulge some vague details about the cases he was working on at the time. He would represent and defend lawyers who were accused of committing malpractice or violating the Colorado Bar Association’s Rules of Professional Conduct. Being an expert in Legal Ethics, it only made sense that he would represent lawyers who had gotten themselves into trouble.
Throughout my childhood, I had envisioned myself having many different occupations, from being an architect to being an author. It never crossed my mind that being a lawyer would peak my interest because I knew how much time it required, and I wanted to be more involved with my family. However, unbeknownst to me, my interest in true crime and association with law led me to an intersection of the two: criminal law.

After my junior year of college, I began to look for any sort of exposure I could to the criminal justice system. I sought out an internship that could give me experience in the criminal justice system, and fortunately, I stumbled upon a diamond in the rough: the Colorado Mountain Innocence Project. The Colorado Mountain Innocence Project is an Innocence Project based out of the Colorado Mountain University law school. The Colorado Mountain Innocence Project requests for help from people who believe they have been convicted despite being innocent of any offense, and evaluates these claims to see if there are factual and legal grounds to get back into court with the claims. When [they learn] of a case that appears deserving of further investigation, the case is referred for further evaluation to volunteer lawyers, who may be assisted by [Colorado Mountain University Law] students (CU Law).

The opportunity of working with the Colorado Mountain Innocence Project has not only inspired and motivated me to go to law school after I graduate, but, it has opened my eyes to the injustices that occur within the penal and criminal justice systems in the United States.

Working with criminal defense attorneys at the Colorado Mountain Innocence Project, I noticed them navigating and managing their identity in the face of criticism from others. On occasion, I would go to observe criminal court dockets and would see the way in which the actors of the court would interact with one another. What was obvious to me, but largely unspoken, was the tension felt in the room. Criminal cases are typically, by nature, very emotional cases. There was an aspect of there being clear roles played by the actors of the court: there was the judge, unwavering and gallant, who was strategically placed in the courtroom at a
panoptic--esque position, front and center and elevated—able to see the movements of everyone. There was the district attorney or the prosecutor, who seemed to me to have tremendous power in the direction the case would go. They played a valiant role, as seeing themselves as the protector of the victim, advocating for their rights; the jury and much of the gallery seemed to share this view. The defense attorney seemed to be already at a disadvantage solely because of their role in the courtroom. The behavior of the defense attorney, even to me, was always being examined, arguably more than the prosecutor. The defense attorney was tasked with the very difficult task of advocating for their client who had broken the law, social norms and was the living and breathing illustration of many people’s fears and outrage. There was the alleged criminal, sitting next to the defense attorney, in a bright orange jumpsuit and shackles around their ankles. The appearance of the alleged criminal in the orange jumpsuit and shackles seemed to scream, “it was me, I did! Look at me!” Then there was the victim, who sometimes would appear, depending on if they felt comfortable enough to testify. They were viewed as broken, violated people who had suffered at the hands of the alleged criminal. I felt extreme sympathy for them and like many others, wanted someone to answer for this injustice, someone to point the finger at. The alleged criminal was an obvious target, but the defense attorney was a target and guilty by association.

What kind of person would advocate and defend a monster? I shared this sentiment with much of society, that is, before I directly experienced the difficulties that criminal defense attorneys face from the justice system and from society at large. In my time working at the Colorado Innocence Project, I saw how hard these attorneys worked for someone that they barely knew, fiercely advocating for their rights when everyone else had lost hope and viewed them as a lost cause. I saw the variety of struggles they encountered: swamped with an unmanageable
caseload, too little time to carefully examine each case and get to know their client, extremely low hourly rates, and pressure by judges and prosecutors to avoid “obstructing justice.” Their access to resources was extremely limited, especially if they were representing an indigent client, as they often were. They regularly faced clients who questioned their credibility, as many defendants were under the impression that you get what you pay for. Some judges would get angry when the defense attorney attempted to zealously defend their client by checking the prosecutor’s power by calling various objections; “in terms of power, prosecutors wield both demonstrable procedural and psychological advantages. The outcomes tell it all: defendants are rarely acquitted” (Smith, 2003:111). But the most significant insight I discovered was the “intentional design of indigent criminal defense to process the maximum number of defendants at the lowest cost” (Smith, 2003:128-129).

I began to see the criminal justice system for what it really was. I saw the defense attorney, ironically, defenseless most of the time. The defense attorneys were like a small but mighty fly, flapping their wings mercilessly, struggling and fighting to navigate the web, one that seemed to be never ending, intricate in its design and one that they could not escape. They had become caught in the web by trying to free a fly with a broken wing—the alleged criminal. This web was simultaneously being woven around them, with a tighter and tighter grip, interweaving them in the sticky mess.

I believe that many people are heavily influenced by the environment they are born into. Many people are born into circumstances that are entirely outside of their control. No one is able to choose their gender, family, socioeconomic status, skin color, or the location they were born. People are either able to profit or are at a disadvantage based on qualities that they had no control over. It has been my experience through working at the Colorado Mountain Innocence Project
that many of the individuals who contact the project for help are in the situation they are in because of unfavorable social status and structure. Many individuals have been disadvantaged based on their skin color, socioeconomic status, mental health, chaotic location they grew up in, and sometimes, family members who influence and encourage bad behavior. It is my view that we all have the same amount of culpability to being influenced by our surroundings. The fact of the matter is, some people are born into better situations than others, and this can extremely change the direction of one’s life.

I now see the criminal defense attorney as the mighty lion, tasked with a job that is most of the time, not rewarding and extremely complex and difficult. Many criminal defenders warned me after they had seen me as a regular, questioning if this is the profession I want after I saw the ugliness. They saw me as naive and vulnerable, half-heartedly joking to get out while I still can. So, instead of getting out while I still could, I took a leap and decided to devote an entire project to understanding the profession. The questions I asked myself started to inform the direction of my thesis: how are defense attorneys impacted by cultural images and interpersonal responses to their occupation? Do these cultural images and interpersonal response affect their sense of self and identity? Do they feel stigmatized, misunderstood and undervalued? If they do, how do they manage these stigma? Does their occupation impact the quality, number, and kinds of social relationships they form with others?

Why does this matter socially? Criminal defense attorneys are a vital component of the criminal justice system; “One of the truest tests of a free country is how it treats those whose job it is to defend the guilty and the despised… One of the surest ways of undercutting the independence of defense attorneys is to question the propriety of their representing the guilty” (Dershowitz, 1982:417). Criminal defense lawyers uphold the integrity of the Sixth Amendment,
convicted criminals are put under the chopping block that is the government. In every system, there is room for error, but the errors in the inner workings of the criminal justice system are hardly questioned as authority is largely viewed as omniscient and omnipotent. It is extremely important that those of who have been accused of their crime get their day in court, “the adversary system only works if each party to the controversy has a lawyer, a person whose institutional role it is to argue, plead and present the merits of his or her case and the demerits of the opponent's” (Smith, 2003:118-119). Criminal defense attorneys are like bloodhounds, constantly in the search for truth and maintenance of justice.

Why does this matter sociologically? Theories of self identity, identity work, stigma management, emotional labor and emotion management are all extremely relevant to attorneys, especially criminal defense attorneys, as they are in a different position than most other attorneys because of the societal feelings of abhorrence against their clientele. It is my hope that looking at this phenomenon through a sociological lens can lend itself helpful to uncovering and exposing the difficulties of the profession and bring to light the complexities that are often overlooked by society. We can begin to differentiate criminal defense and unpack identity work, stigma management and emotion management’s role in the profession in an attempt to discover what are helpful and harmful to criminal defense and how understanding this can help with the criminal justice system as a whole.

There has been a large amount of attention paid to criminals, whether it be through the inappropriate fascination of crime, prisoners and prisons as entertainment. However, there has been a negligible amount of information regarding the work of the attorneys who defend and represent those criminals. It is my hope that my research will cause criminal defense lawyers to be reflexive and examine their own behavior, but also inform other individuals the intense
emotion and identity management that criminal defense lawyers perform. It is my goal to have
my audience consider the importance of criminal defense lawyers because they are integral to
representing a vulnerable group of people and maintaining the integrity of 6th Amendment in
which everyone should be given a impartial jury trial, fair process and competent counsel.
Additionally, I hope that my research can contribute to the awareness of the general public
regarding criminal defense attorneys. Many criminal defense attorneys exceed what is asked of
them and go above and beyond to advocate for those who have been rejected by society.
Researching this topic with a sociological lens can lend itself useful towards encouraging people
to keep an open mind before making an assumption or preconceived opinion of someone who is
doing their job, however distasteful it may be, to the best of their ability.

