

Analysis of Witness Strategies Under “Alienation Effect”: Differences with Common “Immersive” Mode

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Abstract: *Witness for the Prosecution* is a legal film produced in the 20th century. For its analysis, many legal commentators have explored issues such as “the system of tainted witness” from an internal perspective. However, this perspective ignores the understanding of legal phenomena in other fields, thereby leading to numerous doubts. By means of logical analysis, this paper uses the theory of “alienation effect” in drama to explore the reason for the protagonist’s victory: the application of the “alienation mode”. Thus, this paper clarifies the application conditions of this strategy to help lawyers play an effective role in actual trials.

Keywords: *Witness for the Prosecution*, Alienation Affect, Defamiliarization, Witness Strategies

1. Introduction

Witness for the Prosecution was a 1957 classical crime and suspense film directed by Billy Wilder, an Academy Award-winning director. The plot centered on an American named Leonard Vole, who was accused of murdering his wealthy mistress, Emily French, to gain access to her fortune. Based on the system design of an adversarial court, other core figures were involved, such as the criminal defense lawyer, Wilfrid Robarts, and the witness, Christine, Vole’s wife.

In current academic and legal circles, studies and comments have mainly focused on analyzing the objective framework, such as “the right of witness exemption” and “the system of tainted witness”. However, these analyses have answered the question of “how Christine could make the jury believe her testimonies” with generalizations, such as “the use of reverse thinking” and “rich characterization and vivid expression”, without getting to the essence of the question. The reasons may be, on the one hand, that barriers exist between disciplines, and more importantly, on the other hand, that this question is thought to be insignificant and therefore has no value in discussion. Therefore, the author of this paper holds a negative attitude: the exact example has provided lawyers with a mode different from the common “immersive” one but sufficient to produce the same effect when convincing the jury to believe the strategic selection of the witness. Logically, this

new mode is not simply based on “reverse thinking” but could be explained by the “alienation effect” proposed by the German drama revolutionist, Bertolt Brecht. Therefore, this paper aims to specifically discuss how the alienation effect works and how it is used in witness strategy. This study can help us to understand the behavior of witnesses from a dramatic point of view and assist lawyers in their work.

In this paper, the concepts of “immersive mode” and “alienation mode” are defined, and the differences between them are identified from the joint perspective of dramaturgy and legal science. Furthermore, these concepts are compared in terms of principle background and practical operation mode to improve our understanding from the perspective of applied conditions.

2. Definitions and Differences Between “Immersive Mode” and “Alienation Mode”

Based on the reasons mentioned, as well as under the current jury system, the witness strategies are somehow theoretically derived from dramaturgy. In a sense, such theories, which are foreign to the legal discipline, not only help to analyze problems insightfully but also benefit from the proposal and application of specific practical strategies. Based

on these conditions, certain differences are easily overlooked behind the seemingly identical witness strategies at present.

2.1. Differences in Theory and Principle

In general, the “immersive mode” strategy requires the witnesses to answer in a truthful manner that conforms to the logic of the jury to seek emotional resonance and amplify the emotional inclination toward the witnesses’ own favor. In fact, the immersive mode strategy emphasizes emotional guidance and transmission to perfectly impart the actors’ experience to the audience. This tendency is reflected in Aristotle’s *Rhetoric*, in which he identified one of the three modes of persuasion as the appeal to the mentality of the audience. “Emotional changes could lead to different judgments,” said the Greek philosopher. [1] Similarly, he defined tragedy as “the imitation of a serious and complete action that proceeds over a certain duration.” Through the imitation of actions, the audience’s fear and compassion is incited, which in turn purifies and forges their emotional state. [2] The aesthetic philosophy of “guiding the audience directly toward it and touching their feelings through actions” is also founded on the aforementioned logic. Subsequently, this concept was inherited by a Russian dramatist, Konstantin Stanislavsky, who developed a set of complete theatrical principles: “You cannot create something that you don’t even believe in, something that you do not even think is real.” [3] At its core, the essence lies in realism, which emphasizes the authenticity of the stage and the authenticity of the actors’ emotional experience on the stage, i.e., presenting authentic and logical emotions from their real and reliable hearts. [4] “The actions on the stage must be true to their own hearts, logical, sequential, and possible in reality,” according to Stanislavsky.

