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ENVISIONING OTHER WAYS OF DOING CONSEQUENCE

*A CRITICAL INVESTIGATION OF
COURT CASES OF RAPE IN DENMARK*



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ABSTRACT

Informed by anti-carceral feminism and theories as well as practices of transformative justice (TJ) and community accountability (CA), this thesis critically investigates court trials in Denmark and calls for further thinking and action in handling harm beyond carcerality. Through observing 11 rape trials, I outline the logics of processing conflicts within the court system, focusing on how they constrain possible ways of approaching the harm experienced and attend to the parties' affective responses. I argue that in the current Danish court system, conflicts are not generative but assessed with the interest of "evidence" to match the legal paragraphs. The societal context in where sexual violence plays out is decoupled and conflicts are individualized following a liberal paradigm. During trials, the parties' affective responses often got ignored and dismissed by the courtroom professionals. They were not assisted in moving beyond the harm exercised and experienced within court. From the analysis, I suggest that working towards ending the harm of sexual violence entails attending to conditions for harm to be exercised, frameworks for recognizing harm, and envisioning other consequences than court trials and penalties. This entails letting go of the idea that a just ruling over the past is possible and desirable.

Keywords: Anti-Carceral Feminism; The Justice System; Sexual Violence; Harm; Courtroom Observations

Nyckelord: Anti-karceral feminism; Rättssystemet; Sexuellt våld; Skada; Rättssals observationer

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INTRODUCTION

Court, prison and police are part of our mental landscape, holding our collective imagination in captivity (Heiner & Tyson, 2017). Within courtrooms, rape and sexual violence gets translated into legal paragraphs; a question of credibility, innocence or guilt, acquittal or punishment. Every so often, people experiencing sexual violence do not trust that the court will recognize it as so, and struggle to acknowledge what happened themselves (MacKinnon, 1989: 179f). One might find that this stresses the urgency to be concerned with legal definitions to refine what can be attended to in court. However, it may also assist us in shifting focus to consider the very limitations of the law and the justice system. Perhaps, it is more productive to consider what actually causes harm for people and how people can become accountable, than solely what is presented in the law to be a crime. In a social reality where “*women are socialized to passive receptivity*” and men are socialized to dominance, violence is part of the picture and it might not be meaningful to distinguish between sex and rape, as argued by feminist legal scholar Catharine MacKinnon (1989: 177f). Focusing on “violence against women” however misses that sexual violence is not merely about gender but interconnected with other structural systems of violence such as racism, heteronormativity, and economic exploitation (Patterson, 2016: 6).

I come to this work through embodied experiences of interpersonal violence which has in a later stage in my life led to an interest in carceral feminism and the theories and practices of transformative justice (TJ) and community accountability (CA). A number of times, I have been extremely scared of being raped. At times, I have been immensely certain that it would happen. A couple of times, it was attempted. A couple of times, I could not run away. One time I did. A number of times, I have been followed. A couple of times, I have frozen. One time, I cried, and he still didn't stop until I was shaking. One time, I repeatedly uttered the word *no*. I guess it was number 39 that caught on. Then there were all the times I had sex without wanting to. There was the time a boy tried to ignite my skirt, and the plenty of times I've got grabbed, kissed, catcalled and got yelled at from speaking up and defending my personal boundaries. But I too have grabbed an ass of a person who had not granted permission and imposed myself on people where I was not attentive to their boundaries. Although all my gravest experiences of violence and sexual violence were committed by

cismen (assumably), a few times it was not. None of the times have I been in contact with the justice system, nor did I have the desire to.

In this thesis, I am concerned with the following questions: *1) how do the logics of court trials impose and delimit ways of solving conflicts of sexual violence?*, and *2) how do these logics enable and constrain the courtroom professionals in accommodating the parties' affective responses expressed during trial?*. With this engagement, my purpose is to critically investigate the court's ability to recognize and react on the harm of sexual violence, and to contribute to the field of anti-carceral feminism through empirical application. Anti-carceral feminism is in-itself a critique of striving for justice through the carceral – or the euphemistic term: justice – system (Kim, 2020), which will provide me with theoretical capacity to grasp potential harmful practices of trials. I am especially inspired by gender studies scholar and TJ practitioner Ann Russo's (2019) concept of feminist accountability and author, activist and TJ practitioner adrienne marie brown's (2017) idea of conflicts as generative. I realize that the court system does not promise to attend to parties' affective responses nor to handle conflicts generatively, but I insist that it relevant to investigate the logics of trial from this position to get a better understanding of this praxis. If the justice system does not actually create more justice, it is a reason to rethink the system. I will attend to the messiness and intersections of sexual violence in relation to how the court system (fails to) recognize harm. Observing 11 court cases of rape in Denmark, I have experienced an inadequate system in handling the type of harm done; both for the person subjected to the harm, the person committing the harm and the communities they are in. Criminologist Nils Christie (1977) noted that by submitting a conflict to the court system, people get pushed away from how its represented and solved, arguing that lawyers are stealing conflicts from people. Rape victim-survivors themselves also see the need for envisioning other ways of handling harm. As experienced by therapist, Karin Steen Madsen (2005), working in Centre for Rape Victims in Denmark, a number of victim-survivors called for facilitated meetings with their offender. This was not a service the centre provided in the beginning, which is telling of an institutional "epistemic oppression" (concept by Dotson, 2014) towards envisioning handling harm without punishment. My arguments attempt to break free from this epistemic oppression and occupation of penalization as the only solution to harm done.

In order to embark on my analysis, I attend to the matter of rape and sexual violence focusing on the difficulties in claiming and recognizing harm and critically engage with the current Danish justice system through theories and practices of anti-carceral feminism and TJ/CA. These first two

chapters present the theoretical framework for my analysis and provide an outlook on the fields of research. I draw on the concept of the continuum of violence (Kelly, 1987) to consider the messiness of sexual encounters and argue of how the connotations of “rape” and “rapist” work counterproductively. Further, I attend to how gendered expectations create a precarious positionality and how other social categories affect recognizing harm. Then I move on to describe the justice system of Denmark and ideas influencing penal policies; from abolitionist thoughts in the late 1960’s to carceral feminism and the current tendency of “tough-on-crime” in relation to the persisting idealization of the Scandinavian justice system. This happens in dialogue with reflections on the concepts of punishment, accountability and healing based on the theoretical capacities of TJ/CA frameworks and practices.

Abstracting and analysing logics at play within court trials, my analysis concern the semiotic systems (Weber, Patel, & Heinze, 2013: 354) of conflict resolution embedded in the repetitions, rituals, and expectations of court which impose and delimit ways of attending to the harm of sexual violence. I connect my observations from the spectator’s row with prior studies on the court system, and attend to the very materiality of courtrooms, court’s assessment and ruling over the past and the fixation of roles. Secondly, I offer an analysis of how these logics structure – but not determine – the courtroom professional’s ability to accommodate the affective responses of the parties. With “affective responses” I am concerned with bodies in affect: being affected and affecting the social setting of court trials and ubiquitous social scripts. Seeing the courtroom as an affective arrangement (Bens, 2018), I attend to bodily reactions and how the individual bodies play a role in the arrangement of the space and relate to each other. This leads me to a concluding discussion of the inherent limits of the logics of the court system in recognizing and handling harm, and the need for other ways of doing consequence and practise accountability and healing.

WORDING

Throughout the text, I sometimes speak to a collective “us”. By that I am referring to a collective epistemic community of anti-carceral feminists, and to all who in that moment feel called upon to take part in the us. Within feminist scholarship, labelling people subjected to sexual violence is greatly debated, some favouring “survivors” as it stresses the agency in overcoming such assaults, others favouring “victims” as it stresses the deeply harmful behaviour imposed. I use the term victim-

survivors, asserting that the identities are not exclusive but speaks of internal ongoing processes post such violence (as also argued by Kelly, Burton & Regan, 1996).

Deciding on how to use social categories has been a challenge. As much scholarship on sexual violence has been – and still are – conducted through a binary use of “men” and “women”, my arguments will sometimes be structured as such. I however oppose this binary categorization when not operationalized critically to speak about socialisation. Furthermore, I will use categories of race such as Black, Indigenous and People of Colour (BIPOC) and white, acknowledging that these are not static categories, but continually destabilised and reproduced (Hall, 1997: 239f).

The included quotes from my observations are translated from Danish to English, unless otherwise stated.

THE MATTER OF RAPE AND SEXUAL VIOLENCE

There are difficulties in and resistance towards recognizing harm done. As sexual violence plays out interpersonally, it concerns how we structure and have relations with one another and the social fabric it takes part in. Writing this thesis in the times of corona, a rise in the numbers of intimate and sexual violence have occurred (Winther, 2020). I have felt compelled to focus on theories and empirical analyses in relation to sexual violence between people that know and perhaps care for each other, which further reflects my empirical material. Attending to the matter of rape and sexual violence enable me to more critically engage with how the justice system is recognizing and responding to this particular harm; what is brought into the courtroom and what is left out.

LENSES WE SEE THROUGH

The idea of rape as a distinct incident, very different from sex, is not necessarily a productive way of approaching the matter, as argued by MacKinnon (1989). It erases the myriad of ways violence show itself and translates experiences into separate entities of “sex” and “rape”. In 1987, sexual violence scholar Liz Kelly coined the concept of *continuum of violence* observing that violence is part of most women’s lives, however differently it presents itself. The concept enables context and complexity with a move away from neat separations. This is not to diminish the pain victim-survivors experience, but a way of broadening up what is recognizable as sexual violence, from where it easier to confront and address subtle acts of violence as they happen. I align myself with the more current feminist critique of the gender binary employed in a great majority of research on sexual violence (Donovan & Barnes, 2020; Patterson, 2016). The dominant lens of portraying sexual violence as an issue connected to the weak, cis, and heterosexual women as the victim and the strong, cis, and heterosexual man as the perpetrator, skews who is enabled to speak about sexual violence and affects who see themselves as the abuser (Donovan & Barnes, 2020: 11). The understandable aim of stressing the particularities of being “a woman”, leads to an exclusion of trans- and nonbinary people and creates a singular-axis analysis on gender ignoring other important structures co-creating the social fabric where sexual violence plays out. From a queer theory perspective, grief and trauma worker Jennifer Patterson (2016: 5) suggests an understanding of sexual violence which attends to the various

identities and positions otherwise marginalized in the mainstream narrative. A queer approach urges to consider all people experiencing and committing sexual violence, while refusing to take use of the political readiness in the narrative of “violence against women” (Ibid.; Butler, 2011/1990: 19f). Queering my arguments is however challenged by the lack of non-binary and intersectional empirical analysis within a Danish context. This creates unfortunate blind spots and hinders a greater understanding of the phenomenon and its effects on people’s lives.