LITERATURE REVIEW

As a professional group, lawyers are seen by society as powerful, wealthy individuals
that represent myriad of clients. However, the cultural perceptions of criminal defense attorneys
is far different. Abbe Smith (1995) in *Carrying on in Criminal Court: When Criminal Defense is Not So Sexy and Other Grievances*, regards on the inglorious nature of the occupation;

there is no question that the lowly status of the defenders is at odds with the noble stature of the criminal lawyer in popular culture… It doesn’t seem to matter who the defender is,
what the defender’s educational background is, or what kind of lawyer she is. Public
defenders are treated as “second-class lawyers” just as our clients are treated as second-
hand (or worse) citizens (740-741).
Indeed, the “second-class” lawyer aspect of criminal defense attorneys, specifically public defenders, is a result of the clientele that they represent. Criminal defense lawyers are susceptible to moral indignation and criticism by society because they represent those who have disobeyed and disrespected the values that most everyone abides by. As such, blame is shifted from the criminal to the criminal defense lawyer. This blame causes many criminal defense lawyers to look within themselves and question their very identity, as it is constantly under the watchful eye of victims, prosecutors, judges and society at large. A question that is frequently asked of criminal defense attorneys comes in the form of: “How can you sleep at night?” or “How do you justify to yourself representing someone you know is guilty?” This question is all-encompassing of the misunderstandings of the occupation of criminal defense.

Criminal defense attorneys experience moral and social stigma as a result of representing contentious clients. Goffman (1963) wrote extensively about stigma and stigma management. Stigma is defined as “an attribute that is deeply discrediting… [The stigmatized individual] is thus reduced in our minds from a whole and usual person, to a tainted, discounted one” (2-3). However, criminal defense lawyers experience courtesy stigma, “the individual who is related through the social structure to a stigmatized individual—a relationship that leads the wider society to treat both individuals in some respects as one” (Goffman 1963:30). The moral stigma of their clients is transferred to the lawyer; “just as individuals have been found to bask in the reflected glory of others, so too many they be tainted by the reflected deficiencies of others” (Snyder, Lassegard, and Ford, 1986:383).

A majority of society frown upon the concept of defending an individual who has disrespected society’s values, this type of work is considered immoral, distasteful, unacceptable,

> When the dirtiness is pervasive – that is, broadly covering many aspects of the work and deeply connected to the work, the occupation itself comes to be seen by that portion of society as ‘dirty work’ and, by extension, the individuals who perform it come to be seen as ‘dirty workers’ (82).

As such, criminal defense attorneys engage in a series of techniques to counter stigma, or undergo stigma management. Ashforth and Kreiner (2014) identify a series of techniques lawyers use in order to counter stigma. The techniques are identified as entitativity, condemning the condemners, blaming/distancing and depersonalization.

Criminal defense lawyers have been reported to utilize a variety of techniques because of their negative stigma. One such technique is ‘entitativity,’ or criminal defense lawyers finding solidarity within their ‘in-group,’ “the salience of the stigma induces members to recognize that they are being labeled as a group, underscoring a divide between ‘us’ and ‘them’” (Kadowaki, 2014: 85). Ashforth and Kreiner add

> Morally stigmatized occupations generally face stronger critiques from significant portions of society that they tend to have stronger occupational cultures (again, all else being equal) and more robust counters to societal perceptions (86).

Criminal defense attorneys generally stay within their in-group, a group of like-minded people, also in the criminal defense community. This makes it so criminal defense attorneys face less scrutiny among their peers.

Condemning the Condemners is also known as a technique of neutralization that criminal defense lawyers use as a defensive against those who disapprove of their work (Matza and Sykes, 1957; Ashforth and Kreiner, 2014). Criminal defense attorneys use condemning the condemners as a technique to dispute the condemners’ view of them; criminal defense attorneys
convince themselves that their occupation is legitimate and that they are pursuing truth and justice.

Alan M. Dershowitz (1982) remarks on the uncomfortable position that criminal defense lawyers exist in the social world, that they are often the targets of condemnation by society,

Attorneys who defend the guilty and the despised will never have a secure or comfortable place in any society. Their motives will be misunderstood; they will be suspected of placing loyalty to clients above loyalty to society; and they will be associated in the public mind with the misdeeds of their clients. They will be seen as troublemakers and gadflies. The best of them will always be on the firing line, and their licenses exposed to attack (417).

Criminal defense attorneys occupy an uncomfortable place in society and are constantly subject to criticism by a majority of society who are their condemners. As a result, criminal defense attorneys make it a point to prove to their condemners and themselves that their occupation, although stigmatized, is crucial for the attainment of justice.

Blaming/distancing is another technique of neutralization used by criminal defense attorneys in an attempt to separate themselves from the stigma of their client (Ashforth and Kreiner, 2014). Many criminal defense lawyers utilize blaming/distancing in order to convince themselves and others that they do not condone and approve of wrongdoings performed by their clients.

Criminal defense lawyers practice the act of depersonalization in which the lawyer treats “clients as numbers or things” (Taris et al., 2005). It is easier for criminal defense lawyers to make sense of their work when they depersonalize. Treating clients as number or things is a means to compartmentalize their work in an attempt to escape the inhumanity frequently seen. “Emotional exhaustion, in turn, has been associated with depersonalization” (Taris et al., 2005).
Feige (2001) explores the concept of how to defend a client that the criminal defense attorney knows is guilty,

It is his tears I see, his hand I hold and his mother I console. I know my clients like no one else in the system. I empathize with my clients the way everyone else in the system empathizes with the complainants. And ultimately, I do to the complainants what the rest of the system does to my clients. I dehumanize them. I learn their facts and statistics in a police report, but I don't linger over their faces (New York Times).

Depersonalization makes it so that the criminal defense attorney is not as exposed to the monstrosities that some of their clients perform. By treating their clients as number or things, criminal defense attorneys are able to stay focused and defend their client to the full extent of the law.

Being considered dirty workers and morally stigmatized, criminal defense attorneys undergo identity evaluation. There is a contradiction between the identity that others see of criminal defense attorneys, as immoral or dirty workers, and the identity that criminal defense attorneys have of themselves. Identity is defined as internalized role expectations derived from existing social roles, social categories, group memberships or personal qualities or attributes (Hegtvedt and Johnson 2018:65). Identity is considered an ongoing interactional process, where an individual in interaction monitors their identities by comparing their perceptions of the feedback they receive about themselves with their own conception of their identities (Burke 1991). In identity construction, criminal defense attorneys like to view themselves not as dirty workers, but as heroes who are fighting the good fight.

Mead (1934) recognized that one acquires a sense of self through interaction with others. Smith (2003) a criminal defense attorney reflected on the disappointment they had felt after they were personally convinced and had convinced their client that they would receive a lesser sentence than the one the judge had allocated, “I had a hard time coping. I had completely failed
my client. I had completely miscalculated the judge's reaction. I felt incompetent, ineffective, and inept. I lost faith in my judgment” (85). In this loss of judgement and feelings of inadequacy and incompetency, comes identity threat.

Petriglieri (2011) defines identity threat as “experiences appraised as indicating potential harm to the value, meanings, or enactment of an identity” (644). Criminal defense attorneys experience threat of identity more than other occupations because of the frequency of the threat; “the more an individual is exposed to an experience (i.e., the more recurrent it is), the more likely he or she is to perceive it as identity threatening” (Petriglieri, 2011:645). Criminal defense attorneys respond to identity threat by practicing entitativity, condemning the condemners, blaming/distancing, depersonalization and “reframing the meaning of stigmatized categories/roles they occupy so that they can feel more positively about them” (Ashforth, 2000:30). Criminal defense attorneys rationalize their occupation and thus their stigmatized category/role because the pursuit of justice and fair opportunity to defense overrides societal comfortability of what is deemed socially appropriate.

Coping techniques are largely used by criminal defense attorneys as a means of escaping and coming to terms with the heaviness and grim reality of their work. Such coping techniques are forms of emotional labor largely discussed by Arlie Russell Hochschild. Hochschild (2003) defines emotional labor as “the management of feeling to create a publicly observable facial and bodily display” (7). Additionally, “emotional labor is sold for a wage and therefore has exchange value” (Hochschild, 2012:29). Criminal defense attorneys perform emotional labor in nearly every aspect of their profession. Their relationship with their client is one in which emotional labor is frequently used in order to remain professional and carry out their assigned role or identity. In court, litigating cases in front of judges, prosecutors and victims, criminal defense
attorneys must strategically present a publicly observable facial and bodily display that is appealing to the jury, that doesn’t upset the judge, and that intimidates the prosecutor. Much of their public work is strategic and performative, and emotional labor is used to carry out these means. The emotional labor that criminal defense attorneys expend can be understood as exploitation is a certain sense. This may cause the defense attorney to lose touch with social purpose of defense.

