

## Attorney Eye Contact and Control

### In the Courtroom: Act I

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*This ethnography examines attorney eye behavior patterns unique to courtroom trials and hearings. The courtroom procedures of over 40 lawyers were observed in several Midwestern courtrooms and around the country vis-a-vis television. Data assessing the attorney eye engagement behaviors of practicing trial attorneys were drawn through observation in the courtroom and on Court TV, field notes, informal interviews, and lawyer artifacts. The courtroom is advanced as a "stage" (Goffman, 1959, 1963; Leathers, 1986; Sellers, 1993) in which the lead actors, the attorneys in this case, use eye behaviors to guide their performance in each scene. As is evident here, lawyers employ distinctive eye engagement patterns as a crucial mediating process in court proceedings. Results demonstrate that attorneys use eye contact in lawyer/client, lawyer/lawyer, and lawyer/judge relationships in distinguishable ways in an effort to exert control in communicative acts. Finally, future research implications of this analysis are considered.*

Americans have "tuned into" the legal system. The recent coverage of such legal proceedings as the Oliver North trial, the Clarence Thomas/Anita Hill hearings, and Bill Clinton's part in Whitewater, has yet to keep pace with America's fascination with the legal process. Yet, these media events have paled in comparison to O.J. Simpson's "Trial of the Century" involving his role in the death of his ex-wife Nicole. Similar to a made for TV movie, attorneys on both sides of the Simpson case argued the details of the Southern California murder scene before a nationally televised audience for months. The media's access to the legal proceedings made viewing a nationwide obsession. Yet, despite a trial aimed at determining Simpson's innocence, Americans found themselves endeared to the lawyers involved; Johnnie Cochran, Marsha Clark, Chris Darden, Allen Dirshowitz, and Robert Shapiro became household names. As the public watched "the dream team" Shapiro assembled for Simpson's defense and the opposing prosecuting attorneys in trial, they observed firsthand the impact of communication in the jurisprudence process. The messages each attorney conveyed cast an indelible image by which jurors, and the audience, were persuaded to declare Simpson "guilty" or "not guilty." Each lawyer's demeanor in the courtroom played a role in the trial's outcome.

Yet, the influence of lawyer communication is by no means confined to the Simpson trial. Lawyers know their success hinges on impacting judges, clients, jurors, fellow lawyers,

and audience members each time they step into a courtroom. As Smith and Malandro (1985) assert, "Successful ... attorneys must be successful communicators" (p. 5). As Sellers (1993) notes from Thorpe and Benson (1983), "lawyers of every age, gender, and type of practice..." consider "communication skills to be crucial to their success" (p. 12). Taylor, Buchanan, and Strawn (1984) advance that all legal knowledge is useless if an attorney "cannot effectively communicate that knowledge..." in the courtroom (p. x). Consequently, appearances count.

Although research has varied regarding the extent that nonverbal communication plays in the legal process (Klein asserts that nonverbal communication may account for as much as 93% of a message [Aron, Fast, & Klein, 1986].), its bearing in a courtroom cannot be minimized. Klein (1995) notes that "Effectiveness in communicating ideas is as much or more influenced by nonverbal methods as by words themselves" (p. 82). Consequently, attorneys learn to master the art of nonverbal communication, whether they know it or not. With a lawyer's nonverbal communication having such an immense impact on the determination of guilt of a client, it is useful to analyze the behaviors lawyers display within the courtroom. This analysis focuses on what Klien (1993) asserts as the "most significant aspect of nonverbal communication": eye contact (p. 56).

This ethnographic study analyzes the eye behavior patterns of practicing attorneys as observed in several Midwestern courtrooms and on Court TV, by way of field notes, informal interviews, and the artifacts (i.e., publications) lawyers to which refer in honing their presentation skills for court. As a framework for understanding attorney eye engagement, this study: (a) employs Goffman's metaphor of stage, actor, and performance, (b) maps out a stage in which lawyers perform (i.e., several county courtrooms, a federal courtroom, and their similarity to courtrooms presented on Court TV), (c) delineates the observed attorney eye patterns when engaged with the court's actors (i.e., lawyer relationships delineated as lawyer/client, lawyer/lawyer, lawyer/judge), (d) associates eye behaviors with control in courtroom interaction, and (e) summarizes this analysis by advancing implications for future research. A description of Goffman's theater metaphor lays the foundation for this analysis.