DISPARITIES IN RECOGNIZING AND COMMITTING HARM

The number of rapes – conceptualized as separate incidents - committed in Denmark per year is argued to be between the wide span of 5,100-24,000, depending on which report to rely on (Amnesty, 2019).¹ In 2019, 1,094 cases were reported to the police, 646 charged and 79 convicted (Statistics Denmark, n.d.A; n.d.B). The state thus recognizes and enforces consequences in a small proportion of the harms occurring. 77 of the convicts are listed as “men” and 2 as “women” (Ibid.).² Throughout the last 10 years, 718 men and 4 women have been sentenced for committing rape (Statistics Denmark, n.d.B). Self-report studies however indicate that women commit 5 % of sexual assaults in Denmark (Heinskou, Scierff, Ejby-Ernst, Friis, & Liebst, 2017). People assigned as women have historically been neglected agency in legal terms and practice (Smart, 2002), and the conviction rate seem to reflect the continuing existence of that neglect. I will suggest that the privilege of the male position is inverted when we imagine who is capable of committing rape.

In the last 4 years, there has been a rise in the number of rapes of both police reporting and self-report studies in the Nordic countries (Skilbrei, Stefansen, & Heinskou, 2019). The rise is not necessarily related to a higher number of people experiencing rape but may instead reflect a somewhat greater willingness to recognize acts of sexual violence as harmful; both in an individual and systemic perspective (Ibid.). Affect and queer scholar Sara Ahmed (2013: 23) argues that the experience of pain is in relation to attribution of meaning to happenings. Cultural understandings of situations and subjects as harmful or painful change over time and place, which affect how people recognize and categorize an experience (Ahmed, 2013). The greater willingness is however yet so faulted, as e.g. a national radio program the 25rd of February 2020 illustrated. A woman was invited as a guest to talk

¹ The estimate focuses on “female” victim-survivors. I have not found an estimate including all gender identities.

² Statistics Denmark operates through a binary gender division.

about her experience of rape, but the hosts rather quickly questioned her about her resistance from a place of suspicion (DR, 2020). The insensitive response provoked my thoughts: How much violence is needed to claim a rape? How much does a person of varying social categories needs to be suffering before others recognize the pain? Who is needed to validate the experience? I do not attempt to fully answer the reflections but have kept them close throughout this work.

Social stereotypes play out in the myths of rape, and it affects our ability to categorize actions, recognize harm and initiate consequences. Investigating Danish media reports on rape, scholar in media and gender Rikke Andreassen (2006) noted its racialized notions. In cases where a white man committed sexual offence, race was not mentioned, contrary to cases where a BIPOC committed sexual offence. Andreassen observed how it corresponded with depictions of the victim-survivors' responsibility, which were all described as women. In cases of white offenders, women were victim-blamed to a larger extent (Ibid.: 99). The construct of the "dangerous black man"³ evidently manifests itself in how we disseminate and consume news about harms committed. This has great material consequences as visible in the overrepresentation of racialized brown and black people sentenced for committing or attempting rape in Denmark compared to self-report studies of rape (Heinskou et al., 2017). Regardless of the offence, "non-western"⁴ Danes are more frequently subjected to remand custody and more often on false ground (Holmberg & Kyvsgaard, 2003). Russo (2019: 150) have observed that in TJ/CA processes, it is often easier to mobilize white middleclass communities in responding to sexual violence committed by men of colour against white women, and correspondingly more difficult to mobilize the same communities when the sexual violence is committed by white men against either white- or women of colour. It seems that it is considered less urgent to initiate consequence when harm is committed by a white person, which relates to the recognizability of the harm and the construct of victim-survivors' responsibility. Inspired by queer scholar Judith Butler's (2009) question of who is seen as grieveable, it is clear that some is considered more punishable than others.

Yet a disparity in who experience and commit sexual assault is socioeconomic background. Women without employment and without or during higher education are overrepresented as victims of sexual assault (Deen, Johansen, Møller, & Laursen, 2018). Men from families with violence,

³ As e.g. investigated and depicted by cultural theorist Stuart Hall (1997).

⁴ The categorization of "non-western" is constructed and employed by Statistics Denmark (n.d.C).

suicide, mental illness, or where their parents are unemployed, without vocational training, had substance abuse, amongst other factors are overrepresented as convicts of rape (Christoffersen, Soothill, & Francis, 2005). Beside socioeconomical background being a factor in the construct of punishable subjects, various upbringings contribute to various conditions for people to be educated and respectful about their own and others' personal boundaries.⁵ Not all has had the opportunity to evolve in a nurturing and emotional available setting. Yet, it seems that we currently have a system that punish people for not having those conditions.

LOVE AND BOUNDARIES

The vast majority of sexual offenses occurs between two people who know each other (Heinskou et al., 2017: 54). For adults, the person committing harm is in one third of the cases a former or current romantic partner (Ibid.). This contradicts the construction of “the stranger danger rape” [DA: overfaldsvoldtægt] as the archetype of rape (Johansen, 2016: 36), and put spot on structures of intimate relations. Gender scholar Lena Gunnarsson (2014) turns to the embedded gendered expectations in “the quest for love”, arguing that women are conditioned to give more care and affection than they receive, and to be deemed valuable in relation to their (male) partner. Feminist theorist bell hooks (2004) similarly argues that men in their upbringings are nudged to disconnect from their feelings and urged to assert themselves with less thought for others. From this I suggest that as people socialized as women are culturally nudged to attend to “men’s” needs, they might have less awareness of their own boundaries, and perhaps pay less respect to them. This might contribute to them conceding their boundaries to be transgressed in order to please their partners and fulfil the gendered expectations. This creates a precarious positionality. Studies show that the binary socialization and heterosexual power dynamic further structure how queer people reflect about sexual abuse in their relationships (Sanger & Lynch, 2018). The dominance of the heterosexual story hinders to see sexual violence in (some) queer relationships, due to the idea of sameness and thus no power inequality (Donovan & Barnes, 2020: 120). Ideas of masculinity further prevents people socialized as men to acknowledge their experiences of sexual harm (Gunnarson, 2018: 14).

⁵ I am not arguing for a correlation between class and “boundary-education” (the factors listed are further not bound to a specific class) but stressing that abuse and neglect of various kinds have consequences for people’s evolving.

Relational dynamics are varying, and socialisations and privileges/marginalisations manifest in dissimilar ways. Other power dynamics than gender may be more central to a specific relationship in allowing or hindering harm to occur. If we consider privilege as something that is continually (re)produced or challenged (Russo, 2019: 20) – although it might be resilient and thoroughly integrated in various structures - it prompts the urgency to critically engage with the hierarchies we are embedded in, as I return to. Categorical identities do not in-themselves determine whether one commit or experience harm. Talking with one of my former partners (cismale) about the idea of the continuum of violence and the erotization of “male” power and “female” submission, he kept returning to the matter of consent. After processing my initial irritation over his insistence, I could see the importance for him. Consent is something that he educates himself about and is able to practise, whereas the lack of separation between sex and sexual violence through the dominant heteronormative lens, frames masculine subjects as perpetrators regardless of their varying efforts to critically engage with patriarchy and masculinity.

RESISTANCE TO ADMITTING HARM DONE

Language and concepts have stark implications on how we are able to address and understand a phenomenon. Gunnarsson (2018) argues that the dominant discourses on sexual violence are unrealistic in e.g. how violence is constructed as monstrous and the victim-survivor as helpless. A “rape” and “rapist” are labels with harsh connotations, which might not correspond with how sexual violence plays out in all its variety (Ibid.: 10). The discourses make it difficult for the person subjected to harm to identify the experience and may hinder the person committing harm to commit to accountability. It is far from easy to acknowledge and to speak up about harm to the person you (potentially) care for that actually they are crossing your boundaries. This further relates to the resistance towards submitting an act of assault to the justice system, as observed by Madsen (2005: 9). Investigating the so-called “greyzones of rape” through autobiographical stories, Gunnarsson (2018) highlights a situation submitted by the contributor Magnusson. Magnusson experienced that by stopping an unwilling sexual act, asking her partner: “are you raping me?” the roles shifted, and he suddenly became the victim. Her intention of drawing attention to the disregard of her boundaries, got lost in her partner’s insistence on getting comfort for being “insulted” (Ibid.). Her partner’s refusal to see himself within the category of rapists; experiencing - if not overstating - the labelling as representational violence, took precedence over the sexual abuse she experienced (concepts by

Schulman, 2016). Russo (2019: 169) sharply portrays how the idea of “not my intention” prevails in dominant culture, functioning as a way of evading responsibility for one’s actions. This makes it impossible to work from harm done, as no one will be accountable for the effects. The harmed part is left to do the work alone, as Magnusson was left to do so after conducting emotional labour for her assaulter, her partner.

Investigating people who have sexually assaulted in Denmark, Schierff and Heinskou (2019) argued that they could not employ “sexual violence” nor “sexual offender” as terms if they wanted to include people who have assaulted as research participants. People would simply not recognize themselves within those categories. They thus put forward the term “sexual transgression” and even so - after an intense search for research participants - only 3 people were willing to speak about their acts and reflections (Ibid.). This mirrors the taboo of the subject and the refusal to see oneself as part of the issue.

CONCLUDING REFLECTIONS

By recognizing the messy nature of interpersonal relations and the interconnectedness with structural components, I have tried to attend to harm committed and experienced in a more nuanced manner, focusing on rapes between people that know each other. Queering the framework have assisted me to question the picture created by the vast majority of research on sexual violence working with a gender binary as a singular axis-analysis. My arguments however often fail to escape the binary, building on top of prior binary and heteronormative research. Using the concept of continuum of violence allows countering the neat separation between sex and rape to acknowledge the various ways harm plays out in sexual relations. The stark connotations of “rape” and “rapist” correspondingly hinder the person committing harm and experiencing harm in recognizing the harm done. I have argued how the gendered expectations of love as well as myths of rape and stereotypes create specific ways of assigning meaning to experiences. Harm is differently recognized both in terms of who experience sexual assaults and who commits it, which relates to ideas of needed consequences.



Picture 1: Courtroom 32 before the courtroom professionals entered.

PUNISHMENT, ACCOUNTABILITY AND HEALING

TJ and CA frameworks are grounded in an acknowledgment of interconnectedness and transforming relations based on the structures we take part in. The TJ group Generation FIVE (2007: 5) describes TJ as a framework which connects the intimate with a greater scale of injustice, seeing that we cannot end violence without attending to the violence and harm committed by the state, companies, etc.. It differentiates from restorative justice by exceeding an interpersonal focus and through a commitment for structural change (Ibid.: 4). CA is in the words of scholar and practitioner Ana Clarissa Rojas Durazo “*the practise of imagining, creating and applying alternative responses to violence from and within communities*” (2011: 77). Both approaches use restorative methods and are indebted to indigenous population’s ways of handling conflict (Kim, 2020). I build on the imaginative capacities and theoretical as well as practical insights of the frameworks to critically present the current carceral model of the Danish justice system including the system of Victim-Offender-Mediation. I will not distinguish the frameworks greatly as the practitioners are informed by both (Kim, 2012: 2; Russo, 2019: 181). Throughout, I reflect on penalty, accountability and healing as concepts, touch upon ideological turns affecting penal policies, and carve out how TJ/CA envision other reactions.

IDEALISATION OF PUNISHMENT

The Scandinavian justice system has often been idealized by scholars outside of Scandinavia. Criminologist Finn Hornum (1988) has argued that academic articles from the 1960-70:

frequently [were] so uncritical that the prisoners in those institutions would have a difficult time recognizing them, contained factual errors, and failed to link penal policy to the country’s social structure and culture (Ibid.: 63).