Criminal defense attorneys also utilize feeling rules, used to represent what emotions they should express according to their social roles. Hochschild (2012) defines feeling rules as “standards used in emotional conversation to determine what is rightly owed and owing in the currency of feeling. Through them, we tell what is “due” in each relation, each role” (27). Hochschild (2012) brings up a question that is extremely applicable to criminal defense attorneys: “what happens when the managing of emotion comes to be sold as labor? What happens when feeling rules, like rules of behavioral display, are established not through private negotiation but by company manuals?” (27). This can be extended towards criminal defense attorneys’ work: what happens when the emotional labor that the criminal defense attorneys expend towards being an effective lawyer are sold as labor? What happens when feeling rules are implicit in the profession of criminal defense? What happens when feeling rules and emotional labor in the profession of criminal defense start to affect the personal life of the attorney?

Emotional labor also differs depending on the social class of the individual (Hochschild, 2012). Hochschild (2012) suggests that women have the burden of practicing more emotional labor than their male counterparts, as they are often expected to appease people in uncomfortable situations and put on a smile even when they do not feel happy. Joy Kadowaki (2015) in *Maintaining Professionalism: Emotional Labor Among Lawyers as Client Advisors* calls
attention to “dominant professional ideology dictates that lawyers behave professionally toward clients by using logical, rational reasoning and expression and by leaving emotion and personal feelings out of their work” (323). Thus, “lawyers must use emotional labor to cope with their own feelings while maintaining their professional display” (323). Kadowaki uses the combination of emotional labor and feeling rules to identify four ways in which lawyers use emotional labor to cope with and come to terms with their feelings: expression of genuine emotion, deep acting, surface acting, and detachment.

First, expressing genuine emotion refers to lawyers behaving in such a way that will be beneficial to their case; this can be expressed by showing humanity to their client or hiding negative emotions from their client:

For the lawyers, personal feelings could be expressed but only when they could be used as a professional tool. This occasionally meant that the lawyer could share a toned down, deliberate expression of his or her own emotions, only if it was helpful to the attorney–client relationship (Kadowaki, 2015:333).

Seymour Wishman (1981) in *Confession of a Criminal Lawyer*, speaks of how he strategically expressed favorable emotions and hid negative emotions in the courtroom,

Over the past years I had often expressed rage, or indignation, or joy, or sadness in a courtroom. At one level these displays had been fake or, at least, suspect: they were controlled and purposeful. I’m sure I wasn’t the only trial lawyer who knew exactly when he was going to “lose his temper,” what he would say or do while his temper was “lost,” and how long it would be before he recovered (231-232).

The performative nature of being a lawyer can be the crucial factor in whether the criminal defense lawyer will win or lose their case. Some lawyers use expression of genuine emotion more than others if the success of their case is central to their identity (Wishman 1982).

Second, deep acting is a combination of Hochschild’s definition of emotional labor and Goffman’s concept of stigma. Deep acting/emotion work occurs when “a person tries to align his
or her feelings with the emotions they are laboring to display” (Kadowaki, 2015:334). Deep acting is typically invoked in an attempt for the attorney to present a favorable, professional identity, and act in such a way that may contradict how they actually feel about their client.

They remind themselves that the client’s real life situation is more stressful than their own frustrating work situation and by attempting to sympathize and change their internal sentiments about the client, they are better able to conceal their personal or ‘unprofessional’ feelings. The lawyers deep act in order to remain professional in the face of difficult or challenging clients (Kadowaki, 2015:335).

Wishman (1982) also remarked on his personal experience of using deep acting to his advantage and other lawyers doing the same,

The lawyers knew the rules and the acceptable limits of any emotional outburst… But getting angry in a personal confrontation could mean actually losing control and becoming vulnerable, and that could be terrifying. We never lost control in the courtroom. Quite the opposite, we showed virtuoso skill at appearing transported by emotion, while every moment keeping it all on a tether. All the emotions and skills on that tether were supposed to be deployed for one purpose–winning (233).

Wishman, and many other criminal defense lawyers understand that there are times when the expression of their own personal feelings are inappropriate, like that of an emotional outburst. In order to remain professional and in line with the expectation of criminal defense attorneys as logical and rational, they regulate their outward appearance and subsequent behavior.

Third, in surface acting, “we change how we outwardly appear” (Hochschild, 2003:38). Hochschild (1983) also added that “surface acting involves the use of cues, such as facial expressions, gestures, and voice tone, to feign emotions that are not actually felt” (151-151). Kadowaki (2015) found that surface acting was the most common way of coping with difficult clients. It was used when the lawyer was unable to relate or identify with the client, so instead the lawyer labored to display the appropriate professional feelings and to conceal any personal feelings that may not be helpful to the relationship…lawyers most frequently discussed using surface acting to hide frustration, anger, or impatience with a client (336).
Surface acting is specifically utilized in situations where the lawyer needs to appear they are feeling a certain way in order to remain professional and act in the best interest of the case. Sofia Yakren (2008) in *Lawyer as Emotional Laborer*, observed that “in situations where lawyers' experienced emotions do not mesh with their prescribed role, emotional dissonance may emerge as a consequence of surface acting” (167). Hiding how they truly feel towards a client, whether it be frustration or anger, can end up have long-term ill effects on the criminal defense attorney. This frequently occur as well with what some criminal defense lawyers experience in advocating toward morally questionable ends for their client (Yakren 2008). However, what often creates this surface acting and ensuing emotional dissonance is the role of the lawyer,

> Once a lawyer represents a client, the lawyer has a duty to make his or her expertise full available in the realization of the end sought by the client, irrespective, for the most part, of the moral worth to which the end will be put or the character of the client who seeks to utilize it (Wasserstrom, 1975:6).

At one end is the personal feelings the lawyer has towards their client or what their client has been accused of doing, but these are eventually outweighed by the professional duty that the lawyer has, even though these two emotions can be in conflict.

Finally, detaching is employed when the client’s stigma or behavior is so reprehensible that the lawyer will “take emotion entirely out of interaction with the client, reducing the relationship to one that is ‘strictly business’” (Kadowaki, 2015:338). This is another technique in which the lawyer depersonalizes the client; “the lawyer reduces his or her performance to the bare bones, and uses emotional labor to conceal any emotion whatsoever” (Kadowaki, 2015:339). Yakren (2008) notes that detachment, for the criminal defense lawyer, can be the result of professional legal expectations:

> professional standards recognize detachment as enabling lawyers to hold personal view (that can translate into emotional sentiments), which might otherwise be in tension with their clients' interests, without undercutting their zeal… if there is a conflict between a
lawyer’s inner feelings and her outer displays, she is to detach so that the former does not interfere with the latter (166).

Although it can be argued that sometimes, with some clients, detachment can be used as a strategy to maintain focus and to block out the particularly difficult clients for the sake of zealous representation, this oftentimes requires emotional sacrifice at the hands of the criminal defense lawyer.

METHODS

Purpose of Research

The purpose of this study was to explore how criminal defense lawyers navigate and manage interpersonal perceptions of criminal defense that have been imposed on them by a variety of sources inside and outside of their profession. I conducted semi-structured qualitative interviews in order to gain this information most effectively. I hope to understand how the perceptions of criminal defense lawyer subsequently affects their identity management and emotion management.

Importance of Semi-Structured Qualitative Interviews

I conducted semi-structured qualitative interviews in order to gain information about my participants’ experience as criminal defense lawyers. Warren and Karner (2005) remark on the difficulty of interviewing, as it “can range from disastrous to mutually rewarding, depending on the talkativeness of the respondent, the topic of the interview, the functioning of the audiotape and the interview process itself” (138). It is acknowledged that interviews are important “when a study’s purpose and focus primarily on people’s experiences, perceptions, feelings,
interpretations, value systems” (Saldaña and Omasta, 2018:180). Reinharz and Davidman (1992) remark on the value of semi-structured interviews, as they allow for free interaction between the interviewer and interviewee, and unlike survey research, includes opportunity for clarification and discussion (18). It also allows participants to say things in their own terms rather than through the researcher, and “because of the exploratory nature of the research, questions were added when unanticipated patterns emerged” (Davidson and Reinharz, 1992: 19-21). With semi-structured interviews, I did not know how the answers would direct the conversation or what information would emerge, so I needed to be able to follow theoretically intriguing topics of conversation to formulate new questions; semi-structured interviews allowed me to do this best. As this research is exploratory in nature, there is no need for generalizability and a greater need for flexibility that this method provides.