### Method and Data

Erving Goffman's distinctive model of analyzing human interaction (Goffman, 1959;

Goffman, 1963) based upon a theatrical performance, has long been considered insightful (Scheibe, 1987). As Goffman (1959) notes, "The principles derived are dramaturgical ones" (p. xi). His observations distinguish the ways in which ordinary individuals present themselves, perform before others, and control others. Three foundational elements of his method are the performer, the stage, and the performance. A brief definition of Goffman's notions of performer, stage, and performance provides an analog to assess attorney eye behavior in the courtroom.

### The Individual

Goffman's (1959) method of observation is grounded in the actions of people in the visible world. For Goffman, the unit of analysis is the interaction. By using "his eye" to see the world, Goffman focuses on how people behave when in the presence of others, not what they think about how they behave. One's appearance communicates the status of an individual. The individual is understood as a performer who "gives-off" (i.e., consisting of nonverbal actions) and receives information while in the presence of others (see Footnote 1).

Goffman (1963) focuses on a "person's handling of himself and others during, and by virtue of, his immediate physical presence among them" (p. 8). The essence of any individual is his or her actions, and actions determine who people are or who they can be. Consequently, individuals are constantly trying to persuade one another of their identity.

For example, in this analysis, the male attorneys presented themselves as well-groomed and affluent. Most of the male lawyers wore their hair cut short, off the ear, while exposing their necks. In one instance an attorney did have longer hair, but his hair was pulled back and held tight at the back of the head in a small pony tail. Additionally, male lawyers typically wore suits or slacks and sport coats predominately in darker shades of blue or grey or in black. A light colored, long sleeve dress shirt (most frequently white) was consistently worn with a subdued, darker colored tie. Polished shoes were the norm in black or dark brown leather. Facial hair, displayed by only a very few of the 40 plus lawyers observed, was kept trim.

The three female attorneys observed displayed a similar formality of costume. In one case, a female lawyer wore well-tailored, taupe colored trousers and a white, stiff blouse buttoned up to the neck. Both of the other female attorneys observed wore dresses in darker shades (i.e., charcoal grey and navy jacket/burgundy skirt). All three female lawyers also displayed shorter hair (i.e., shoulder length or shorter) brushed away from the face and minimal

make-up. It became evident in observing both male and female lawyers that each individual gave-off an appearance adhering to the social code ascribed to lawyers: professional appearance, cleanliness, and competence as displayed through purposed demeanor.

### The Performance

Goffman's (1959) designation of the individual as a performer brings a logical consequence: there must be a performance - and according to Goffman there is. A performance refers to all activity in a given occasion that serves to influence other participants. The individual puts on a performance for others, yet may or may not be taken in by his or her own act. In addition to a person's appearance, an actor displays a manner which "warns us of the role the performer will play in the interaction" (Goffman, 1959, p. 24). One's manner is comprised of indications that the individual is going to act in a certain way (e.g., angry or disgusted). Manner and appearance, as defined in the previous section, are intrinsically linked. Appearances reinforce a manner.

In addressing the notion of performance, Goffman (1959) explains the complexity of performing effectively. He notes:

The problem of dramatizing one's work involves more than merely making indivisible costs visible. The work that must be done by those who fill certain statuses is often so poorly designed as an expression of a desired meaning, that if the incumbent would dramatize the character of his role, he must divert an appreciable amount of his energy to do so. (p. 32)

The aim of the person (see Note 2) is to persuade others that they are who they profess to be. The individual's identity is made manifest through actions. For instance, upon entering a courtroom for arraignments or dealing with motions and objections being filed, lawyers frequently scan the room, acknowledging the individuals they know with eye contact accompanied by a wave, a head nod, or verbalizing a greeting. This was evident numerous times over the course of this study. Attorneys demonstrate a familiarity with the domain, the existent social order, and the key actors who frequent the performance area. The ease of comfort is especially evident from monitoring attorney eye contact as lawyers enter and exit a courtroom .

Eye Behavior and Performance. As consistently demonstrated by these observations, an actor's eye behavior is instrumental to an effective performance. Goffman (1959) uses the term

"eye" or "face" engagement to describe the patterns of eye contact an individual uses during an interaction. Face engagement involves the focusing of one's attention (i.e., eye contact) to someone. Eye engagement must be initiated and acknowledged by both parties to occur. It is when eye engagement occurs that a shared definition of the encounter exists for its participants. In sum, eye engagements have a social order (i.e., consensually agreed appropriateness) in all contexts, and this was substantiated in the lawyers observed. Goffman (1959) notes that social orders often become apparent when violated in a performance.