In 2008, Australian criminologist John Pratt (2008a; b) published two papers describing Scandinavian countries to be an exception of penal populism and the increased use of harsher punishment in

“western countries”, investigating whether or not the exception would be able to uphold. The so-called “open prisons” are often used to exemplify the humane principles of the Danish justice system (Smith, 2011), as incarcerated people can move somewhat freely within the compound during daytime. The open prisons are however a result of and quick solution to the mass-incarcerations happening after WW2 and not “humane reasoning” (Ibid.: 42). Old barracks were used as prisons, which revealed that it was possible to run prisons more openly, and the practice has continued since then (Ibid.). I suggest that the idealisation of the Scandinavian justice system may provide momentum for change, as it serves as an example of how less restrictions does not produce more crime. However, it functions as a double-edged sword, simultaneously disabling criticism to be formulated about the Scandinavian system and hinders thinking beyond punitive practices. By idealizing the Scandinavian model of penalization, it quite critically legitimizes the carceral model as a whole by presenting it as potentially humane and functional.

Although Scandinavian countries do not follow the exact same carceral path as Anglo-Saxon countries, ideas of consequence and punishment have changed and a distinct rise in the level of punishment have occurred especially since the 1990’s (Bondeson, 2005; Uglevik & Dullum (eds.), 2012; Lappi-Seppälä, 2007; Smith, 2011; Wandall, 2010). Between 2001-2015, the penalty frame in Denmark has been raised 47 times and the number of court rulings has increased by 70% from 1980 to 2015 (Nilsson & Delica, 2015: 56). The former government further enforced increased penalties within prison for various breaches (possession of a mobile phone, disregarding the smoking ban, etc.) (The Department of Prison and Probation [DA: Kriminalforsorgen], 2018: 23). The Department of Prison and Probation even put forward that prison guards experience the environment behind the walls as “harsher” (Ibid.: 5).

In the 1960-70’s, Norwegian criminologists such as Thomas Mathiesen and Nils Christie critiqued the carceral system and wrote about prison abolition which gained massive influence in academia within and beyond Scandinavia (Lappi-Seppälä & Storgaard, 2015: 137). The Danish criminologist, Flemming Balvig, co-authored an article in 1969 arguing that “[p]risons will disappear because they are not useful as preventive measures, neither in general nor on the individual level (...)” (cited in Balvig, 2005: 178). Prisons have nonetheless continued as a central pillar of the justice system in Scandinavia. Writing retrospectively about his renown books of essay *The Politics of Abolition* 14 years later, Mathiesen (1986) described how he had been convinced he would witness -

if not abolition - then a radical decarceration during his lifetime. He regrettably notes that “*the times are no longer with us*” (Ibid.: 83), and that social scientists increasingly considers abolition a “*youthful and confused prank*” (Ibid.: 84). Balvig (2005: 181) argues that the narrative of social deprivation as an explanation for crime in a Danish political context has been replaced with the narrative of “lack of control”, and the idea that society must protect itself from the dangers of criminals. The focus on risk is e.g. visible by how pre-sentence reports – personal investigation reports produced by the Prosecution Service [DA: anklagemyndigheden], accounting for the accused person’s life and future plans – is operationalized during trials. Wandall (2010) found that the courtroom professionals make predictions and risk assessment based on the reports, and observed connections to construction of stereotypes. Stereotypes and myths of rape does not only have an effect on recognition of harm in interpersonal relations, but also on the juridical assessment of innocence, guiltiness and credibility as I return to later on.

(ANTI-)CARCERAL FEMINISM

In 1980, Denmark as the first country enrolled the legal function of a complainant’s lawyer, giving specifically rape plaintiffs right to a state-paid lawyer to look after their interests throughout the juridical process (Antonsdottir, 2019: 137). 40 years later, the system however still does not function as it should, and many plaintiffs do not get a complainant’s lawyer (Amnesty, 2019: 42), as I also observed. Some scholars have posed that a central aspect of feminism in Scandinavia is the very explicit turn to penal law as a mean for achieving gender equality (Burman, 2010, in Skilbrei et al., 2019: 4). The demands for improved rights and legal representation for plaintiffs in rape cases can be traced back to the women’s movement in the 1970’s (Antonsdottir, 2019: 137). The movement had a “legal optimism”, while less concerned with the issues of accountability and prevention (Skjørten, 1996 in Skilbrei et al., 2019: 5). Feminist sociologist Elisabeth Bernstein (2012) argues that influential theories on the emergence of the neoliberal penal state and the correlating re-masculinization and decline in welfare, fail to recognize how feminist movements have contributed to this development. Bernstein (2012) developed the concept of *carceral feminism* – observing a change in American anti-trafficking groups’ logics and aims – to depict this very issue. In the early 2nd wave feminist movements, focus was on the material and structural conditions facilitating inequality and harm, whereas in the late 2nd wave feminism – also declared by some as the current dominating feminism (Whalley & Hackett, 2017) – solutions to gender inequality was/is sought

within the carceral system and its institutions: police, courts and prisons (Bernstein, 2012). However, to increase the powers of the penal state is to increase the disproportionate criminalization of some over others. Marginalized people and BIPOC's are more negatively affected by the carceral turn as they more often get sentenced, as earlier presented (Kim, 2020: 315). The decline of the welfare state has further led to more and more services being provided in the NGO-sector, where organizations compete over the same pile of money, combatting each other through a capitalistic logic of outcome, effect and system preservation (Incite!, 2007). As poignantly argued in the anthology edited by the TJ group Incite!: Women of Colour Against Violence, "*milking the system*" in praxis quickly becomes "*being milked by the system*" (Jones de Almeida, 2007: 186). The organizations previously involved in radical critique and dismantling of the carceral system, now are fed money when they restrict themselves to minor reformation (Ibid.). As carceral and mainstream feminist organisations base themselves in a capitalistic logic, class is never a central component in the analysis (Jones de Almeida, in Incite!, 2007: 191). Writing about sexual violence, class only took up a minor part of the arguments I made. This has not been a deliberate choice to delimit words used to think from and by class, but a result of not having articles, reports, zines etc. to work from.

I align myself with the criticism of anti-carceral feminism, noting that feminist movements need to search for other answers, and look beyond the epistemic occupation of carcerality (e.g. Durazo, 2011; Kim, 2020, Russo; 2019). This is not to argue that feminist movements should not be concerned with improving current conditions, nor should we neglect the importance of mainstream feminist movements in making sexual violence a recognizable harm in the carceral logic. It is partly due to their struggle that rape victim-survivors' experiences with the justice system have gained greater attention during the last decade, which has had a positive effect on e.g. their experiences with police reporting (Kyvsgaard, 2018).

PENALTY: SITUATING RAPE TRIALS

Black studies scholar Jackie Wang (2018: 87) notices how "safety" as an idea politically is related to and practised through violence. The justice system of Denmark is based on the fundamental principle of the state as the sole legitimate actor of violence. In political philosopher Thomas Hobbes' influential book, *The Leviathan* (1651/1652), absence of centralised law administration and state violence is framed to be an inferior stage where humans turn on each other and everything is in a state

of chaos. In order to achieve order, people must give away their right to self-defence to receive protection from the state. As the state takes on the task of distinguishing what is violence and what is not, the very violence committed by the state is disregarded and perhaps not seen as violence (Durazo, 2011: 81). I contend that the practice of carcerality however *is* state violence, as the state enforces pain and harm on its citizen in exercising control under the declared aim of protection.

The responsibility for addressing experiences of interpersonal harm is on the individual victim-survivor (Russo, 2019: 110). They need to get in reach with the police in order to have their experienced harm attended to by the state institutions. Thinking back on the difficulties in recognizing harm, it is not surprising that victim-survivors often struggle to recognize a happening as sexual violence, and perhaps then are not reporting it (Russo, 2019: 94f). The justice system takes as a prerequisite that everyone can and is willing to contact the police, which is not the case. Some might be in a precarious situation or under greater scrutinization from the state and fear police violence due to the social categories they embody, and therefore do not consider that an option (Durazo, 2011: 77). Effectively, the system is not accessible to them, and their harm is thus not attended to. Both elements speak to the discrepancy earlier presented between rapes occurring and police reports of rape.

Upon reporting a crime, the police produce a report which the Prosecution Service assess, evaluating if the case is likely to stand ground in court and accept/reject them accordingly. The police too have the possibility of closing cases, when they believe no crime has been committed or the person committing harm cannot be identified (Hansen, Nielsen, Bramsen, Ingemann-Hansen, & Elklit, 2015: 223). The system thus deems if the experienced harm is legitimate according to its own logics already at these stages. A study from 2014 showed that the police closed 61.7 % of the rape cases reported to them, and the Prosecution Service closed 53.7 % of the cases referred by the police. Only 5-10 % of the cases reported in 2010-13 resulted in conviction (Hansen et al., 2015).⁶ If the premise of the system is that when a person is sentenced then “justice is achieved”, the system does not deliver greatly for rape victim-survivors. When the harm is recognized by both the police and the Prosecution Service, it will be put on trial in one of the 24 district courts [DA: byretten] under The Courts of Denmark [DA: domsstolsstyrelsen]. If a person is arrested accordingly, it must be assessed by a judge within 24 hours. The judge may appoint them held for a longer period of time under the declared purpose of them not hindering the investigation or attempting to escape (Hornum, 1988). The

⁶ In 2016, the cases processing changed in order to delimit the number of closed cases (Amnesty, 2019: 27).

Department of Prisons and Probation execute punishments. Its declared goal is to: “*help reduce crime by enforcing the penalties the courts have determined*” (2020). Notably, its purpose is not to help the person experiencing harm to move forward, nor necessarily create conditions for the person who harmed to take on accountability but relates to the idea that punishment in-itself will reduce crime.



Figure 1. Institutions of the Danish justice system.

To penalize a person by removing them from their communities, relations and everyday life entails force and violence. We are bridging on considering people as waste and disposable when forcefully placing them away from the rest of society (brown, 2017: 132). The very idea of placing someone in prison and appointing a punishment on them, leaves little space for the person to take on a commitment for change, nor does it address the societal structures which have enabled the harm to take place. Although goals of humanization and resocialization are represented as part of the practice of punishment in a Scandinavian context (Nilsson, 2011), we see a prison reality and political landscape which is not in alignment with that ideal (Bengtsson, 2015, The Department of Prisons and Probation, 2018; Mathiesen, 2011).

Since 2010, the so-called Victim-Offender-Mediation (VOM) model have been implemented in Denmark (Kyvsgaard, 2016). VOM consists of dialogue meetings between the parties and a facilitator trained in conflict resolution. Other countries have implemented a so-called conference model of mediation where key persons besides the parties are present, which show positive results in relation to the plaintiff’s needs and a decline in crime recurrence (Kyvsgaard, 2016; Kyvsgaard & Øland, 2018). Correspondingly positive results have not been found from the Danish model (Ibid.). Legal scholar Britta Kyvsgaard points to the fact that important relationships and communities are cut off in VOM which makes it more difficult to support the plaintiff and defendant in moving on. From a TJ/CA perspective, a number of other elements can be criticized. The model is completely entangled with the penal system which entails that it is not possible to attend VOM without going to court (Ibid.). No matter how the mediation will go, penalization will be initiated if deemed so in court. More so, it is police officers who scan the cases and suggest parties to go to VOM. Parties may also

express this want, but as VOM hardly can be said to be widespread,⁷ the parties might not have heard about it. The meetings are furthermore highly concerned with the act of harm (Kyvsgaard, 2016: 10) which I argue mimic the act-oriented epistemology of court – as I analysis later – and are less concerned with moving forward from the harm done. It furthermore does not a strive to change structural relations.