Sampling Procedures

Participants were selected through a convenience sample enhanced by snowball sampling methods. A convenience sample was used primarily for ease and speed; the fact that I did not have any budget to look for participants, and this is arguably the easiest and cheapest non-probability sampling for an undergraduate, especially because I am conducting interviews. Snowball sampling is “often employed as a particularly effective tool when trying to obtain information on and access to ‘hidden populations’” (Noy, 2008:330). Additionally, “snowball sampling is also used to access groups that do not suffer from stigmas and marginalization, but, to the contrary, enjoy the status of social elites” (Noy, 2008:331). Although in this paper I argue that criminal defense lawyers do suffer from stigma, the snowball sampling method was useful to gain access to criminal defense lawyers, who are part of a larger group, that of lawyers in
general, who do enjoy some perks of being socially elite relative to other occupations. This is precisely why I used snowball sampling, because finding criminal defense lawyers if you are not a lawyer, or part of this membership group, is difficult. My use of a gatekeeper alleviated the difficulty of finding participants.

My gatekeeper was my supervisor at my internship who is a criminal defense attorney and was connected within the community of Colorado Criminal Defense. A snowball recruitment method was used because in this method, “potential participants typically linked to the study by a familiar, trusted person who can describe the interview process and alleviate any concerns” (Hennink, Hutter and Bailey, 2011:100). Because I had not had membership or immediate access to the group of criminal defense lawyers, using a gatekeeper was crucial in order to assure potential participants of my legitimacy and build rapport and trust. Public defenders as well as private criminal defense lawyers were recruited in order to maintain diversity and variation of participants.

Initially, I believed that snowball sampling would yield the best results in terms of sampling methods. I do not necessarily blame the method of snowball sampling specifically for my extremely small sample size, but how difficult it is as an undergraduate to ‘study up,’ or study a group with a higher status than the researcher. At first, I had promising participation as I started my interviews. However, over time, it became increasingly difficult to reach and interview more criminal defense attorneys as they have no personal relationship with me, I am not their client, and it is easy to not respond to an undergraduate when you are not getting any sort of compensation when criminal defense lawyers have to carefully and strategically allocate their time. Limitations in this sampling method were lack of resources and lack of time.
Laura Nader (1972) in *Up the Anthropologist-Perspectives from Studying Up* wrote, “if we look at the literature based on field work in the United States, we find a relatively abundant literature on the poor, the ethnic groups, the disadvantaged; there is comparatively little field research on the middle class and very little firsthand work on the upper classes” (289). Historically, ethnographers have ‘studied down’ because data is easier to access (Nader, 1972). Many sociological ethnographies have studied vagrancy, sex workers, addicts and prisoners (O’Reilly, Taylor, Vostanis:2009;). As such, these ethnographers have been in the position to obtain data with the confidence that they are studying those who are in less privileged positions. However, in obtaining my data and interviewing criminal defense lawyers, as an undergraduate woman, I was ‘studying up’ and interviewing those who are in a more privileged position than me, both socially and economically. Although criminal defense lawyers are considered stigmatized within the community of lawyers, they are still not considered a vulnerable population. Ultimately, Nader poses a very important question that has become extremely relevant to my thesis, “what if, in reinventing anthropology, anthropologists were to study the colonizers rather than the colonized, the culture of power rather than the culture of the powerless, the culture of affluence rather than the culture of poverty?” (Nader, 1973:289). This question can be expanded towards sociologists as well, what if sociologists were to study the powerful *in addition* to the powerless.

The Institutional Review Board (IRB) considers groups such as “pregnant women, fetuses, children (with the exception of observational studies), prisoners, persons at high risk of incarceration or deportation, or mentally disabled” as vulnerable populations (CU IRB Guidance Document, 2017) . When I uploaded my prospectus to the IRB database, there was a fairly short turnaround, with no real issues. This proved itself to be a sociologically valuable insight; the IRB
does not view this group as a vulnerable population, this speaks to the meager amount of literature dedicated to criminal defense lawyers, but specifically the intersection of emotion work and identity management. This is where I hope my research is able to fill in gaps that existing research has paid very little attention to.

**Ethical Issues/Limitations**

‘Studying up’ proved itself to be an intricate task. Although my gatekeeper was able to put me in contact with many of the criminal defense lawyers that I interviewed, I was not in position to blend into my settings, mainly because of my status as an undergraduate and not as a lawyer. As an undergraduate researcher, I was in a lower social position than my interviewees. The combination of my age, education, occupation, experience and gender inhibited the amount of data I was able to collect. A 21 year old female undergraduate student with a limited amount of legal knowledge and no legal experience, my position as a researcher was inhibited by my identity and status. Additionally, the amount of time and resources I had to dedicate to my research was limited. I did not have the same resources in terms of money and contacts to be able to conduct groundbreaking research as would professional researchers and graduate students.

In terms of confidentiality, both myself and the interviewee were restricted in discussing information that was protected by attorney-client privilege. Although my interview questions were not concerned with the subject matter of specific cases, it made it difficult at times to maintain transparency.

Problems with generalizability emerged during my convenience snowball sampling methods. Convenience sampling is neither strategic nor purposive, as members are chosen at random, or using a non-probability method. As such, convenience sampling, is likely to be
biased, and could have been the case in my research. It was difficult for me to find diverse data because each participant was chosen based on who the previous participant had told me to contact. All such defense attorneys, for the most part, whether they were private or public, were part of the same community or in-group. It was extremely difficult for me to access defense attorneys outside of this community, as I had a limited number of participants, limited time, and no budget. A problem with convenience sampling is that I do not know how representative my participants are of the entire criminal defense community nationwide; there was the possibility of outliers being present “because of the high self-selection possibility in non-probability sampling, the effect of outliers can be more devastating in this kind of subject selection” (Etikan, Musa, Alkassim, 2015:2). However, I did the best that I could considering I was studying a group with a higher status than me, and a group in which I only had indirect membership in.

Some limitations within semi-structured interviews that existed were that I cannot guarantee the truth of the participant. However, I would argue that one can never guarantee the truth of the participants in any research method. Additionally, the flexibility of the interview can have the tendency to lessen reliability. That is, the further away my interview gets from being structured, the more likely it is to be less reliable. I tried to ensure reliability within my interviews by not keeping the interviews too flexible, and still following the outline of the interview guide. But the advantage of semi-structured interviews was that I felt as if I could get more information from the participant by establishing a researcher-participant relationship that was not too strict, formal and uncomfortable.

At times, it was difficult to maintain rapport with my participants because of the daunting nature of ‘studying up.’ This was the opposite of exploitative; I felt as if at times I needed to utilize identity management and emotion management myself in order to appear knowledgeable,
professional, and non-threatening. Although all participants were welcoming of me, I felt myself in a precarious position in which it was clear during the interviews that I was in a lesser position than the participant. I felt the need to control my tone, body language, think about my word choice. I thought about how my position as an undergraduate and as a women changed the type and amount of data I received. Sometimes I felt as if my questions were not challenging enough, that I could not relate to their experiences as I had never defended a client before. I constantly was reminded, though unspoken, of my age throughout the interviews, as I had not graduated from college. I felt the need to tell them that I was interested in going to law school after I graduate college and that my internship had made me more knowledgeable about criminal defense. I felt myself trying to appear comfortable and warm even though I felt uncomfortable at times. At the end and the beginning of each interview, I found myself thanking them many times, as I felt that I had asked them a favor that I would forever be indebted.

Data Collection

I conducted nine interviews over the course of two months, from October 2018-December 2018. All participants who agreed to take part in an interview were provided informed consent to participate. Out of the nine participants, six of the participants were male-identifying and three of the participants were female-identifying. Ages of participants ranged from 26 years old to 78 years old, with all but one participant identifying as caucasian. Three of the nine participants were native to Colorado, two of the participants were not originally from the United States, two participants were from the East Coast, one participant was from the West Coast and one participant was from the Midwest. Years of criminal defense experience ranged from 14 months to over 50 years. However, what was significant was that eight of the nine participants I
interviewed had either made the switch from public defender to private defense after a number of years working in the public sector, with two of those nine participants working part time public and part time private. The only participant who was not working for a private firm at least some of the time was a participant who had been practicing as a public defender for 14 months. Only one participant had been working for a private firm for the entire time they have been practicing.