For example, a child custody hearing on March 3, 1997 provides an illustration of the complexities of effective eye contact. In this case, the prosecuting attorney was a middle-aged man approximately in his 40s. He had on a grey suit and wore eye glasses. Conversely, the state appointed attorney was a third-year law school student about to complete his degree. (He defined himself as an "intern" in a brief interview prior to the hearing.) The intern was dressed in a navy double-breasted jacket, tan pants, white dress shirt, and a dark green tie.

Both attorneys sat beside their clients prior to the judge bringing the court to order. The majority of the prosecuting attorney's movements appeared deliberate as he wrote notes on a yellow pad and periodically looked to the front of the courtroom to gather his thoughts. The court appointed intern's movements were much more mechanical. For example, he moved his notes around several times on the table searching for the "best" spot for them. He frequently looked down to his right, checking for things in his attache case. His eyes continually scanned the room, moving in a staccato manner observing the behavior of the other main actors prior to the commencement of the hearing. In one eye pattern sequence, the intern observed the judge for several seconds as she did paperwork, looked at the prosecuting attorney for three to four seconds, glanced down at his pad of paper for several seconds, back to the prosecuting attorney, then down at his paper to flip through his notes, and finally wrote a note on the top page of his tablet.

As the hearing began, the intern had the first opportunity for questioning a witness. After calling a young, female witness to the stand, the intern proceeded to ask her questions regarding her witnessing the damaging of a car. The intern's eye contact went from his page of notes, during the question asking, to the witness for each answer. This pattern of looking down (question), and looking up (making eye contact with the witness) went on for several minutes

until the prosecuting attorney began to object to the line of questions being offered. Following several objections, the intern's eye behavior became erratic, moving from his questions on his paper, then to the prosecuting attorney's area, then to the witness, then back to the judge, and finally to the witness. The intern's eye pattern gave the appearance that he was seeking approval from the prosecuting attorney for each question, prior to another objection. This continued for several minutes, during which the intern blushed, and eventually he concluded his portion of questioning.

The cross-examination of the witness by the prosecuting attorney demonstrated a marked contrast in performance and eye pattern. In this case, the prosecuting attorney began by looking down at his page while asking questions in a rapid-fire type format. As he continued with this rate of questioning, he refrained from looking up until the witness began to qualify her answers or provided incomplete answers. It was after approximately ten questions (now the rapid-fire questioning pattern was evident) that the attorney looked up and made direct eye contact with the witness. The rapidity of the questions continued, coupled with the attorney's eye contact, during which the witness faltered several times in answering the questions accurately. At the completion of the questioning, the lawyer made no eye contact with anyone, stating, "That's all the questions I have, your honor." Focusing eye contact in the direction of his chair, he moved back to the table where he had been seated.

This brief episode demonstrated the degree of familiarity each lawyer had with the courtroom. It illustrates the role of eye contact in an attorney's performance. Here, the prosecuting attorney conveyed a sense of control by way of direct eye engagement commiserate with the social environment-the courtroom. Conversely, the intern's performance exuded confusion. By every indication, the intern was exerting "appreciable energy" adapting to the court's social order. It appeared as though neither the prosecuting attorney, nor the judge (nor the intern himself) were taken in by the lawyer's method of lawyering.

### The Stage

Drawing on Goffman (1959) once more, a stage is often alluded to; a region, refers to "any place that is bounded to some degree by barriers of perception" (p. 106). Self presentation originates from the region in which one behaves. Regions involve physical arrangements and,

with each performance, are bounded by time. Goffman specifically delineates the place in which the performance occurs as the "front region." In this analysis, the courtroom is the front region. The back region refers to where the performers prepare for their performance (e.g., the hall leading to the courtroom, or the lawyer's office).

Intrinsic to a region are requirements to which the performers and audience (i.e., those observing) adhere. These requirements, or decorum, guide how individuals interact on stage. A decorum consists of moral requirements (e.g., presumably rules regarding respect for a place) and instrumental requirements (i.e., the duties necessitated by a certain region). Standards are "justified chiefly on instrumental grounds or moral ones, and whether or not he (the individual) is asked to incorporate the standard" (Goffman, 1959, p. 108). The moral norms represent a social order that regulate human behavior (e.g., the ways in which people pursue objectives in a given setting). As Goffman (1959) notes, "On the stage one player presents himself in the guise of a character to characters projected by other players" (p. xi). One of the courtrooms visited allows an understanding of how a stage is laid out.