With regard to the special witness strategy of the “alienation mode,” its characteristics could be depicted as follows: requiring the witness to be unconventional and causing difficulty for the jury members to comprehend before reconstructing the logical chain of the jury through the intervention of other factors. From the perspective of the audience, what is emphasized is unconventional and is therefore incomprehensible at first glance. The principles were mainly derived by Brecht, one of the founders of three major schools of drama in the world. To accurately express the relevant special concepts, he coined the word *Verfremdungseffekt* in German, which could be translated as “defamiliarized method” in English. As the term implies, this method advocates the distancing and dissociation from the common and familiar stereotype of the object of concern during the process of perceiving it. *Verfremdungseffekt* encourages one to penetrate into the core of the object [5] and analyze and judge the plot and characters rationally and calmly so that profound aesthetic emotions can be felt. [6] “It’s just necessary for you to comprehend, and then you have to free yourself from the role.” [7] In terms of the specific requirements for actors, Brecht advocated giving up all methods that might cause the audience to resonate through a specific image. [8] Instead of employing pathos, unusual and unconventional methods should be adopted to make the

audience feel “defamiliarized”. Brecht defined defamiliarization “as a reflection that the object is well known to the audience, but also unfamiliar at the same time due to the presentation.”

2.2. Differences in Actual Operation Modes

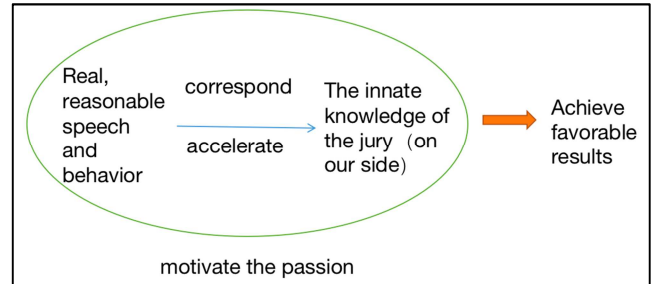


Figure 1. The Operating Principle of “Immersive Mode”.

Based on the introduction of concepts and principles, the most significant difference between the immersive and alienation modes is that the former emphasizes emotion while the latter emphasizes rationality. In the witness strategy of the “immersive mode,” the witness mainly plays a role of emotional transfer whose true, logical speech and manner takes a guiding role in the judgment because it accords with the inherent cognition of the jury members in the witness’ favor, i.e., “making it unnecessary for them to think too much.” This approach eventually causes the jury to recognize the speech delivered by the witness emotionally. A typical example in the case was Janet McKenzie, the old servant of Vole’s mistress. The prosecutors who summoned her were hoping that she could guide the jury through her authentic speech and manner. Unfortunately, this “actress” did not do a good job. Induced by the defense, she went against the inherent logic of the jury in depicting the key points. Eventually, under the influence of the gentle and conforming plot of the “immersive mode” strategy, what was then a secure winning situation crumbled due to the failure to evoke emotion.

However, in the witness strategy of the “alienation mode,” the witness represents “destruction,” i.e., by disturbing the rational judgment of the jury and causing the jurors to fall into a state of “incomprehension” through the behavior that contradicts the existing common acknowledgement. Thereafter, by adding new evidence and materials, the jury “slowly [gains] comprehension” before eventually achieving “complete comprehension” under the guidance of the lawyers by connecting the overall situation based on a bounded rationality, i.e., “construction after destruction”. In the entire process, rationality no longer remains in reticence because of the consistency between the behavior of the witness and the cognition of the jury. However, this rationality is still affected by “the exchange and interaction of the surrounding cognition and consciousness,” [9] and universal problems also exist, such as conventional thinking, and hence, the term “bounded rationality”. In this manner, Christine constructed the reversal means, particularly the component of bounded rationality.

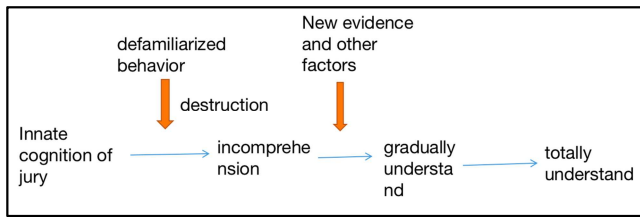


Figure 2. The Operating Principle of “Alienation Mode”.

Undoubtedly, regardless of how the defendant’s wife swore, the jury experienced difficulty in believing the alibi she provided for the defendant. [10] The existence of such a stake made it impossible for her to find a way out of the “immersive mode” because the inherent cognition of the jury members was not in her favor. Therefore, the following chain was constructed in an unconventional way to solve the problem:

As the witness for the prosecution, the defendant’s wife made a confession (contrary to the conventions) → The jury and defense were always plunged into confusion (incomprehension) → The evidence of Christine’s dishonesty and Vole’s bigamy (letters) were added and the jury gradually ascertained her “immoral” image under the guidance of the lawyer → She deliberately harmed her husband → Her husband could not have returned at the time when she “had the motive for crime” but at around 9:40 as claimed by the defendant → Thus, the defendant was wronged.