I started my first interview with my gatekeeper who then subsequently referred me to other defense attorneys who referred me to other defense attorneys and so on. The interviews were either held at the participant’s office, at a coffee shop, once at a participant’s house, and once over the phone. The location of the interview was chosen based on what was most comfortable and convenient for the participant, I let each participant choose where and when they wanted to interview to take place. The length of the interview was dependent on if the participant felt comfortable to continue the interview, how much the participant wanted to discuss, how much information we got through and how much time the participant had to be interviewed. The average interview lasted around 50-55 minutes.

Rapport was built at the beginning of the interview as I talked them through the IRB consent form. Every participant was either read, if preferable, or handed the IRB consent form where they were clearly told the intentions of the interview, why I was interviewing that participant specifically, the purpose of the study, explanation of procedures and were told that participating in the interview was completely voluntary and they could leave at any time. I also told each participant that the information shared with me would be kept and remain confidential and they were not at risk of violating attorney-client privileged information as none of my questions were concerned with the content or clients of their cases. Participants were told that they would be given or could choose a pseudonym and that all identifying information would be
altered; they were also informed that there was no monetary incentive for participating. Each participant consented to being recorded, checked the boxes and signed the consent form.

At the beginning of the interview, the questions I asked were demographic questions and then transitioned into questions asking the participant how many years they had been practicing criminal defense, and how many of those years were public and how many were private. Then I asked what types of cases the participant typically handled, whether that be state/local cases/work, federal, misdemeanor, petty, felony, trial, appellate, post-conviction, high profile, mandatory sentencing or capital cases. My next question asked how they became involved with criminal law specifically to try and uncover what about defending criminals sparked their interest. I asked each participant whether they thought current criminal law in Colorado was too lenient, too harsh or appropriate to understand their view and stance on the criminal justice system in general, but what their view with the legal system within Colorado was. Afterwards, I asked what their opinion about mandatory sentencing for drug offenses and habitual offender laws was in order to see whether they felt this was an injustice, or whether this was an appropriate law for criminals. I then asked them how that felt about their work, in an effort to start uncovering answers about identity work/management and emotion work/management. Following this question was typically when I felt I had grounded my understanding of them enough to start to ask questions that I had thought about myself; this was typically when I deviated from prescribed questions and had more of a dialogue with the participant. However, not all participants were as easy to have a conversation with where I felt comfortable probing, “the goal of early interviews is to search for unexpected findings in order to make adjustments and, if necessary, paradigmatic shifts” (Becker et al., 2002). Going forward with this
information, I got more comfortable with interviewing, and the flow of the conversation felt more natural.

After the interview was conducted, I either personally transcribed the interview or a software program was used to transcribe the interview for me. I used inductive coding which was supported in grounded theory,

theory evolves during actual research, and does this through continuous interplay between analysis and data collection… if existing data (grounded) theories seem appropriate to the area of investigation, then these may be elaborated and modified as incoming data are meticulously played against them (Strauss and Corbin, 1990:273). This was my intention whilst coding the interviews, use some existing data theories when appropriate and compare it with the information I was receiving in my interviews. The interplay between analysis and data collection is primarily how I coded my data; descriptive and thematic coding aided in grounded research. With thematic coding, I looked for themes within the data by looking at the words and phrases within the interviews and seeing if they fit what my literature had suggested. For example, I would look at passages to see whether they implicitly or explicitly contained words or phrases, even what was unspoken by the participant, about things that would suggest things such as identity management, emotional labor, detachment, or compartmentalization. I pulled out passages within interviews, connected them with previous literature and theory and coded them according to descriptive or thematic categories. I examined the interviews for recurrent themes; salient and illustrative quotes were pulled and these were categorized them accordingly.

Strengths of using grounded theory are that this method builds empirical checks into the analytic process and leads researchers to examine all possible theoretical explanations for their empirical findings. The iterative process of moving back and forth between empirical data and emerging analysis makes the collected data progressively more focused and the analysis successively more theoretical (Bryant et. al, 2007:2).
Going back and forth between the data I received from my interviews and my analysis helped my analysis have a more structured format. I found it useful to code my data based on grounded theory using codes and themes so that it was easier for me to make the connection between my data and what the literature suggests. However, this method of analysis also had limitations, in which “this type of reasoning involves a leap from the particular to the general, and may rely on too limited a number of individual cases or an idiosyncratic selection” (Bryant et. al, 2007:15). I had this exact problem: I had a limited amount of participants, so this proved a problem in how generalizable my data is. However, I was not concerned specifically with generalizability as my sampling method, convenience sampling/snowball sampling, is not an approach that generally leads the researcher to be able to generalize their data.

Given the problems of generalizability, bias, outliers and studying up, I did my best to make my research as sound as possible. By conducting semi-structured interviews, I allowed the participant to tell their truth and attempted to take as much of my voice out of the interview process as possible. My inclusion of both private and public defense attorneys attempted to diversify the data, although limited time and indirect membership inhibited diversifying the data more. It was my hope by interviewing a participant that had 14 months of experience to over 50 years of criminal defense experience would capture a broader range of experiences in order to capture a better picture of how the experience of criminal defense has changed and stayed the same over time.
FINDINGS AND DISCUSSION

To begin, the first question I asked probed whether or not criminal defense attorneys felt as if there were negative perceptions based on popular opinion from their job. Participant’s responses supported this inquiry.

My analysis identifies three main conceptual codes emergent from the data; all of these are subsets of the larger concept of stigma management. I will discuss the theme of managing stigma of the occupation through distancing of self from “the job,” stigma management through offering justifications for “the job,” and the theme of the criminal justice system itself being broken. These three themes appeared consistently in interviewees accounts of how they come to terms with and make sense of their occupation as criminal defense attorneys.

Justifications for Occupation

Condemning the Condemners is a technique of neutralization, which was theorized by Matza and Sykes (1957). This technique is largely used as a means for defensive against prosecutors, judges, victims and against the larger disapproval of criminal defense held by much of society. “The chief utility of this practice as a defensive tactic is in convincing the members themselves” (Ashforth and Kreiner, 2014: 93). Criminal defense attorneys use condemning the condemners as a technique to dispute the condemners’ view of them; criminal defense attorneys convince themselves that their occupation is legitimate and that they are pursuing truth and justice. Ashforth and Kreiner (2014) add that members of morally stigmatized occupations often face a greater threat to their social esteem and their very existence than do members in other stigmatized occupations and they are thus, all else being equal, more likely to condemn their condemners (93).
Alan M. Dershowitz (1982) remarks on the uncomfortable position that criminal defense lawyers exist in the social world, that they are often the targets of condemnation by society,

Attorneys who defend the guilty and the despised will never have a secure or comfortable place in any society. Their motives will be misunderstood; they will be suspected of placing loyalty to clients above loyalty to society; and they will be associated in the public mind with the misdeeds of their clients. They will be seen as troublemakers and gadflies. The best of them will always be on the firing line, and their licenses exposed to attack (417).

Criminal defense attorneys occupy an uncomfortable place in society and are constantly subject to criticism by a majority of society who are their condemners. One way in which this is exemplified is when people outside the occupation of criminal defense ask criminal defense attorneys how they can live with themselves or how they can sleep at night defending accused or convicted criminals. As a result, criminal defense attorneys make it a point to prove to their condemners and themselves that their occupation, although stigmatized, is crucial for the attainment of justice.

Scott and Lyman (1968) developed the employment of accounts in the way people talk and interact with one another. Accounts are statements made by an individual to explain troublesome behavior and bridge the gap between actions and expectations and ultimately neutralize an act or its consequences when one or both are called into question; they can be categorized into two types: excuses and justifications (46). My interviews with criminal defense lawyers exemplified this very phenomenon, with many participants offering accounts or justifications for their occupation, specifically to justify their defense of criminals to the rest of society. Criminal defense lawyers employ excuses when the legitimacy of their occupation is called into question, and they employ justifications when they accept responsibility for their role in defending criminals, but deny the negative qualities associated with it.
Throughout my interviews, several participants claimed an appeal to loyalties when people question their involvement defending criminals, this is seen by appealing to the constitution.