FEMINIST ACCOUNTABILITY

From anti-carceral feminism, envisioning consequence starts elsewhere. Condemning and punishing people who have hurt, makes them the locus of the issue. Rather, it is productive to consider people who harm as complex people with complex histories which actions show up in various ways (Russo, 2019: 134). Generation FIVE (2017: 40) suggest that people committing harm have been formed by their experiences and the societal arrangement they live in which is part of enabling them to commit harm. In order to fully understand and change the conditions which produce harm, we must understand the life circumstances of people committing harm. From her work with TJ processes, brown has reached a similar acknowledgement. It is from the “why” that a process of accountability opens up (brown, 2017: 148). Brown notes that we all mess up, lie, betray, and hurt each other, but if we turn immediately to punishment, we remain on the surface of what has happened (Ibid.: 147f).

Accountability can be seen as an internal resource used when recognizing and working from harm, and not something that is done to us, contrary to punishment (Burke, 2016). Informed by 30 years of TJ practice, Russo (2019) develops the concept of *feminist accountability*. Feminist accountability insists on the interconnected-ness of our identities and experiences in relation to harm exercised and experienced, seeing that our inevitable participation in the social fabric make us more or less complicit in harm being enabled (Russo, 2019). It concerns transformation of behaviour on the premise that we are all implicated (Ibid.: 8, 161). By acknowledging the insights of intersectionality and seeing that we are all entangled in the same hierarchies, however occupying various positions, conflicts are not just other individuals’ responsibility, nor belonging to the few. Rather, it is a collective responsibility to engage and gain better interpersonal and community skills and work towards ending various forms of harm (Ibid.: 175).

⁷ In 2019, 564 VOM’s where completed (Secretary for Conflict Councils, 2020)

THE WORK OF TRANSFORMATION

brown asks us to reflect on how we *"shift into a culture in which conflict and difference is generative?"* (2017: 132), seeing small interactions as a scale of potential. Often people are knowing of harm happening but are reluctant to act. People might want to intervene but freeze, feeling uneasy or anxious about doing something that might end up worsening the situation. As Russo notes *"[b]ystanders are often people who are overwhelmed by what they witnessed"* (2019: 133). The harming situation may then escalate to the extent that bystanders' reason that there is no other way than to call the police (Ibid.: 146). The centrality of the justice system within our society and minds might contribute to an externalisation of responsibility, seeing that there is a system responsible for acting upon harm. The glorification of family privacy and individuality influencing dominant culture (in the "western world"), further contributes to legitimize non-action (Ibid.: 146). TJ/CA processes seek to take these barriers seriously, and work towards enabling people and communities to change their default responses of withdraw. As observed by TJ worker, Grace Poore, people are willing to take action when having a greater awareness of how to recognize signs of violence and trained in how to make interventions before, during and after violence occur (in Russo, 2019: 135). The ability of becoming accountable for one's actions as an individual and as a community is not a static end-stage but a continuing process that demands cultivation (Ibid.: 11). Importantly, the work of transforming relations is not isolated to when severe harm is done but concerns restructuring relations in general; being open and caring in explaining how we experience other's actions, daring to explain when we are hurt, and be accountable when someone is explaining why our actions hurt them.

The process of healing is – as well as the process of accountability – internal (Creative Interventions: sec. 3: 15). Healing may not be a goal for the victim-survivor and mean and entail various things for various people. Generally, healing can be described as learning to live with experiences of harm, which also concern the person who harmed (Generation FIVE, 2017: 44, 56). brown (2017: 34) has experienced that a process of healing begins, when the pain or place of trauma is really listened to and given full attention. This entails moving away from one-size-fits-all approaches to create more organic processes which are oriented to the situation and actual needs of the victim-survivor (Russo, 2019: 119). brown (2017: 141) stresses that if a victim-survivor feels too exhausted, angry or maybe unsafe being in a process with the person who harmed, they should embark on a different process. This touches upon a critique raised of TJ/CA processes that it forces victim-

survivors to be compassionate with their abuser, which effectively creates more harm for them (Acorn, 2004).

ATTENDING TO THE CURRENT PRACTICES

In USA, several TJ/CA organizations have emerged since the early 2000 led especially by queers and women of colour (Richie, 2012). USA is in many ways an extreme example of the neoliberal penal state (Ugelvik & Dullum, 2011: 4), and perhaps this gives answer to the corresponding stronger movement working towards decarceration and abolition of the penal system. Invested in the organization Creative Interventions, Mimi Kim (2012: 18) has been part of collecting stories of CA processes. From these experiences, Creative Interventions (2012) has developed tools and models, available online, envisioned to be used as a resource catalogue when conducting CA processes. They put forward three core models of facilitative interventions; victim-survivor model, accountability model and community accountability model, practised following the phases of 1) getting started, 2) planning, 3) taken action, 4) following up (Ibid.). The first model attends to the emotional, physical, practical, financial state and needs of the victim-survivor, whereas the second focuses on creating conditions for the person who harmed to become accountable. Kim (2012: 22) noticed how people who harmed have a resistance to change, but experience that this change during the course of an accountability process. Creative Interventions (2012: sec. 1: 33) conceptualize such a process as a staircase, as illustrated below. Accountability processes in praxis may however vary in terms of depth and time, and sometimes not all steps will be reached (Ibid.).



Figure 2: Staircase of Accountability (Creative Interventions 2012, sec. 1: 33).

The third model concerns the community as a whole and attends to how the community permits, ignores, allows, and hinders harm to occur. None of the models demands that the person who experienced harm and person who harmed need to be in a mediation (Ibid., 2012). The various interventions enable sensitivity towards the situation at hand and the needs of the person experiencing harm, the abilities of the person who harmed, and the resources of the community (Ibid.). Although violence is not exercised in the same manner as in the justice system, a level of authority if not coercion might be practised within TJ/CA processes (Kim, 2012: 29). Sometimes the very first intervention entail force to stop the violence from reoccurring.

In Denmark we do not see the same blossoming of organisations nor criticism. However, there are some initial seeds. I take part in a community called Restorative Circles [DA: Genoprettende cirkler], where we train facilitating skills by doing simulation circles inspired by conflicts happening in our lives. Some – more trained than myself - practise restorative justice processes in actual conflicts. Often this takes place within our extended communities, as people get asked to facilitate on a mouth to mouth basis.

THE POWER OF NOT GIVING A FIXED ANSWER

The TJ/CA frameworks are imperfect, and reading through the chapter, you might have stumbled across various issues which could compromise the outcome. One aspect is connected with class and resources. As the integral part of TJ/CA is to collectivise the responsibility of harm, are communities with less resources then let to suffer more? And within a process of handling harm, are the ones who have more rhetorical skills advantaged as they might assert themselves and their needs better than other people? Returning to an earlier presented observation by Russo (2019), TJ/CA processes are not immune towards racism and the construction of punishable subjects – and arguably other social structures – which affect how and if they are initiated and conducted. brown (2017: 141) argues that ideally TJ/CA processes take place were we already have better relationships with ourselves, each other and the planet, but as we are not there yet, it is important to adapt to the current situation which entails pragmatism. Sometimes it will not be possible to initiate a TJ/CA process (Ibid.).

The dismissal of ideas and practices of TJ/CA is connected with the frameworks' lack of providing a fixed answer to what should replace the current system. Prison abolitionist Angela Davis

(2011) argues that as the hunger for a fixed answer presumes that *one* way of conducting penalisation should be replaced with *another* however nicer way, TJ/CA practitioners and scholars should not aim for providing that. Cages will still be cages. Davis sees the strength in exactly not delivering on that premise, acknowledging the need to rearrange various relations, institutions and structures. Doing TJ/CA is practising what has not yet been materialized, and I assert that there is a powerful humbleness in not claiming to know all steps. Mathiesen (1986: 87) argue that it is the very unfinished nature of abolition that create transformation, moving towards unbuilt ground.

CONCLUDING REFLECTIONS

I have reflected on the concepts of punishment, accountability and healing through attending to empirical studies of the justice system of Denmark and by thinking from TJ/CA frameworks. I have pointed towards that the very idea of being a forerunner country of “humane punishment” work as a pillow which silences criticism and legitimises the carceral model. Punishment is practised in the current justice system through the idea of the state as the legitimate actor of initiating consequence when harm is done. The carceral logic entails a zero-tolerance approach to the harms recognized by system, while other harms are ignored. The justice system – as well as carceral feminism - is not concerned with life circumstances, or structural conditions allowing for harm to happened. In this paradigm, harms are treated as individual aberrations. Accountability is on the contrary not about penalty but a process of becoming responsible and aware, which goes beyond the individual. TJ/CA approaches theorize and practise consequence from acknowledging the interconnectedness of our identities and experiences in relation to harm exercised and experienced, and work towards redressing our interpersonal and societal relations. In this paradigm experiences of harm are centred in how to move forward and generate conditions for healing.



Picture 2 + 3: Courtroom 18.

DOING OBSERVATIONS IN COURT

Doing observations in court entails overseeing courtroom professionals exercising their power, but also imposing on people in difficult times. The court proceeds by rituals, and each courtroom professional has a specific part to play in exercising a court case. The metaphor of theatre is heavily used by scholars in unfolding the dynamics of court trials (Bens, 2018; Brooks, 2019; Dahlberg, 2009; Van Cleve, 2016). Throughout my observations, I have not only attended to the performativity of language, but also architecture, body language and gestures, all part of how the logics are (per)formed. In this chapter, I present the very practicalities of doing courtroom observations as well as how I produced and worked with the empirical material. This happens in dialogue with methodological and ethical considerations where I reflect on the consequences of my presence and the production of knowledge.

FEMINIST ETHNOGRAPHY

The courtroom can be considered as an affective arrangement as anthropologist Jonas Bens (2018) proposes. He suggests a methodology of analysing atmosphere, mobilizing insights of affect theory and phenomenology to consider the entanglements of the space and move beyond the “analytical logocentrism” of words within legal research (Ibid.: 337, 341). Although the distinction between emotion and affect is contested (Ahmed, 2013: 207⁸), affect as a prism allows to attend to expressions of feelings residing between people, collective bodies and social scripts, and remind us to be concerned with how bodies and objects are arranged and oriented (Ibid.: 209; Bens, 2018). Geographers Faria, Klosterkamp, Torres, and Walenta (2019) – like Bens (2018) – call for grounded and complex courtroom ethnographies. Developing a feminist methodology, they argue that it:

attends to the affective, intimate, and bodily politics of courtroom subjects, spaces, and moments, connecting these with wider structural processes of legal, sociocultural, political, and economic life (2019: 1).