The primary stage, in this study, consisted of a Midwest county courtroom. The county courthouse is a large, grey cement building located in a city square of a mid-size town. The courthouse itself is comprised of two main floors and a basement. Each floor has several courtrooms which are used on a daily basis for trials and hearings. In this case, the basement houses the small claims courtrooms. Courtroom B, one of the basement courtrooms, provides a blueprint for generalizing what was common to all courtrooms observed (i.e., a federal courtroom, several county courtrooms, and courtrooms displayed on Court TV).

One enters courtroom B by going through two sets of dark brown, thick wooden doors inlaid with window panes. After progressing through the first set of doors, one walks several feet (i.e., approximately 10 feet) before opening the second set of doors which lead into the courtroom. The courtroom is roughly 50 feet long by 35 feet wide. The floors are carpeted in tan, shag carpet. Directly ahead of the doors is a coat rack.

As one turns to the right, the courtroom is made up of three rows of brown, wooden benches located outside of the bench area (i.e., where lawyers, clients, and interact before the judge) for audience members. The benches run the length of the room from south to north. Three 15 foot benches sit parallel to one another, then are separated by a five foot aisle, leading to three

other, parallel 15 foot benches. These benches face the main court area (i.e., the bench).

The judge's desk, termed the "judge's bench," faces the wooden benches. Yet, to approach the judge's desk, one is required to walk through a three to three and a half foot fenced off area (referred to as the bench), past several tables, and a lectern. If standing in the middle of the room facing the judge's bench, an individual would have the stand (i.e., location where witness testimony is provided) to the left, and the jury box (i.e., twelve wooden chairs arranged into two rows of six in a separate gated area) to the right.

The performance area is dominated by wooden or leather furniture; the judge's large desk is placed on the east side of the room. Two wooden tables which the lawyers use are in the middle of the room. The jury box and the stand are all wooden. Each wooden table has three leather chairs for seating. Leather chairs are also on the interior side of the bench area facing the judge.

Two seals are placed on either side and behind the judge - a state of Oklahoma Seal and another seal. Two flags are, as well, behind the judge: the United States of America flag and the state of Oklahoma flag. The room is well lit with track lighting on the ceiling. Two windows on the north wall allow natural light into the courtroom. The arrangement of the courtroom and its decor radiates a sense of theater. Lawyers reinforce this phenomenon by the way they act, what they wear, and where they place themselves. This is made evident especially when court is in session. The arraignments heard in Courtroom B the morning of March 10th illustrate this notion of performance.

March 10, 1994 arraignments came to order in Courtroom B at 9 a.m. Prior to court convening, the individuals present in the courtroom looked and acted in distinct ways. The majority of those present in the room wore casual or dressy-casual clothing (e.g., men wore jeans and polo shirts; women wore jeans or slacks and a t-shirt or blouse). As the judge read the court docket (i.e., list of cases to be heard), audience members, seated on the wooden benches, responded affirmatively. Most of those waiting for the judge's call appeared uncertain of the order of events. By contrast, the seven male lawyers, present at various times throughout the arraignment session, exhibited comfort with the proceedings. Their costumes differed from the audience members (e.g., usually dark suits) and each carried an attache case or a file of papers.

Those lawyers present, when arraignment commenced, did not sit on the long wooden

benches. Rather, they sat in the bench area. Two lawyers even sat in the jury box on the top row and joked quietly during the majority of arraignment session. Still other lawyers were seated in the leather chairs inside the bench area or at the tables in the middle of the room. All lawyers either sat quietly observing others in the room looking over their own paperwork or talking with fellow lawyers.

Although half of the lawyers appeared on behalf of their client, a few lawyers did accompany their client. As each case was called, either the individual in question or the representative lawyer would approach the judge for court processing. It was here that a lawyer's knowledge of the proceedings was most noticeable. The attorneys consistently addressed the judge, noting who they represented, and made eye contact in the judge's direction as they approached the judge. If their client accompanied them, the client would follow the lawyer usually a few paces behind and then come along side as they stood before the bench.