**Interviewer**: In response to previous conversation concerning how participant had received death threats from people angry at her for her involvement in defending criminals, specifically in high-profile cases

**Lucy**: I truly felt like my responsibility was to make sure that the process that was going to deny that person’s liberty was done in compliance with the constitution... And I wanted to get the government to comply with the constitution. And I don’t know if that’s right. Maybe that’s the way I compartmentalize it, in my head. But I do think it’s right. Because I never left the feeling like, like feeling responsible for the outcome. The outcome wasn’t my responsibility.

In this example, Lucy justification her role in defending criminals as making sure that the system, or trial, that had the potential to strip a criminal of their liberty was done in compliance with the constitution, she felt as this was her responsibility. “To justify an act is to assert its positive value in the face of a claim to the contrary” (Scott and Lyman, 1968:51). Lucy denied the negative consequences by saying that she didn’t know if it was right, and later, claimed that she did think this was the right thing to do, thus denying the negative consequences by affirming the positive value of defending the criminal. She offered an excuse when she claimed that she never felt responsible for the outcome of the trial, thus “mitigating or relieving responsibility when conduct is questioned” (47). When appealing to higher loyalties, a type of justification, “the actor asserts that his action was permissible or even right since it served the interests of another to whom he owes an unbreakable allegiance or affection” (51). Lucy claims that her action is permissible because of her allegiance to upholding the constitution.

**Interviewer**: So, when you have people that don’t understand your work and ask you ‘How can you defend them’ or ‘How do you sleep at night?’ How do you respond to those?

**Candace**: You know, it’s funny, I get asked the question all the time that I asked my criminal law professor when I was in law school. What do you do if they’re guilty? And, my response is, look, the constitution says you have the right to have a trial. Full stop. Not, unless they have you on video tape, unless you’re a horrible person. You know, Hannibal Lecter has a right to have a
trial. You know, I have come to realize more and more the longer I do this is it's what separates our society from less free societies is our right to be presumed innocent, to not have that sort of, automatic, right, ‘you’re a bad person.’

Lisa McIntyre (1987) in The Public Defender: The Practice of Law in the Shadows of Repute, remarks on the question many people ask public defenders, the same question Candace claimed she used to ask her criminal law professor: how can you defend someone who is guilty?

How can you defend people who you know are guilty? Public defenders say that question is incredibly naive, that for the most part they have little patience with that question and little time for anyone who asks it. One suspects that they would like to answer with shock and outrage when asked how they do what they do--and sometimes they do answer like that… Simply put, public defenders believe that they come not to destroy the law but to fulfill it (142).

When Candace is asked the deadly question, she offers the same justification, appeal to loyalties, as Lucy and is alluded to by McIntyre (1987). Namely, that she is appealing to the constitution in her defense of a guilty criminal, and that everyone, even Hannibal Lecter is deserving of the right to have a trial. In her explanation, Candace excuses defending the guilty in her statement that Hannibal Lecter, a cannibalistic serial killer, who is exemplary of the worst kind of criminal, still is deserving of a trial, otherwise, we would be like societies who are less free. McIntyre (1987) helps to illuminate the question many criminal defense attorneys are asked, and claims that public defenders’ role is to fulfill the law, which exemplified through Lucy and Candace, that this can be done through upholding the rights given to the guilty by the constitution.

Interviewer: When you would have to take those really tough cases, what were the kind of things that were running through your mind, like how could you compartmentalize these things?

Bradley: I think the thing that I always focus on is that my job is to protect the values of the constitution, to ensure that the rights of those that people dislike or hate are protected to the fullest degree so that we as a society can be better. Uh, I think this society is not judged by how they treat the richest among us, it is judged by how they treat the poorest among us. And I want to make sure that we live in a just society. And I think that's the way of doing it.
Bradley alludes to similar concepts that Candace spoke of, that the rights of those who are disliked or hated by society, similar to Candace’s mention of Hannibal Lecter, are still deserving of a fair trial. However, Bradley’s excuse is different from that of Lucy and Candace. Bradley wants to live in a just society, and by upholding the values of the constitution and defending those who are disliked and hated by society, the society can become more just.

**Interviewer:** So, how do you typically respond to those people who ask, you know, how do you sleep at night, or how can you live with yourself defending these people?

**Julia:** I mean, I always remind them that everybody has the constitutional rights and that’s what we are, you know, working under, we’re protecting people’s constitutional rights and that there’s a lot of people who either get convicted or accused of more than they’ve done or haven’t done it at all. And that, you know, I have no problem looking at myself in the mirror, sleeping at night, and that I’m actually really proud of what I do.

When asked the question, Julia responds by making a justification, an appeal to loyalties, that she believes that everyone has constitutional rights, and her job is to protect people’s constitutional rights. She implicitly mentions that some people may be innocent if they haven’t done what they are accused of at all, and explicitly mentions that many people get convicted or accused of more than they have done. Julia denies full responsibility when she claims that she has no problem looking in the mirror, and that she is proud of what she does.

David Feige (2001) in *How To; Defend Someone You Know is Guilty*, remarked on the question that many criminal defense attorneys get asked,

> Few public defenders have ever escaped a cocktail party without being confronted with "the question": How can you defend someone who is guilty? … I believe in the Constitution, and I think in terms of proof, not guilt. I tell them that trial work is fun, and that like most longtime public defenders, I can’t imagine incarcerating people for a living (New York Times Magazine).

Feige (2001) also encounters the question that many criminal defense lawyers get asked, and like many of the participants I interviewed, justifies his work by appealing to higher loyalties, the

Each participant takes a slightly different approach to answering “the question,” but overall, criminal defense attorneys take pride in their work by offering excuses and justifications in the face of those who question the legitimacy of their occupation. Some participants acknowledge their role and accept responsibility for their role in defending the criminal, however, many deny responsibility, like Lucy and Julia. Nearly every participant spoke about their appeal to higher loyalties in the form of the constitution, and proves itself significant by the frequency in which it was discussed in interviews. Ultimately, the role of accounts in the form of excuses and justifications helps the participant to manage their stigma, as it is largely recognized and encapsulated in “the question” that many ask criminal defense attorneys. It can be seen itself as a form of protection, defense mechanism, but also a larger realization of how critical their role is to the protection of those who need to be defended, even if it means facing condemnation from society.

Distancing

Ashforth and Kreiner (2014) claim that “both objectivity and the notion of providing a critical service for a deserving client may be very difficult to sustain when moral or social taint arises from the apparent culpability of the client...in such cases, occupational members may feel the need to distance themselves from their client” (95-96). In regards to criminal defense attorneys, they exemplify distancing strategies.
Blaming/distancing is another technique used by criminal defense attorneys in order to separate themselves from the stigma of their client:

blaming/distancing can be very alluring to the occupational member because it legitimates the occupation, provides a ready target for any resentment caused by the association with stigmatized others (Ashforth and Kreiner, 2014:96).

Many criminal defense lawyers utilize blaming/distancing in order to convince themselves and others that they do not condone and approve of wrongdoings performed by their clients. However, it is important to recognize that criminal defense lawyers themselves are oftentimes the source of blame. David R. Lynch (1998) explores occupational stress among public defenders by interviewing public defenders. One public defender reveals, “let’s see. I’ve been blamed for people losing their babies. I’ve been blamed for families breaking up. I’ve been blamed for people in jail, for people losing their liberties” (477). Criminal defense attorneys, often the subject of blame themselves, shift the blame from themself to their client.

Blaming/distancing oftentimes is “coupled with an ideology of critical service to a higher-order purpose rather than just to potentially blameworthy or distanced individuals” (Ashforth and Kreiner, 2014:96). The higher-order purpose that criminal defense attorneys appeal to is the pursuit of justice, to fulfill the law, defend constitutional rights, and to protect the rights of the guilty and wrongfully accused.

The most significant conceptual code that was found consistently throughout my interviews and existing research was distancing. Throughout most of my interviews, when asked about the emotions criminal defense attorney experiences whilst representing clients who have broken moral codes and norms, participants noted many different ways in which they coped or came to terms with the job when faced with external and internal criticism. Distancing is typically used by criminal defense lawyers in order to avoid and separate themself from the
stigma of their client. Many criminal defense lawyers utilize blaming/distancing in order to
convince themselves and others that they do not condone and approve of wrongdoings performed
by their clients.

**Interviewer:** Umm, so, you were talking a little bit earlier about how like representing
umm, indigent people is very taxing. Do you think you can speak more on that?