⁸ Realizing that Ahmed (2013: 208) employs “emotions” to politicize and deindividualize the concept.

I pose that the feminist methodology is in alignment with perceiving the courtroom as an affective arrangement but goes beyond in its attention to social categories and power logics. Analysing how the court system fails to recognize the lived reality of black women in cases of discrimination, critical race scholar Kimberlé Crenshaw (1989) made clear how central intersectionality is when investigating the effects of the court system. Much feminist ethnographical and theoretical work on the court take on her arguments as backbone (Faria et al., 2019: 3). Faria et al. urge ethnographers to create links between the immediate courtroom and structural factors influencing the space, seeing “transscaling” as an important feminist research tool (Ibid.: 11). In order to attend to that, Faria et al. conceptualize *embodied transcripts* (Ibid.: 8). Embodied transcripts include happenings as well as non-happenings, gestures, tone of language, bodily positions etc. to annotate the enactment of gender, race, and class⁹ and is grounded within the researcher’s experience of the space (Ibid.). This aligns with my theoretical commitment to feminist accountability, which demands attending to hierarchal structures (Russo, 2019: 6). Embodied transcripts differ from court transcripts as they are not produced by the system itself (which surely has constraints as empirical material) and by exceeding typing word exchanges. Words are crucial when it comes to court trials; the process might even be seen as a communicative struggle over defining the past through legal categories. However, it is not merely words which play a part in that struggle. Whereas the parties and courtroom professionals only are allowed to speak during certain sections, the body communicates through the entire trial (Johansen, 2019: 256). The disembodiment of court transcripts is fraud to mute injustice occurring (Faria et al., 2019: 9), and they would not enable me to grasp the subtle power dynamics happening inside and outside the courtroom.

I have felt aided and inspired by the tool of embodied transcripts and the methodology of affective atmosphere; which has guided me in producing my empirical material and in conceptualizing the parties’ emotional reactions as *affective responses*. Faria et al. (2019) acknowledge that the call for embodied transcripts necessarily will be “*messy, emotionally heightened, and fraught for both the researcher and her subject(s)*” (Ibid.: 15). My embodied experiences of being a cis, femme, white, queer woman from lower-middleclass in academia – however dynamically these categories have manifested themselves – of course influence what I sense and recognize and how quickly I do it. While I cannot describe people’s embodied experiences of

⁹ These are the social categories listed, but surely other categories are important following an empirical sensitive approach.

trial and affective responses, I am grounding my analysis in what I experienced during trials, and how I read the parties' and courtroom professional's bodily and verbal expressions.

TRIAL ATTENDANCE

When planning for trial attendance I relied on the online service of court dockets, where public trials are published one to two weeks ahead on the website of each individual court. I used the search words of “§260” and “rape” [DA: voldtægt] at the district's courts¹⁰ of Copenhagen, Frederiksberg, Lyngby and Glostrup, all in close proximity of my residence. The cases I observed were on trial between September 2019 and December 2019. I only managed to observe one trial at Frederiksberg; all others were at the district court of Copenhagen. This has to do with its larger case volume, lack of rape cases put on trial in the other courts, and with my time schedule. Gathering the material as I was interning at a research centre at the University of Copenhagen – where I work as a student assistant – I had to coordinate with other tasks as well. Although my arguments will be mirroring a specific court, it can be seen as an expression of the system, as districts courts are similarly organized (Johansen, 2019). It does however reduce the generalisability of the study.

I developed a document-template in accordance with the proceedings of trial accompanied by a section where I described (my perception of) the courtroom professionals' and parties' gender, age, racialization and clothes (see Appendix A). Being in dialogue with my supervisor at the University of Copenhagen, anthropologist Louise Victoria Johansen, whom in her Ph.D. conducted more than 80 courtroom observations, I received some insider know-how and discussed the ethical issues of researcher presence. For my first observation, I was equipped with a notebook and a soft tip pencil, as she urged me to be mindful of the disturbance created. During the trial my wrists got sore, and I felt constrained by looking down. At the same trial, a Ph.D. student with a laptop was present, and it did not seem to generate more attention towards him. On my next observation I brought both my notebook and my laptop, and quickly turned to the latter. I did not experience it to be more alienating than writing in a book. Perhaps this was slightly influenced by my need for comfort, however, using the computer allowed my gaze to be more horizontal, and though I was engaging with a digital device, I actually felt more present in the room. It further enabled for greater detail in my embodied transcripts, as I could type faster. As I consider the psychical set up highly crucial in how the logics

¹⁰ Above the district court is the two High Courts courts [DA: landsretten] and the Supreme Court [DA: højesteretten].

of court play out and are materialised, I took photos of some of the courtrooms to enable the reader to get more intimate with the space.

	DEFENDANT // PLAINTIFF	TRIAL DAYS OBSERVED (TOTAL NUMBER)
1	Abdi // Dorte	2 (2)
2	Mads // Emma	1 (1)
3	Sala Maria // Viola	1 (1)
4	Hamid // Maha	2 (2)
5	Asante // Tilde	1 (1)
6	Aziz // Charlotte	1 (2)
7	Markus // Nanna	1 (5)
8	X // Y	1 (3)
9	Wakim // Rikke Hassan // Line	2 (3)
10	Emil // Anna	1 (1)
11	Lion // Hanna	1 (1)

Table 1: List of trials attended.

I base my analysis on 11 court case observations (app. 70 hrs, 180 pages of field notes). 11 might seem to be a clear-cut number, but – as the general theme of this thesis would seem to be – all human interaction is complex; the neat number of 11 covers more messy math. In the table above, I have listed the trials attended. The names are pseudonyms in accordance with the language origin of their actual names. To ensure greater anonymity, I have not provided the court dates and have altered certain details in the shared empirical material. The order of trials is changed, and I will not be referring to the numbers or names to hinder connecting exposed details to specific cases. Most trials followed the time schedule as described in a following section, however some were planned to be processed through several court days, others got postponed and consequently took up more days (which often happened when a translator did not show¹¹). In 4 trials, I did not observe the entirety of the processing for a variety of reasons relating to postponing of proceedings, and my time scheduling. One trial did not even begin, as the translator did not show. I yet consider it to be part of my empirical

¹¹ In 2018, the Danish government signed a deal with the translation company EasyTranslate, which has been greatly critiqued in relation to the translator’s working conditions, their insufficient skills, and the instability of translator’s presence (Abrahamsen, 2019).

material, as I gained information about the workings of the system: the practical reality of using translators, police officers' mundane responses, and the enforced restrictions on communication between the defendant and their close relations. Sitting and waiting outside and inside courtrooms has been a big part of doing observations, not only in that trial.

USING INTIMATE EXPERIENCES

Being present in courtrooms allowed me to attend to the wealth of trial logics, and the courtroom professionals' ways of relating to the parties. It was an emotional endeavour and not unproblematic. I was not invited but imposed myself on a happening in peoples' lives that was defining and distressful. The parties' experience of trial also got affected by how I acted in the courtroom. I was indeed aware of this position and tried to declare my presence in a thoughtful manner, but often struggled to find the right face and words.¹² Generally, it seemed that the parties and present relations were okay with my presence after I described why I was there.¹³ Sometimes I felt, I showed them support and attentiveness through eye contact and presence in a manner the courtroom professionals did not. It seemed to ease the people personally involved that I was not investigating them per say, but the system. It has been a deliberate choice not to critically analyse the people occupying the more powerless positions of parties in-themselves, but people occupying powerful positions in the carceral system's ways of relating to them. A couple of times, the parties and their relations reacted to my presence before I introduced myself, as described below:

The spectators of the defendant have sat down on the chairs closest to the defence counter. I also go into the courtroom and sit down with a chair in between to give them some space. They look at me a bit puzzled. The mother asks who I am, and they all look at me. I explain the best as I can: "*I am doing research on how the court system solve and represents conflicts between people*". The person closest to me [the defendant's friend] asks if I'm from the prosecution: "*No, University of Copenhagen*", I say. "*Okay, it sounds exciting*", he replies. I say that they should let me know, if they have more questions, and that I understand if they experience it as a weird that I take notes; it will of course be anonymized. There is a pause in our conversation. They are quiet. Then they look at the defendant again and start talking with him.

¹² I usually declared my presence when I found my seat in the courtroom, and I made sure to address the defendant by eye contact. I said something along the lines of: "*I just want to present myself, it might be nice to know who is in the room. I am doing research on court trials and how conflicts are represented and solved, so I'll be taking notes, but all will be anonymized. Please let me know if you have some questions about it*".

¹³ With exception of one defendant.

With my presence, yet a professional stranger imposed on an intimate happening in their lives and influenced the atmosphere. Already subjected to the power of the state, they were now subjected to my analysis. When asked where I come from, I answered: University of Copenhagen, where I work, and not Lund University where I study. Reflecting upon this, I think it was important for my ethical reasoning to *do something* with the material beyond merely writing a thesis. There is something quite problematic about operationalizing people's intimate experiences for your own benefit. Interning at a research centre, I used the empirical material to write a proposal for a conference on sexual violence with my supervisor, which surely would not dissolve the problematic aspects either. Within black feminist theory, there is a shared commitment to activate scholarly work to benefit those who are "*most affected*" (Richie, 2012, in Heiner & Tyson, 2012: 14), which in this case are those affected by carcerality and/or sexual violence. From continuing reflections on for whom and how this work should be accountable for, I will try to disseminate beyond academia's walls to honour the insights I have taken with me from being in court, realizing that it is also insufficient and inevitable will benefit me. To my knowledge there are no empirical investigations of court trials within Scandinavia from an anti-carceral feminist perspective, which for me prompt the urgency to produce such an analysis and make the empirical arguments available.

Having eyes from the outside is a form of oversight, sociologist Nicole Van Cleve (2016) argues, which disrupt the routinely ways of the system. From her experience of doing courtroom observations, she considers being present in trials as a form of activism (2016: 185). Faria et al. (2019) conjoins arguing that simply being present in trials ignored by the media is a way of attending to the silenced and marginalized. Activist court watch groups have been formed exactly due to the importance of being present in legal proceedings (Ibid.). Faria et al. (Ibid.) share a story from one of the authors' fieldwork, where a family member to a party in a monthly long trial told her about the differences when she was present and when she was not. The family member experienced that when the courtroom professionals felt watched, they behaved "better" (Ibid.: 13). I consider these observations important in relation to how I might have affected the space.

RITUALS OF TRIALS

Once I had participated in a couple of trials, I could feel the rhythm and expectations. When entering a courthouse, you go through a metal detector and your belongings are checked as if in an airport. Then you need to sort out where to go to, which floor the courtroom is at, and perhaps where the

toilets are. The courtroom is not available before the legal secretary unlocks the room 10 minutes before the trial begins. When the defendant is an arrestee, they are accompanied by two armed police- or prison officers, otherwise they show up on their own. The trial begins when the judge and two lay judges enter, but the experience of going to court of course has another beginning for the parties, exceeding the physical space of the court and rituals of trials. When the judges enter, everyone in the room needs to stand up. If not immediately doing so, the courtroom professionals will make a remark, as happened in one trial where the defence lawyer told the defendant to “*Stand up!*” with firm tone of voice. They were the last ones to sit again.