The lawyers made their client's requests promptly to the judge, using eye contact intermittently especially when addressing a specific point. The process was duplicated by all six lawyers on this court date. Those lawyers noted during the arraignments and similar sessions followed the same pattern. In sum, this stage provided a distinct domain in which the primary actors, the lawyers, moved with familiarity through the courtroom procedures while adhering to the social order unique to the context. Their nonverbal behaviors, especially eye contact, were the means by which they persuaded their audience of their authenticity. Their various interactions provided vehicles to illustrate their knowledge of "being" an attorney. This overview of Goffman's (1959; 1963) metaphoric performer, performance, and stage now provides an understanding of the interactions that lawyers in this study engaged.

### Eye engagements and Relationships

Attorneys tend to exhibit distinct eye behaviors based upon the individual with which they associate. Most often, eye contact is used to establish a cooperative climate of the participants in an encounter. Yet, Goffman (1959) distinguishes that an individual's performance is an expressed attempt to *control* how others perceive the self. Specifically, the individual's aim is to exert control over others by influencing them to perceive one's self in a desired way. This association of eye contact and control is unique to each of the three primary of relationships in which a lawyer is involved in the courtroom: lawyer/client, lawyer/lawyer, and lawyer/judge.

Numerous examples illustrate how eye contact and control are made manifest. (To maintain anonymity, episodes are numbered sequentially, and lawyers are provided letters as an identity.)

Lawyer/Client Interaction. In March 10, 1995 episode, Lawyer A accompanied his client to an arraignment. Both the lawyer and the client entered the room well after the court proceedings had begun. The lawyer's initial attention was paid to the contents of the room, first scanning the room for the location for his client to be seated, then toward the judge's bench, seemingly as a way to indicate to the judge that he had arrived. The lawyer gestured to his client to be seated on the wooden benches outside the bench area. The lawyer then entered the bench area and was seated just in front of his client in a leather chair. Soon thereafter, Lawyer A's client was called, and the lawyer answered, "That's me."

Upon approaching the judge, Lawyer A glanced in the direction of the judge, primarily looking down. Lawyer A's direction of sight appeared to be purposefully avoidant of the judge's line of sight. During this brief interaction, the eye pattern of the lawyer proceeded as follows: (Sequence is lettered to distinguish individual eye behaviors.)

- a. Lawyer stands before the judge, with his client. (Judge asking question.)
- b. Lawyer looks down at his date book. (Lawyer responding to judge's question.)
- c. Lawyer does not make eye contact with the judge, although the judge sits just feet away, filling out paperwork.
- d. The lawyer engages in direct eye contact with the client, (providing informative message) then goes back to writing in the date book.
- e. The lawyer makes indirect eye contact with the client (Continuing dialogue with client.)
- f. Lawyer looks down at date book then to paperwork judge is filling out. (Client responding to lawyer.)
- g. Judge makes eye contact with lawyer. (While informing lawyer of next step in client's legal process.)
- h. Lawyer responds in the affirmative with eye contact, head nod, and verbal message.
- i. Lawyer drops his head and exits bench area and room while client follows. (Lawyer partially turns head toward client on exit and conveys information)

relevant to case.)

j. Lawyer scans the room on way out once again, assessing who is in the courtroom. In this episode, it is evident that the lawyer initiated eye contact with the client at a specific time (eye behavior "d"). Lawyer A appeared to use this situation as an opportunity to persuade his client of his competence in dealing with this arraignment and by extension, representative of his overall legal abilities.

In episode two, a lawyer accompanies a client to a motion in the client's behalf. In this incident, the lawyer is observed sitting with the client just inside the bench area. Prior to the judge requesting the client for the motion, the lawyer (approximately 60 years-old, costumed in a black, double-breasted suit and wearing eye glasses) spends extensive time talking with his client. This brief interaction proceeds as follows:

- a. Lawyer is observed spending extensive time in eye engagement with client. (While discussing issue an issue.)
- b. Lawyer looks down while continuing to listen.
- c. Lawyer glances back at the client.

The case is then called to the bench.

- d. The lawyer leads the client toward the judge making eye contact with the judge. (Verbal response made to judge confirming appropriate case.)
- e. Lawyer glances toward client, with eye glasses halfway down the bridge of his nose. (Lawyer discussing issues of the motion with the judge.)
- f. Lawyer looks over top of glasses at judge during remainder of interaction.

The episode ends with the judge filling out the necessary paperwork, Lawyer B expressing thanks for the judge's consideration in a matter, and Lawyer B and client exiting the room.