**Gregory:** Umm, lots of people suffer from you know, the trauma of looking, you know
dealing with the initial traumatic act, umm, you know, I, my boss at the public defender’s
office, was, you know, in his, like what he likes the most is just to deal with the truly
messed up cases. Umm, and, you know, I had this, I had a vehicular homicide where my
client, it’s a one car accident. I’ve got all these, like, ugly pictures of them and my boss
just refused to look at those pictures. You know, I’ve got to limit my exposure to that
stuff. Because it’s really traumatic, and I can’t deal and I don’t want to deal.

In this example, Gregory explains that not looking at particularly gruesome pictures of a
vehicular homicide are a means to limit exposure to trauma, because there exists the ‘trauma of
looking.’ This is an attempt for Gregory and his colleagues to limit their exposure to trauma and
gruesome nature of the crime, distancing themselves from the images and realities of the case in
order to compartmentalize.

Ingrained in the notion of distancing is deep acting. Yakren (2008) introduces the concept
of deep acting when noting that “one way for lawyers to avoid the psychological strain of
emotion work may be to perform deep acting, rather than to detach, and by inference, perform
surface acting” (170). As such, this form of emotional labor comes with the caveat that
“endorsing lawyers' use of deep acting essentially means urging them to morph their identities in
the name of self-protection, and at the expense of the potentially important signaling
function of emotional dissonance” (175). While Gregory is dealing with negative emotions,
namely, the trauma of the vehicular homicide images, he distances himself by avoiding looking
at the gruesome pictures in an attempt to protect himself. However, this is problematic because
he avoids feelings he might feel if he were to look at the images. This is done in order to regulate his emotions so that he remains professional and can zealously defend and represent his client.

Another means of practicing distancing in the criminal defense occupation is by using dark humor/gallows humor.

**Interviewer:** Um, so, going back to what you said earlier about how like sometimes, like, the defense will like, roll their eyes, and you said this was a form of ‘distancing.’ Do you notice any other forms of distancing that you see, or any other behaviors?

**Lucy:** Oh, umm, well, there’s lots. Right? Well, they call it dark humor. We’ve talked about that before, gallows humor. Like they [criminal defense lawyers] make fun of things that are no longer funny. They’re really crass sometimes in the way that they talk. I think that it’s a way of dealing with all of the secondary trauma that they’ve seen. And I myself, your boundary for what is appropriate conversation starts to change.

Mathews (2016) claims that
deflective humor is thought to be utilized as a way of managing difficult affect aroused by extreme pain or mortal danger through distraction and self-empowerment...sometimes referred to as ‘gallows humor.’ However, sustained and relentless use of deflective humor may lead, over time, to significant desensitization where tragic perceptions are no longer tempered by humor (15).

Lucy identifies that the reason why dark/gallows humor is being used is to deal or cope with secondary trauma commonly seen in criminal defense.

**Interviewer:** Do you think other people in the office feel hesitant to talk about their cases? Because you said that people [criminal defense attorneys] don’t usually talk about it [their cases]. Why do you think that is?

**Malcolm:** There’s a lot of joking, there’s a lot, a lot of gallows humor. Which, ya know, if you’re into gallows humor then that’s fine and pretty much everyone is or else they wouldn’t do the job. Because you kind of need a black sense of humor to get by. You have to have someway to process the, I mean we deal with awful stuff, right? But especially in district court, you’re talking with people who have been charged with, and likely committed very heinous acts. Ya know, whether it’s sex assault on a child, whether it’s, ya know, homicide, whether it’s really horrible acts of domestic violence, it’s hard to take it seriously. Because if you take it seriously, like, *laughing* what are you gonna do? Like you can’t, in some ways, you can’t get involved with the subject matter because it’s, if you take it seriously, you’re just gonna go crazy. So that sometimes it’s fine to crack a joke about whatever, you know, move on.
Malcolm is displaying behavior similar to Gregory in that he performs distancing in dealing with the subject matter of the cases. As a means to limit or curb his exposure to the gruesome nature of the cases, Malcolm displays distancing behavior by him and his colleagues cracking jokes in order to not take heinous and awful crimes seriously. This is done as a means to process the information and ‘move on.’

**Interviewer:** Yeah, true! Umm, so, in social situations, do you feel any nervousness about talking about your work?

**Gregory:** Not really, for the same reason. But, I mean, you sort of end up, you end up having sort of a thick skin doing this. And, you know, it’s, and because you will have clients that end up hating you. There are times when literally everyone is yelling at you. Your client is yelling at you, the judges are yelling at you, the DAs [district attorneys] are yelling at you. It’s like, ‘Whatever guys, I’m gonna keep on doing my thing.’

Gregory describes a need to develop a ‘thick skin’ order to compartmentalize and distance himself from stressful, conflict-ridden situations. He adopts an apathetic strategy, one of a need to move on and not let the conflict affect him. The detachment and distancing that having a thick skin requires “functions in a self-protective manner for the worker and requires using emotional labor to strip away niceties, suppress feelings of anger or frustration, while still meeting requirements set by organizational feeling rules” (Kadowaki, 2015:328). Gregory is acting in a self-protective manner by adopting a thick skin and distancing himself from the conflict-ridden situations. He does this in order to suppress personal feelings of anger or frustration with the client, judges and district attorneys.

What these interview excerpts show is that criminal defense attorneys practice different distancing strategies as a means to make sense of their occupation and process and cope with the gruesome reality of many of their cases. In order to not take the subject matter of the cases too seriously, the participants reported engaging in dark/gallows humor, developing a thick skin and
limiting exposure to trauma. These excerpts magnify the overlooked and imperceptible notion that is largely ignored in the perception of criminal defense lawyers: this occupation is much more than showing up for your client, filing motions and advising them with the law. It is very emotionally taxing; everyone is susceptible to being emotionally affected by trauma, and criminal defense lawyers are no different.

Difficult Balancing Personal Life and Work

Throughout my interviews, many participants reflected on their difficulty balancing their personal life with their work life, specifically in terms of identity. Mead (1934) recognized that one acquires a sense of self through interaction with others. In this way, there is a conflict between the sense of self that criminal defense attorneys acquire through their interaction with society at large, one in which they are viewed with condemnation and disgust, and the sense of self they acquire through their interaction with clients and fellow criminal defense attorneys. Criminal defense attorneys undergo impression management in an attempt to influence and alter how others think view and think of them. In impression management, “the actor acts on his or her cognition, which reflects what the actor thinks that the others want to see, and that behavior shapes the cognition of another” (Hegtvedt and Johnson, 2018:119). However, when individuals present different identities in different contexts, they are known as situated identities (Hegtvedt and Johnson, 2018:77). Criminal defense attorneys have situated identities because they present a different identity when they are surrounded by their condemners than they do when they are surrounded by their criminal defense community and a different identity around their family and friends. These identities emerge in different contexts
depending on the audience; some criminal defense attorneys have an easier time switching from one identity to another than others, depending on how internalized the identity is.

Ashforth (2000) in Role Transitions in Organizational Life: An Identity-Based Perspective discusses role identities in which they are “socially constructed definitions of self-in-role… They anchor or ground self-conceptions in social domains. To switch roles is to switch social identities” (27). Criminal defense attorneys have role identities in their occupation. When they are at work, much of their identity is grounded in their occupational success; it is a difficult role to switch out, especially when work is taken home.

**Interviewer:** So that kind of brings me to my next question is how do you balance your social life and your work life and your personal life and relationships that you have?

**Bradley:** Lawyers are very hardwired to work lots of hours, you know, I'm there and there's, you know, anxiety associated when you're not working, you just have to spend time ensuring you have to work at that about like letting it go… I actually have two cell phones, personal phone, the work phone. My friends think I'm crazy. One hundred percent best thing because I can leave the work phone in my car and then out of sight, out of mind, you know?

Bradley reflects on the difficulty that lawyers have switching from a work mindset to a home mindset. What comes along with this is difficulty switching identity from one space to another. However, Bradley makes it a point to separate these different roles by having two cell phones, one for work use and one for personal use. He still remarks on the anxiety that he feels when he’s not working, thus, in the back of his mind, the work identity is looming.