After the trial has been summoned by the judge, the prosecutor presents the case and its investigation in the so-called initial referral. Then the prosecutor interrogates the defendant, followed by the defence lawyer. Once witnessing, the defendant rises from the seat next to the defence lawyer and moves to the witness chair. The case proceeds with interrogation of the plaintiff. The plaintiff is not allowed to be in the courtroom before witnessing to ensure they cannot bend their explanation in relation to the statement of the defendant. Their complainant’s lawyer enters the room before them, and briefly discusses if a request of “closed doors” has been put in. This is a right the plaintiff has, entailing that all possible spectators shall leave the room to minimize the exposure of retelling the incident (Civil Procedure Code: §29a). The closed doors, however, did not shut all noise out. The old courthouse of Copenhagen does not deliver on what is granted a right. I have been able to hear short sentences when stated in a raised voice, and a number of times I heard the plaintiff cry. I twice was granted special permission to observe the plaintiff’s interrogation – entailing that the plaintiff consented to me being an exception – thus in 6 cases I observed the plaintiffs’ interrogation. The complainant’s lawyer can also file in a request to have the defendant leave the room while the plaintiff witnesses, on the ground of ensuring a better statement (Civil Procedure Code: §845, p.6). The defendant is then placed in a separate room, where they are able to listen to the interrogation but not see it, nor be heard unless their microphone gets turned on. The defendant does not have the same rights. The judges were often reluctant to accept the latter. Many of them questioned why the plaintiff have that need, and the defence lawyers argued of the right of their client to be present. One defence lawyer prompted it as a dramatization of the case, if his client should leave the room, as it implies and acknowledge that the plaintiff is very emotional due to her experiences. After the interrogation of the plaintiff, the complainant’s lawyer declares an evaluation of harm done translated into an economical compensation (DA: tort); the claim varied from 15,000 – 110,000 DKK. In all the trials

I observed, the plaintiff left after their interrogation, and thus only participates in a short amount of time.

A lunch break gets initiated either before or after the plaintiff's interrogation, typically from 12:00-13:00. If there are witnesses, they get interrogated afterwards which typically last 5-15 min, in contrast to the 1-2 hours interrogations of the defendant and plaintiff. The trial proceeds with the documentation section in where evidence not presented during interrogations are put forward. The documentation varies from forensic investigations, police reports, written material (mail, messages, etc.), photos, etc.. Here the personal investigation report is also presented. After that follows the closing arguments. Firstly, the prosecutor will make their case, summing up the arguments in favour of their position, then the defence lawyer do the same. The defendant has the possibility of having the last word. Even though it is the only time during the entire trial where there is space for one of the parties to speak freely, it is really not a free space. As experienced in one trial, there are clear expectations of what is relevant and what is not.

Defendant: *It just really sounds like their explanations are imprinted on each other. Like, in her testimony, there were also things that weren't really connected, and I have really noticed her signals ...*

Judge interrupts: *All that we have heard. Was that what you wanted to say?*

Defendant: *Yes*

As the quote illuminates, the judge intervened by evaluating his statement to be "already presented" and thus irrelevant. The defendants typically did not use the opportunity of having the last word. I experienced their body language signalling being overwhelmed and unsure of what to express. *What to say after such a process?* The case is then fully presented, and the judge and lay judges adjourn to the deliberation room bordering up to the courtroom, where they often stay during the lunch break. Sometimes the judge declares an approximate timespan for when they expect to have a ruling ready, often they do not.

And then we all wait.

This time is heavy. During this time the defendant often goes out to get some air, but as it is not a clearly defined time section, they are urged to return shortly after. Their uneasiness is visible. The courtroom professionals seem to be considering their work done at this stage. Often, they pack

PROCEDURES OF TRIAL	
The courtroom is opened	By the courtroom secretary The courtroom professionals enter as well as the defendant and potential spectators
The trial is summoned	By the judge
Initial referral	By the prosecutor
Interrogation of the defendant	1) By the prosecutor 2) By the defence lawyer
Interrogation of the plaintiff	1) The complainant's lawyer presents requests 2) The plaintiff and their potential spectators enter the courtroom 3) The prosecutor interrogates 4) The defence lawyer interrogates 5) The complainant's lawyer presents an economical compensation
Lunch break	
Interrogation of the witnesses	1) By the courtroom professional that has called the witness in (either defence lawyer or prosecutor) 2) By the other courtroom professional
Documentation	1) By the prosecutor 2) By the defence lawyer
Closing arguments	1) By the prosecutor 2) By the defence lawyer
Last words	By the defendant
Deliberation	The judges adjourn
Presentation of ruling	By the judge

Table 2: Procedures of trial, based on my observations.

up their stuff, look at their cell phones, write emails, and in general attend to other things than the physical space they take part in.

When the ruling is declared, all stand raised and sits down only when the judge says so. The legal assessment is put forward as well as the possible punishment. The reason behind the ruling consist merely of 2-4 sentences. This section lasts no more than 5 minutes and usually less. Hereafter the judge and lay judges leave the room and the trial is done. The assessment has been made. The defence lawyer and defendant discuss the ruling. If they want to complain, the defence lawyer will get back to the defendant.

Not long after, the courtroom is again empty, and the courtroom secretary locks the door.

BUILDING RELATIONS

In the conference proposal, I attended to the courtroom professionals' use of discursive patterns, and I conducted interviews with six of them to create material on their reasoning behind presenting the cases in specific manners. Doing interviews and observing cases at the same district court, I got acquainted with some of the courtroom professionals. They were all interested in what I was doing, and what my results might be. It seemed that they were under the impression that it could not be a critique of them nor the system but was pleased that someone was giving their job attention. There were however also cracks in the epistemic oppression, and it seemed important for them to be certain about what I actually was investigating. One of the prosecutors felt especially invested in the research. During one trial, he defended my right to be present during the plaintiff's interrogation which led to the judges adjourning to attend to the issue of my presence. I thus caused an interruption and turned attention to my project at the expense of processing the case. It felt unreasonable and I was embarrassed about this turn of event and experienced the prosecutor's insistence as a weird alliance. I tried to mimic my apologies to the defendant (the plaintiff was not in the room), having to sit and wait for the trial to move forward. In the end, I was allowed to stay but the defendant's friends and partner had to leave.

The mundane experience of being at one's job, sometimes seemed to produce a neglect towards the parties and a focus on what was different and therefore more interesting. During the first trial I

observed, I was sitting in the hallway due to “closed doors”, as a break in the plaintiff’s interrogation got initiated and the doors opened.

The complainant’s lawyer comes out, talks a lot and loud. The defendant goes to the toilet. The complainant’s lawyer asks who we are (me and a Ph.D. student), what we study/research, how we have found this case etc. I have shut down my computer screen and reply more quietly.

The atmosphere is off. The plaintiff has come out. She has tears in her eyes. It looks like she's waiting to go to the bathroom, as she's standing close. The complainant’s lawyer is not attentive to her and does not tell her that the defendant went in there. Instead, she talks to the Ph.D. student. The defendant comes out of the toilet. The plaintiff got close to him and expresses discomfort. She goes to the toilet. The complainant’s lawyer does not comment on it.

The complainants’ lawyer’s neglect resulted in an uncomfortable situation for the plaintiff where she got in close proximity with the defendant. I reflected upon my complicit behaviour in enabling the situation by not sharing information. Hereafter, I tried to take on a more active role when needed.

On some occasions, I got closer to the people related to the parties and engaged in longer conversations with them about the turn of events (N: 2). During one trial, I had eye contact and exchanged small polite phrases with two women sitting behind me in the spectator section. As they had heard me briefly talking with the prosecutor, they knew I was there doing observations. It was clear that they had a personal relation to the defendant, and throughout his interrogation had several low-grade outbreaks. As the first day of court ended and we all had left the courtroom, they approached me while I was unlocking my bike. One of them told me that *“I’m dying not being able to say anything. My name got mentioned several times during the trial, and I just wanted to shout and scream: “Yes, it’s me - and it’s a lie what he says”*”. They both explained to have information about 6 more women the defendant had sexually abused, but even though they had contacted the Prosecution Service, nothing had happened. They told me that they are angry, and it is *“some fucking bullshit”*. I told them that I had the prosecutor’s contact information which I could provide them (realising that I shared something which might not to be mine to share). At the same time, the prosecutor exited the building, and one of them found courage to walk over and approach him. The other explained that she was too angry to talk with him right now. After returning, she explained that the prosecutor had said that he might consider expanding the case, but that he needed to talk with the defence lawyer about it. The two of them hugged and seemed excited.

Although initially feeling uncertain about what “an appropriate reaction” on my behalf would be to their stories, it eased me to think about that when people in pain decide they want to share that with you, the ethical respond (as a researcher) is to be attentive and supportive. Reflecting upon this, I think I impersonated a link to the system they experienced as appealing. I was neither a representative of the system, but due to my “professional interest” in the trial, they could trust that I was interested in listening to their experiences. Their experiences illustrate the court system’s power to deem who is allowed to be involved. They shared information with me about their life circumstances which spoke of a marginalised positionally. This relates to the unequal access and treatment within the court system. I did not attend the other court days, so I do not know if their interaction with the prosecutor actually had an impact and if they were allowed to witness.

CONTRIBUTING TO CARCERALITY

From being present in courtrooms with an investigative interest in critically analysing the practices, I took part in a situation where I now have to contribute to the system, as a defendant verbally threatened the prosecutor as well as recorded me with his phone. Police officers were present for some of it and my name and number were put on record. I was not left with the possibility of not declaring witnessing. The experience provided me with information on another aspect of the juridical system: reporting of testimonials. 3 hours after leaving the court, the police officers contacted me. I had not processed the experience sufficiently, and I did not want to give my testimony at a stage where my words were not thought through, knowing that they would be used to penalize the man. The officers texted me, as I did not answer their calls, proclaiming that they just needed some information from me to proceed with the case and that it would be 2 minutes. I assumed they needed some formalities, and I returned their call. Thinking back on this, I was still in a highly emotional stage and felt pressured to do “what the police is telling me”, despite not necessarily believing that to be the right thing. The officer actually did want my testimony, and I ended giving it then, even though it did not feel right. Now, the words I have spoken will be used in court as evidence against the man, and I will be referred to my statements when witnessing. It gave me a bodily experience of having the conflict stolen from me and forcefully be placed in a system which takes on the conflict (Christie, 1977), regardless of how I would like to solve it.

WORKING WITH THE MATERIAL

I have been guided by theories and frameworks from feminists working inside and outside academia. My analytical apparatus is indebted to BIPOC feminist scholar-activists who are the forerunners in anti-carceral feminism and TJ/CA movements (Kim, 2020). From my empirical material I analyse two interconnected issues: 1) how court logics impose and delimit specific ways of handling conflicts, and 2) how the court logics enable and constrain the courtroom professionals to react on the parties' affective responses expressed during trials. I have strived to conduct an empirically sensitive analysis, and the number of court cases observed allowed me to see repetitions and get empirically confident about the logics and affective responses I abstracted. Although I could refine the analysis by attending more trials, I did experience a level of saturation. The logics might be considered tentative, as they are grounded in me as an observer, based from one court and due to the quantity of trials, but are however supported by prior research.