As these two interactions demonstrate, and the other gatherings observed, lawyers exhibited distinct patterns of control when accompanying a client. Specifically, lawyers consistently appeared to initiate eye contact and showed attention to clients by looking down or near them during interaction, but rarely looked into the eyes of the client. Whenever a lawyer did exhibit eye engagement with a client, it appeared to be either to distinguish a crucial point or to get a point across.

Lawyer/Lawyer Interaction. Lawyer/lawyer interactions occur much less frequently

because of the nature of business in the courtroom. Yet, there appears to be two distinct ways in which lawyers engage in social interaction in a courtroom.

As one example, here typified as *off-topic interaction*, two lawyers (designated here as Lawyers A and B) were observed socializing while waiting in line in front of the judge's bench in small claims court. Although the judge was seated at the bench, the line of nine lawyers progressed slowly toward the judge as the judge filled out paperwork on each of their behalf.

During this drawn out period, Lawyer A and B, near the back of the line, began conversing. Their interaction appears as follows:

Lawyer A: Looking in the direction of the judge. (Makes a comment to lawyer B.)

Lawyer B: Looking at the judge. (Responds to Lawyer A.)

Lawyer A: Turns and makes eye contact with Lawyer B. (Continuing the dialogue.)

Lawyer B: Looks down at the carpet, up at the judge, then back at Lawyer A.

Within a few seconds, a pattern develops by which Lawyer A looks down at the carpet, then at Lawyer B, then at the judge. Variations of this eye pattern behavior continue throughout their interaction until they reach the judge. Both lawyers end their performance by communicating their good-byes to one another by way of eye contact and head nods.

Episode four, typified as **on-topic interaction**, consists of two lawyers (Lawyers A and B) involved in a divorce modification hearing. In this instance, Lawyer A is a male lawyer dressed in a suit, and Lawyer B is a female lawyer dressed in taupe trousers and a starched blouse. Both stand before the judge and interact with the judge, representing their clients in the divorce process. Both lawyers have their notebooks open and placed on a small shelf halfway down the judge's bench.

As the interaction begins, Lawyer A makes a request on behalf of the husband he represents. An interaction ensues as follows:

Lawyer A: Makes glances in the judge's direction while reading from a document in his notebook.

Lawyer B: Listens to Lawyer A's comments while looking at the judge's bench, then at the judge, then at her own paper work.

Lawyer A: Establishes eye contact with the judge after a few minutes, requesting the judge's ruling on his client's behalf.

## Communication Law Review

- Lawyer B: Makes eye contact with the judge, and awaits the judge's decision.
- Lawyer A: Returns to paperwork and begins to plead for favor in this case, now making eye contact with the judge more frequently.
- Lawyer B: Makes direct eye contact with Lawyer A. (Here lawyer B's eye engagement is correlated with a statement that if lawyer A gets what he is requesting, Lawyer B will make a move to limit his rights regarding some other issue.)
- Judge: Makes eye contact with Lawyer A. (Agrees with Lawyer B that the move can be made.)
- Lawyer A: Returns eye contact to Lawyer B. (Verbalizes that he will not pursue alter this motion.)

The interaction soon ends with Lawyer B making eye engagement with Lawyer A and teasing him (Lawyer A) about something case- related. Both scan the room on the way out, discussing how the next step affects both of their clients.

In lawyer/lawyer communication there is a definite equality which is displayed. In this study, observations consistently supported an *off-task* and *on-task* eye behavior pattern between lawyers. These two episodes illustrated this phenomenon.

Lawyer/Judge Interaction In the final two episodes, lawyer/judge interaction is addressed in the courtroom. Here, too, the eye behavior patterns appear consistent across observations. Incident five was The Tokars Murder Trial televised on Court TV throughout February, 1997. On February 19, Lawyer A is addressing the Georgia court judge. The lawyers have been arguing about the admissibility of out-of-court testimony. As the camera pans out, Lawyer A is directly facing the judge, making direct eye contact. His eye pattern, coupled with his verbal communication, demonstrates an unique insight into this relationship.

### Lawyer A's Eye Behavior

Eye engagement

Looks down.

Looks at judge.

### Verbal Message

That is the problem with  
with judge. Judge Wright's ruling.  
Is, there is a transcript that is ... that  
is this thick. This thick (!),  
and I'm suing this as an example. I

don't have it in front of me. You know -- 200 pages. He didn't say everything is accepted!