**Interviewer:** What ways do you find yourself kind of like coming to terms with your work?

**Julia:** I mean, there'd be times where I had a hard time, especially with the first one with my son, I would drop him off at daycare at like six in the morning and not picking him up until seven and I was crying the whole subway ride into the city. So that was super hard for me when we had the kids it was harder because then you have, you have to, you're pulled in two directions and you never feel like you're doing either one… But then when we got a preschool case that the media was all over us, they were following us to court. They were at, you know, calling us at home. They were showing up at our office and like [the client’s] family was there and they relied on us a lot. And I mean I lost a ton of weight. I would wake up at night, like my hair drenched in sweat. So that one was super hard.
Julia mentions the difficulty she has with her work, feeling like she is being pulled in two different directions in which she doesn’t feel like she’s doing either one. In this way, identity is under threat. In this loss of judgement and feelings of inadequacy and incompetency, comes identity threat. Petriglieri (2011) defines identity threat as “experiences appraised as indicating potential harm to the value, meanings, or enactment of an identity” (644). Criminal defense attorneys experience identity threat when they receive criticism and moral condemnation from society and start to question their professional identity as an attorney with their internalized identity. Julia was speaking of her the difficulties of being a mother, one identity, and the difficulty when work life bled into her personal life; the press was calling her at home and she would think about her work when she was sleeping, she would wake up drenched in sweat.

**Interviewer:** So how do you balance your social life and your personal life and your work life? **Candace:** one of the things that's nice about working privately is that I can kind of set my hours, um, you know, I make sure I get enough exercise, um, therapy if I need it. Finding people within the system or who work with the same populations that maybe have a similar perspective in terms of making a difference and the value of it even though it does maybe take a personal toll at times. Um, and I, I definitely feel like I'm modeling a life that I want my kids to see. I want to be in a job where I'm making a difference

Emotional labor and identity management also differs depending on the social class of the individual. More emotional labor and thus identity management will be expended if the attorney is a public defender rather than a private criminal defense attorney because public defenders typically have a higher caseload, less time to work on cases, are paid less and represent indigent clients more than private attorneys do. James Kunen, in *How Can You Defend Those People?* notes that “many defendants prefer private attorneys to public defenders, on the theory that anything “public,” like public transportation or public schools, must be crummy… If you get what you pay for how good can a free attorney be?” (1983:51). Additionally, the United States
Department of Justice’s *Indigent Defense Findings*, “indicated that about 80% of the felony defendants relied on a public defender or on assigned counsel for legal representation” (Smith, DeFrancis, 1996:3). Candace reflects on the perks that come along with being a private attorney, setting her own hours and getting exercise and therapy if she needs it. This is not to say that private attorneys do not face challenges in identity management and emotion labor, it is just different and less of a burden than public defenders. However, Candace faces an added challenge that makes identity management within her occupation and stigma management more difficult: she is a woman criminal defense attorney.

More emotional labor and identity management will be expended by women attorneys, as they are underrepresented and under more scrutiny than their male peers; the combination of being a woman and a criminal defense attorney is a more precarious position. Lynch (1998), in an interview with a woman criminal defense attorney,

Q: So would you call that the number one stressor, the client? NY-6: Yeah, I think that is… but it’s also the old boy network that works because criminal law is predominantly a male dominated field. So from a woman’s perspective and from a public defender’s perspective you got a double whammy most of the time (488).

Hoschild (2012) observes “the general subordination of women leaves every individual woman with a weaker ‘status shield’ against the displaced feelings of others” (111). That is to say that female criminal defense attorneys, whether they be public or private, face more scrutiny in their effectiveness and success in their cases than men do because they exist in a predominantly male-dominated field. They must expend extra emotional labor to appease others and often have to prove themselves as competent and capable.
Interviewer: [In regards to previous discussion on some of her clients being chauvenists.] When you do pick up on clients that you feel like are chauvinists, what do you do to combat that?

Candace: I’m really interested in the difference, I feel like a lot of my clients are chauvinists… I feel like, as a woman, there is this extra layer of suspicion from a lot of my clients. It’s like, they have to go through this testing, whether I’m smart or whether I know what I’m doing. I usually just talk to them about their case… You know, there are some people, I just had this client who I went to meet with him and he was like, ‘Well, I know this, and I know that, and I know this…’ And okay, well, do you have any questions for me? And it turns out that he was just posturing and actually wanted a bunch of information, umm, so then I just threw a bunch of information at him. Like, were you testing to see if I know what I’m talking about? So then I just started throwing numbers at him like, ‘in a class 2 felony, you’d actually be looking at…’ Then he was kind of like ‘Woah…’ You wonder whether I know what I’m talking about? I do.

Candace has to spend time managing her identity and suppressing and evoking certain emotions, specifically around her male clients when they question her qualifications and capabilities. In a predominantly male-dominated field, Candace is sometimes tasked with tweaking her identity around clients who are suspicious of her, her identity is questioned in the face of male clients who have the notion that women cannot defend their clients as effectively as male defense attorneys. Candace’s identity is under threat around those clients, and she must use identity management and emotional labor in order to reassure her chauvinist clients that she knows how to effectively do her job.

Not only must female criminal defense attorneys expend extra emotional labor and identity management, but they must utilize more feeling rules than their male colleagues in their daily interactions. The strategic performance is ever present in female defense attorneys because their femininity is constantly in question based on how they represent themselves, “women who want to put their own feelings less at the service of others must still confront the idea that if they do so, they will be considered less ‘feminine’” (Hochschild, 2012:113). The image of women as “more emotional” and not in control of their feelings, women criminal defense attorneys have to evoke a feeling that they do not actually feel, or suppress a feeling that they do in fact feel so that
they can be viewed as capable attorneys. Women defense attorneys have to evoke or suppress feeling rules more often than their male colleagues to keep their job, and be viewed as ineffective as this can threaten their license to practice law. The evocation or suppression of feeling rules are also important in job growth and consideration for participation in high profile cases and job-growth opportunities.

Ultimately, what these interviews show is that criminal defense attorneys have to manage their identity and put in the effort to differentiate their identity at work and at home. This is seen by having two phones, one for work purposes and one for personal purposes, for Bradley. As women and as mothers, Candace and Julia have a different experience in managing their identity than Bradley. Julia has a hard time when her work identity and home identity with her kids are pulled in two different directions. It takes a toll on her personal life, in which her dreams are being affected by her work. Candace highlights the benefits of being a private defense attorney in which she has the flexibility to set her own hours and has time for things like exercise and therapy. However, she talks about the difficulty she faces as a woman defense attorney, with some male clients questioning her competency. Identity work and subsequently emotion work differ from what sector the attorney works in, public or private, but also differs according to the gender of the attorney.

CONCLUSION

In interviews with criminal defense attorneys, I discovered that criminal defense attorneys face stigma and identity work similar to that alluded to in Goffman (1963) and emotion work, emotion management and emotional labor alluded to in Hochschild (1983, 2003, 2012). In the face of condemnation and scrutiny from society at large, criminal defense attorneys practice a
variety of techniques such as distancing, justification of their occupation and difficulty managing their identity from work to their personal life as balancing personal life and work life is extremely difficult for many participants I interviewed. The way in which criminal defense attorneys respond to condemnation is highly associated with the amount of identity and emotion management that they invoke. Participants would change their identity based on their audience, and such identity management was highly supported by emotion management in which feeling rules and emotional labor to convey or suppress certain feelings was able to be used strategically. However, studying a demographic with a higher status than myself proved itself a challenge. If I were to conduct this study again with more resources and time, I would interview more participants from various locations, ages, ethnicities, years of experience, and more female defense attorneys proportionate to male defense attorneys in an attempt to diversify my data. I would interview a proportionate number of public defenders and private criminal defense attorneys to understand how their experience differs across sectors.

My study has provided more empirical examples of what has been claimed in existing literature about defense attorneys, it verified that criminal defense attorneys do feel stigma and it is indeed a dirty job. Even though the occupational prestige of criminal defense is higher than that of other dirty jobs, criminal defense attorneys still practice similar stigma management techniques that we see among other morally stigmatized occupations.

Many people tend to look at lawyers as a whole, without differentiating and understanding how their experience differs across areas of practice. My research attempted to bring to light the lower status of criminal defense attorneys among lawyers as a whole in order to highlight their experience within the criminal justice system and how paramount their role is to the maintenance and promotion of justice.
REFERENCES

   Taylor & Francis.

Ashforth, B., & Kreiner, G. 2014. *Dirty work and dirtier work: Differences in countering physical, social, and moral stigma.* Management and Organization Review

Becker, H. 2002. “*Observation and Interviewing: Options and Choices in Qualitative Research.*”


Feige, David. n.d. “*HOW TO; Defend Someone You Know Is Guilty - The New York Times.*”
   Retrieved March 1, 2019


Mead, G. H. 1936. *Mind, self and society*