I approach the court's logics as *semiotic systems* (Weber et al., 2013: 354) of conflict processing within the institution which have a structuring although not determining power on behaviour. Rather than presenting logics as enclosed and complete systems of meaning and interpretation, I present a variety of ways in which the semiotic systems got expressed through central ideas, rituals, architecture, wordings, movements and expectations. Some arguments on the logics are highly grounded in the embodied transcripts and some are to a greater extent theoretical scrutinization, however all the arguments resonate with the observations I have done. In the second analysis, the reader gets closer to the affective arrangements within court trials and the consequences of the court system's logics. I approach *affective responses* as bodily and verbal reactions and orientations to the immediate social setting. The logics influence how the parties' affective responses may be expressed, are perceived, and can or cannot be attended to by the courtroom professionals. (Re)reading my empirical material I attended to the details of wordings, remarks of body positions, relational dynamics, and recalled my memories of the affective arrangements of the space.

CONCLUDING REFLECTIONS

Doing courtroom observations allows to generate rich and complex empirical material to illuminate the workings of trial. I have reflected on various ways in which my presence might have affected the parties' experiences of going to trial. While my hope is that I contributed positively by overseeing the courtroom professionals, trying to create an atmosphere of care, and producing rare insights by applying an anti-carceral feminist framework, I have nonetheless imposed myself and subjected

people to my analysis. Spending roughly 70 hours in courtrooms, allowed me to experience the repetitions and expectations, and thus analyse the logics of conflict processing embedded in the praxis of trials. Producing embodied transcripts and attending to bodies in affect and the arrangement of the space of courtroom, enabled me to analyse how the logics constrain the courtroom professional's in their attendance to the parties and their affective responses during trial.



**Picture 4: Courtroom 11.
Taking from my seat in the spectator row.**

LOGICS OF COURT TRIALS

From being seated at the spectators' row, I have abstracted semiotic systems of conflict processing at play and will argue how these logics impose and constrain ways of resolving sexual violence. As the very spatial construction of courtrooms is part of structuring interactions, I firstly do a reading of the space, and then turn to the epistemology of court in assessing social happenings. I argue that the courtroom professionals see their work as informed by ideals of equality and the quest for truth and consider the legal outcome to be beyond the reach of their personal control. Then I turn to how my empirical material demonstrates the binary of victim and perpetrator informed by stereotypes and constructions of who is considered already innocent or guilty, as well as the struggle representation in relation to the epistemology of court. Lastly, I put forward how the parties are hindered in their accountability and healing processes. This first analytical chapter enables me to analyse how the courtrooms professionals are constrained in attending to the parties' affective responses in relation to the logics.

READING THE SPACE

The materiality of courtrooms has recently been attended to by critical and feminist scholars, seeing that manifestations of power can be read from the very architecture of court (Bens, 2018; Brooks, 2019; Dahlberg, 2009; Farida et al., 2019). Spatial areas are designated to certain functions and bodies (Brooks, 2019: 335f). Attending trials, I experienced the courtroom as the very scene of the theatre of court. As illustrated in the drawing below, the judge is centred by the judge desk with the lay judges seated next to them. When the judge speaks or presents a ruling, they speak from an elevated place, as the floor is raised at the back of the room (illustrated by the line). To the right of the judge's desk, the prosecutor is seated, and to the left the defence lawyer with the defendant next to them. From the two desks, two various accounts of a social happening are proclaimed. The empty space between the courtroom professionals is of symbolic importance in the negotiation of the past, as observed by Dahlberg (2009). As no party inhabits this space, it represents a "neutral no-man's land" where the alleged "objective" ruling will be found (Ibid.: 180). It was very rare that the courtroom professionals

stepped into this space, and it only happened when there was a reason to do so; getting water¹⁴ – as the jugs are placed at the judge desk – or when showing evidence to the judges. In one case, a family member to the defendant transgressed the empty space to get water for the defendant. It immediately seemed off and to be breaking script; the space is not meant to be tainted. The eyes of the prosecutor and defence lawyer followed the family member until he again was seated.

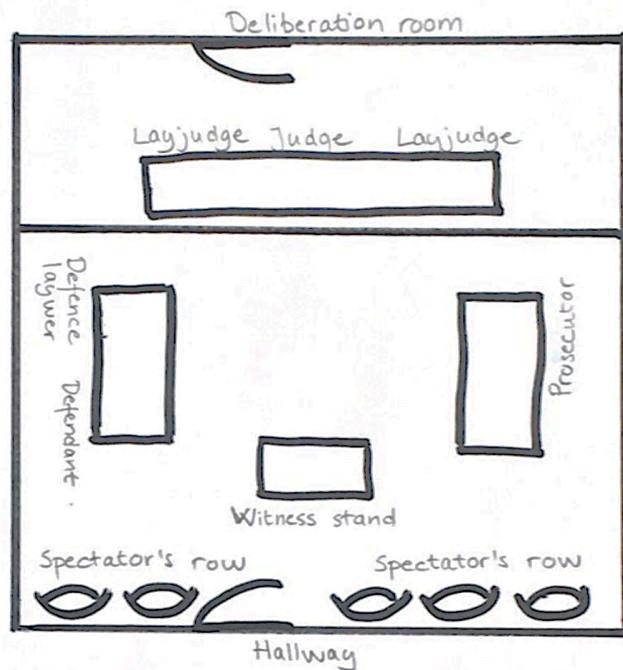


Figure 3: Drawing of courtrooms, based on my embodied transcripts.

The desks are covered at the sides and front. This conceals a great part of the body, leaving only the torso to be seen. Bodily reactions are consequently less visible, which I suggest centralise words. Interestingly, the judge desk conceals the most, as visible in Picture 4, which I read as a way of manifesting the judges’ superiority; being “more mind than body”. I experienced that the stability of who inhabit which seats, increase the feeling of performance. I quickly had expectations about e.g. the person sitting in the chair of the defence lawyer to act in a certain way. The spatial segregation further demonstrates who is educated within the law and who is not. The courtroom professionals are gathered at one end of the room, the parties in the middle, and the spectators (be it family members, friends, social workers etc.) at the other end. Thinking about Christie’s (1977) argument of people

¹⁴ The only drink offered is the transparent substance of water, and even the courtroom professionals need to bring their own coffee and tea.

being pushed away from their own conflict when submitting it to the justice system, it is very easy to continue the symbolic reading.

Moving from the courtroom to the architecture of courthouse, I suggest it does not accommodate the needs of the parties. In several trials the plaintiff expressed discomfort with being in close proximity to the defendant. The long corridors with doors to different courtrooms do not allow for the plaintiff to be in a separate waiting hall or use other toilets than the defendant. More so, there are not meeting spaces for the parties to engage with their lawyers or close relations, whereas the judges have their own deliberation room. Although some of the critique concerning the functionality of courthouses have recently been addressed and sought to be acted upon by the Courts of Denmark (Rørdam, 2016), I consider that the courthouse and courtroom have been built and still are used with the system and professionals in mind, not the parties.

THE CLAIM OF OBJECTIVITY

Part of court's authority is connected to court's claim of accessing truth through its proceedings (Bladini, 2013; Smart, 2002). Thinking about Haraway's critique of the god-eye-trick (1988), it is compelling to recall that the very symbol of the court system is the blinded Greek God of Justia. Haraway (Ibid.) argues that claims are situated, and their embodiment should be made transparent. In court, bodies are hidden away and the symbolism of blindness is interlinked with court's claim of being capable of having a pure, unbiased outlook of a happening. The judges' ruling in cases of rape is grounded in the Penal Code, chapter 24 §216-236.¹⁵

§216 Rape is punishable by imprisonment for up to 8 years for the person who (1) force intercourse by violence or threat of violence or 2) obtain intercourse by other unlawful coercion, cf. section 260, or with a person who is in a state or situation in which the person is unable to oppose the act.

From these paragraphs' happenings are scrutinized and must correspond to be designated a crime. The court is thus interested in physical signs of violation, evidence of threats, observations by witnesses and evidence on the plaintiff's state and situation. The prosecution has the burden of proof, and reports, pictures, etc. that are brought forth to perform a version of reality gets described as

¹⁵ The EU Istanbul convention is encouraging EU-countries to centre consent. The monitory group GRIEVO (2017) has been pushing the Danish government to rethink the law, which currently is in progress (Ministry of Justice, 2020).

“evidence” and “documentation”. Surely, even the evidence produced by the justice system is faulted, yet when a mistake in a report was exposed during a trial, the report was still employed as “evidence”. Contradicting the idea of bodily marks as evidence of rape, marks may come from consensual BDSM sex, and non-consensual sex may leave no marks. Based on experiencing the law-in-action (concept of Roscoe Pound, 1910, in Faria et al., 2019), the court’s epistemology concerns acts and excludes societal context. The beginning and ending of a case were typically designated a short time span (often 1 day), which consequently delimits what can be attended to. The case gets isolated from previous and future situations. By decoupling interpersonal stories of violence from a historical and structural analysis, I assert that the court individualises sexual violence.

The legal paragraphs were interpreted and used differently. The ideal of a neat separation between sex and rape thus got muddled, however not acknowledged. In one trial, a phone call between the plaintiff and employees from the emergency call centre was presented as evidence. During the call the employee asked a colleague for guidance:

Employee1 (assumably female) to the plaintiff: *It’s really a tough one. I will just ask my colleague.* [Puts her on hold and redirects the call to the colleague in charge] (...)

Employee2 (assumably male): *To me it sounds like she’s been willing.*

Employee1: *Yeah, okay.*

Employee2: *What does she think she’s been exposed to?*

Employee1: *Well, it’s the thing about being...*

Employee2 interrupts: *When you have said yes first, and then no later, then it’s not rape.*

Employee1: *Yeah, it isn’t in my terminology either.*

The female employee expressed doubts whether the experiences of the plaintiff corresponded with the legal definition of rape, whereas the male colleague expressed greater certainty that as she allegedly had been “willingly” at first it cannot be a rape. This argumentation is an example of why creating a rape law based on consent is not a fault-free solution either. The exchange was addressed by both the prosecutor and the defence lawyer during their closing arguments. The battle over the meaning of the law expose the legal paragraphs as inadequate definitions and counter the court as a neutral site creating objective rulings. The defence lawyer and prosecutor execute their role by arguing that they present the accurate version of reality, however claim - as one prosecutor said - that it is up to the court to decide “*what happened and what did not happen*”. During yet a trial, the complainant’s lawyer suggested the plaintiff to go to therapy for victim-survivors, and the judge immediately intervened by stating: “*That we do not need to solve here*”. The key-function of the court

system is to assess and impose definitions over past happenings, and as the complainant's lawyer presumed the happening to be rape, she overstepped her role. I experienced the judge's intervention as a way of regaining authority over truth. A rape is not a rape in legal terms, unless deemed so before the court.