Eye engagement with judge

Everything goes in...

As the interaction continues, Lawyer A persuades the Georgia court judge to reverse a previous ruling by a lower court judge. Lawyer A uses eye behavior to extend his control for his client -- despite being less powerful than the judge in the courtroom.

In episode six, Lawyers A and B represent their clients in a divorce settlement occurring March 27, 1997. In this instance, both attorneys stand before the judge with their clients. The episode unfolds as follows:

Lawyer A: Making intermittent eye contact with the judge. (He explains why his client's fees should be reduced in the settlement.)

Judge: Makes direct eye contact listening to appeal. (Judge asks Lawyer B whether they have any additional information at this time that could impact this decision.)

Judge now makes eye contact with Lawyer B.

Lawyer B: Makes direct eye contact with the judge. (Verbally reemphasizing that her client is already being short-changed in the arrangement.)

Judge: Returns direct eye contact to Lawyer A. (Judge stipulates that no change will be made in the current alimony payments.)

Judge's eye contact turns to Lawyer B's client. (She verbalizes that the divorced husband should stop complaining and keep up his payments or face further penalties.)

Episode six serves to illustrate that in lawyer/judge relations, the judge possesses greater control especially as indicated by eye behavior. This example is one of several observed where the judge made eye contact to emphasize a point that had legal ramifications. Here the lawyer's persuasive acts were secondary to the judge's acts.

In sum, lawyer/judge courtroom interactions are best described as tension-oriented. In these relationships, the judge has the advantage. But, as illustrated, a lawyer may appeal to the court citing an injustice or flawed precedent to balance the relational control. Lawyers often

reserve eye engagement to punctuate a necessary point, while being expected to cooperate in eye engagement whenever a judge deems it necessary.

#### Summary and Discussion

This ethnographic study has laid a framework for understanding how lawyers use eye behaviors to exert control in the courtroom. An analog using Goffman's (1959; 1963) use of dramaturgical metaphor of performer, performance and stage have been employed to provide an understanding of the patterns of lawyer eye contact. Variations of eye engagement in distinct relational types (e.g., lawyer/client, lawyer/lawyer, and lawyer/judge) have demonstrated that eye contact is a "most significant aspect of nonverbal communication" (Klien, 1993, p. 56).

Results indicate that control varies as a function of the relationship in which an attorney engages. This study has substantiated that in lawyer/client interaction, attorneys consistently initiate eye contact and, most frequently, use it to provide assistance. Similarly, eye contact was used to persuade a client of some point. Lawyer/lawyer communication was typified by relational symmetry. Eye contact varied by *off-task* and *on-task* eye behavior patterns between lawyers. Finally, lawyer/judge interaction was described as a tension in which the judge often guides the performance. Lawyers often reserve eye engagement to punctuate crucial points in lawyer/judge interaction, though most often use eye engagement as a means of cooperation.

Future analysis of lawyer interaction can move in several directions. First, as a means of exploring the courtroom further, jury or judge ethnographic research could be done using the same dramaturgical metaphor analyzing eye behaviors. Second, a conversation analysis of lawyer communication would be worthwhile based upon the same relational structure (i.e., lawyer/client, lawyer/lawyer, and lawyer/judge). Finally, an empirical, survey analysis could be done pursuing some correlation between lawyer intentions and behaviors enacted within the courtroom. Each of these proposals should be taken into consideration to expand communication research in a legal context.

As apparent in recent years, the public has taken a growing interest in the legal profession. America's attention to the Oklahoma City bombing trial and regular viewership of Court TV are indicative of modern society's fascination with images and personalities of the courtroom. Lawyers have taken center stage and appear to be assuming even more prominent roles in society as the media become involved. Consequently, communication researchers have a

valuable opportunity to provide effective lawyers and competent citizens with an informed understanding of the judicial process by way of communication analysis. By all indications, this ethnography of lawyer eye contact and control in the courtroom is only -- Act I.

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Footnotes

1. According to Goffman (1959), give-off is an expression which connotes performer intention (i.e., done for a reason).
2. Goffman (1959) deliberately uses the term "person" referencing the comments of Park (1950):

It is probably no mere historical accident that the word person, in its first

meaning, is a mask. It is rather a recognition of the fact that everyone is always and everywhere, more or less consciously, playing a role ... It is in these roles that we know each other; it is in these roles that we know ourselves (Goffman, 1959, p. 19).