The first three proceedings of the judgment were normal, and the reason for the problems eventually lied in the fourth judgment: the jury was trapped in the “either A or B” conventional thinking. This framework for selection was constructed on the premise that the witness was a dishonest and immoral woman. This way of thinking would be obviously inappropriate if based on a complete rational analysis. However, this framework is precisely the unique advantage of this mode in dealing with adverse circumstances: it could omit a particular process of proof and cause the jury members to make a self-supplement based on false conventional cognition to turn adverse conditions into favorable ones.

2.3. Summary

Based on the preceding analysis, the two strategies that coexist in the trial have considerably different principles and specific operation procedures. Thus, these strategies should not be identified as the same because doing so not only goes against the improvement of the lawyers’ professional ability but also overlooks the “channels” through which certain defendants may get away with murder. However, this paper does not intend to provide a valuation of these strategies because its main purpose is to briefly discuss the application of the “alienation mode” by considering its viability.

3. Application Scenarios of “Alienation” Mode

First of all, the mistake of “taking the part for the whole”

should be avoided. Although this mode is successfully applied in favor of the guilty party in the film, saying that it is only applicable to guilt would be improper. In fact, both the “immersive” and “alienation” modes are witness strategies whose essences lie in the means rather than the outcome. However, both modes could not be used at random. After all, in the comparison between emotional resistance and emotional resilience, the latter has more advantages in most cases. Whether it could be applied and how it could be applied are two different issues. Therefore, based on the characteristics of the new mode of “alienation,” this paper briefly summarizes its optimal applications and requirements.

3.1. Optimal Applications and Requirements

3.1.1. Lack of Documentary and Physical Evidence for Verdict

Insufficient evidence applies to both witness strategies. As generally believed, the testimonies of the witness may differ under certain conditions or various circumstances, but the possibility of changing the physical or documentary evidence is relatively small. Thus, the latter generally has a stronger probative force. When the physical evidence is sufficient to decide on a verdict and cannot be excluded, the witness strategy becomes meaningless. Therefore, the appropriate scenarios of application should be restricted to the lack of documentary and physical evidence to support a verdict.

3.1.2. Jury Judgment is Expected to Be Against the Defendant

Based on the special identity of the witness of the defendant or testimonies of the witness summoned by the other side, when the jury’s judgment is expected to be against the defendant, the witness strategy of “alienation mode” could be adopted to reconstruct the logical chain and guide toward neutral or favorable comprehension. However, from the perspective of the burden and risk of proof, the strategy of emotional resistance is obviously greater than the strategy of emotional resilience. Therefore, where the opposite is true, when the jury’s judgment is expected to be neutral or favorable to their own side, adopting the witness strategy of “immersive mode” is more effective by strengthening the inherent cognition of the jury through the testimonies of the witness.

3.1.3. “Defamiliarized” Behavior Is Appropriate and Intervention of Other Factors Is Logical Enough to Play a Bonding Role

As mentioned, from the perspective of operational logic, two key points are considered in the witness strategy of “alienation mode”. First, the defamiliarized behavior is sufficient to break the inherent cognition, and second, the intervention of new evidence and other factors is sufficient to construct a new logical chain.

For the first point, owing to its low requirements, numerous means are available for selection, but this condition does not imply that any means is appropriate in a specific case. For example, Christine chose to “play” the role of someone with a

mental disorder instead of being a witness for the prosecution or appearing immoral. As shown in the film, this mode seemed unconventional but turned out to be extremely difficult in achieving the effect of clearing the charges. After all, this “defamiliarized” behavior must be verified with subsequent intervention factors. The intervention factors are the cause and the “defamiliarized” behavior is the result. The result depends on the collection and selection of the cause, so the two elements are logically integrated.

For the second point, acting as a bond must be sufficient. When tracing back, this approach could guide and rationalize the “defamiliarized” behavior. When stretching backward, appealing to the inherent cognition is sufficient for the jury to make a neutral or favorable verdict. Moreover, this document must not be easily reserved, which is certainly a higher requirement under the aforementioned adverse circumstance. Otherwise, it would be useless however the document fits.

3.2. Summary

To summarize the preceding arguments, the mode of “alienation” is mainly a witness strategy with a wide range of theoretical applications but a narrow range of practical applications. It is a test for both lawyers and witnesses. However, high risks and high investments often mean high returns. Even at present, this strategy deserves to be recognized and applied.

4. Conclusions

As the Chinese saying goes, “learn from each others’ strengths and seek a common ground while reserving the differences”. By blending the theories of dramaturgy and the scenarios of legal science, the witness strategy of the “alienation mode” becomes independent of the general “immersive mode” and demonstrates a unique vitality with its characteristics of creating contrasts and reconstructing logic. Owing to the lack of profound academic discussion on this

issue, further study is needed on how to decide on the specific scenarios where the witness strategy of “alienation mode” is applicable in China’s judicial practices remains to be investigated, so that. Through further investigation, a form of reliable assistance for China’s judicial practitioners can be proposed.

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