THE RULING FROM ABOVE

I experienced the courtroom professionals treating *the* law and *the* court as entities raised above their influence, or at least beyond their responsibility. Smart (2002) opposes this representation, seeing that the court system gets empowered as entities almost have a will on their own; *the* court rules, *the* law says. By not thinking and talking about the court system as a result of a number of social acts, Bladini (2013) argues that the court's verdicts are understood as unavoidable necessities rather than a consequence of actions and decisions. A judge in one trial, similarly defended the law's legitimacy and portrayed the consequence as something external to her.

The defendant interrupts: I'm so disinterested in what it [the law] says. I don't care, you don't care about me.

The judge leans forward towards the defendant and states sharply: You must respect the court! There are restrictions and rights. Most were written 100 years ago. I do not have a share in those rules, but I do apply the law and so should you!

The courtroom professionals did not seem to face the impact they personally have on trials and peoples' lives. Courtroom professionals might have a desire to uphold the ideal and enlisted human right of "equal before the law", but discrimination nonetheless occurs and is practised unconsciously following "business as usual", as a prior study from Sweden has shown (Shannon & Törnqvist, 2008). Investigating Danish trials, Johansen (2019) found that judges took notice of how defendants explained themselves, how they sat, gazed, which emotions they expressed, and argues that these impressions may affect assessment of guilt and penalty. From my observations, I experienced that the courtroom professional's related differently to the parties, as I return to.

When submitted to the justice system, the system has power to process the conflict as the logics dictates. The timing and scheduling of court are the determining factors for when and how long time it takes to "solve the conflict". In one trial, the court secretary spoke with a witness over the phone and told them that if they did not show for court they may be arrested. Judged by the

conversation, the witness on the other side of the line, was grappling with how they could potentially be arrested, as they have not committed a crime. During trials, bodily needs are expected to be repressed to fit the schedule of breaks. In a trial, a friend of the defendant left the room during the documentation-section, which did not please the judge and he got reprimanded: “*When you are in a courtroom, you do not go out! And if you finally do, you stay out, you do not come in again. Well! We are moving on.*”. By reacting on his needs and thus leaving the courtroom in discord with the time schedule, the friend crossed the rules. The judge may however initiate a break when pleasing to do so. In another trial, a lay judge mentioned that he needed to pee, and a break was granted. Notably, people being in closer proximity to the conflict do however not have a say in how the day is structured, or how they would like to have their conflict handled; in great contrast to TJ/CA processes where attendance to needs and capacities are crucial and structuring.

THE DUALISM OF VICTIM AND PERPETRATOR

The justice system cast the parties as a plaintiff or defendant, leaving little if no space for nuances and complexity. The axes of interlocking oppression reveal that there are “*no absolute oppressors nor pure victims*” (Collins, 1990: 126), the justice system in-itself thus works against the insights of intersectionality and the messiness of reality but correlates with the macro-narratives of the clear roles of victim and perpetrator. The categories presuppose an understanding of personhood as something autonomous and separable from influence. In order for an individual to act in a way that can be judged as “guilty” and “criminal”, the individual’s “free will” to choose otherwise is assumed. This mimics the liberal idea of the rational actor (Jokila & Niemi, 2019: 127) and misses the influence of adaption of social norms and various positionalities. From a feminist perspective, the social fabric should never be excluded from conceptualizing choices and actions (Ibid.: 121). Autonomy is rather conceptualized relationally and through interactions (Ibid.), as also practised by the TJ group Generation FIVE.

Social imaginaries of other binaries and categorisations inform the dualism of victim and perpetrator. As argued by Russo (2019: 97), innocence is connected to white, middleclass, cis-gender, able-bodied femininity and young, black masculinity is connected with guiltiness. As already argued, this fails to consider the multitude of sexual violence. The courtroom professionals seem somewhat aware of stereotypes informing the dualism. During the closing arguments in one trial, the defence lawyer stated:

When I first visited the jail, I could feel that it was especially important that the defence made an effort; here we have a previously punished, dark foreigner, sentenced to expulsion. And he is facing a blond priest in the Danish Church. But in a Danish court, a sentence must only be reached when the court is raised beyond any doubt.

The defence lawyer noticed the parties' racialization, nationality and the fact the she is a priest and he has a previous sentence. Surely, he put these reflections forward about the defence's need to do an extra effort, as he knows the effects the social categories might have on the trial; as Russo argues "*who is [seen as] a real and always already perpetrator*" (2019: 97). I did however not experience, that this acknowledgement led to any changes of the procedures or to any reflection on the court system's possible reproduction of stereotypes. The defence lawyer operationalized it to dismantle the claim of harm. Of the 11 trials, 7 defendants were BIPOCS. In 5 trials white women were plaintiffs and BIPOC men the defendant; 1 trial a white woman plaintiff and a brown woman the defendant; and 1 trial a brown woman plaintiff and brown man defendant. This speaks to who wants and gets to use the justice system. To me, the racialised discrepancy illustrates the point that harm committed by a BIPOC is considered worse than when the same harm is committed by a white person.

None of the trials, had a non-cis-woman as plaintiff, which speaks to the construction of the victim. Nils Christie's (1986) famous piece on the ideal victim deals with the issue of divergence from the construction of innocence as a victim, reflecting on how it affects their credibility and the legal outcome. There are things you are expected to notice as a victim and there are things you should not. In one trial, the plaintiff was quoted in the police report to have said that the defendant had a nice breath, which the defence lawyer portrayed as peculiar to note:

The defence lawyer speaks calmly. He reads out from a police report that the plaintiff has described that the defendant had a nice breath and asks the plaintiff to elaborate

Plaintiff: *There are many who have bad breath.*

Defence lawyer: *Even so, it's a bit of a peculiar thing to notice during a rape.*

(...)

The prosecutor intervenes after going through his papers: *Let us have the whole sentence: "had a nice breath, but smelled of beer and cigarettes"*

Defence lawyer: *Yeah well, do you any query concerning this?*

Prosecutor: *No, but it is still important to include.*

Stepping aside from the expected narratives by noticing something about the defendant that was not purely bad, the plaintiff's innocence got suspected. The category of victim does not easily welcome experiences beyond subjection to pain.

CREATING VERSIONS OF THE PAST

The ruling over the past entail re-ordering and re-working of happenings (Dahlberg, 2009: 198). Some elements are deemed relevant, others are excluded. Recalling brown's (2017) argument on the importance of "why" in opening up a happening, I will propose that "the motive" might be seen as the "why" in a legal framework. Some of the courtroom professionals touched briefly on motives in their proceedings, others did not. In one trial, the defence lawyer even claimed that the motive is irrelevant to avoid unpinning a proclamation: *"Motive? There are some cases where women give false reports. It is a fact that it happens, and to that the motive is indifferent"*. In the act-oriented epistemology, the "why" is operationalized and diminished to fit a specific version of reality, and not to gain a greater understanding. In this paradigm, it does not matter if e.g. norms perpetrate certain ways of acting or if the harmed person has experienced harm themselves, what matters is the "evidence" of an act.

The prosecutor and defence lawyer prepare the interrogations, foreseeing that it will generate a certain version. Parties and witnesses cannot freely present their stories or wants but are obliged to answer the questions. They thus have less influence on how their experience of reality is represented, and how it is used. When interrogating, the courtroom professionals either work towards building up or dismantling the plaintiff's and defendant's credibility. During their closing arguments they almost always commented on whether or not the parties' statements were credible. They typically described a credible statement by the words: coherent, detailed and consistent. Refby (2001) argues that especially in so-called "western" societies, coherence in narrative statements is highly stressed. However, this may contradict with how a person with trauma is able to describe the happening (Ibid.: 68), which I will provide an example of in the following analysis. The messiness of social interactions was present in the parties' statements but not readily welcomed in the logics of court. It was often addressed by the defendant that they had experienced some signals from the plaintiff to engage in a sexual encounter, which the plaintiff refused (N: 5). Turning to socialisation it would be possible to give perspectives to why such disparities might exist, but this context is not attainable within trials. The plaintiff sometimes expressed that they had experienced a somewhat diffuse fear and threat, which was not accepted by the courtrooms professionals as the threat did not refer to a very explicit act of violence (N: 4). The epistemology does not enable to take account of a general fear of sexual and gendered violence.

RECODING: RELATING TO MAINSTREAM NORMS

Although societal context is cut off in the act-oriented epistemology, stereotypes and norms perpetrate the recreations of the past and are part of producing them. The courtroom professionals actively build up narratives in relation to mainstream norms. They construct an implicit “us” calling upon the judges to take part in the “us”, and to align their ruling with the norm-set they put forward. Presenting the extensiveness of this process, lies outside the scope of this thesis. Rather, I have chosen to present a few observations in relation to the operationalization of sexual and “cultural” norms. Ideas of what constitute “normal” and “willingly” sex was a central part of which questions got asked and how the courtroom professionals presented their closing arguments. In one trial, consented spooning was represented by the defence lawyer as an act that *“must reasonably be seen as an invitation to something more”*. In another trial, the prosecutor rhetorically posed in her closing arguments: *“And one might ask, who wants to have sex when you're on a rocky ground?”*. In cases where the sexual interaction stepped outside the mainstream norm, it was addressed. In one trial, the plaintiff was at the time in an open relationship, and she was asked to elaborate on this construction in relation to why she could not have falsely accused the defendant, as she was not cheating on her partner. In the trial with the female defendant, both her and the plaintiff got asked about their sexuality. By observing a case that diverge from the typical myths of rape, the expectations of court got clear. Questions about sexuality was never asked in cases of men // women. I wonder what it would have mattered if the plaintiff did not identify as being sexually interested in women; would the alleged harm be considered worse and more recognizable through the logics of court?

The reactions of present spectators sometimes took part in constructing collective bodies and highlighted what is considered normative behaviour. In a trial, one of the defendant’s friends reacted with a deep sigh, when the defendant answered that he and the plaintiff actually had not been talking during the party.

Defence lawyer: *During the evening until you had to sleep, had you spoken to each other then?*

Defendant: *Not really. I also thought it was cool that she made a move to sex.*

The defendant’s friend sighs deeply.

I read the friend’s reaction as an acknowledgement that talking before a sexual interaction constitute typical behaviour. The sigh was a representation of this shared cultural sexual norm. With the sigh comes a recognition and an affirmation that the exposed information would make the chances of

acquittal smaller. In trials with BIPOC defendants, ideas about “culture” was central in the interrogations and closing arguments. In one trial, the reported offenses happened while the defendant and the plaintiff were married. They both grew up in Lebanon and moved to Denmark as part of their academic training, where they met. During the closing arguments, the defence lawyer and prosecutor used elements of the parties’ statements in various ways:

Prosecutor: This is not an arch-typical Danish family and culture where we can just parallelize what we ourselves would do in that situation. Here, more honour-related concepts are at stake. Here there is more shame, as I see it.

Defence lawyer: One could - as one tie this to cultural matters - have seen someone who got married in their home country, had come here and was bound by cultural norms, and perhaps oppressed by the man’s regime. But that is by no means the situation we have in this case.

The prosecutor clearly evoked notions of “us” and “them”, portraying the parties to be outside of the Danish norms and urged the judges – belonging to the “us” – to consider other sets of norms when assessing the case. The defence lawyer on the contrary tried to create possibilities for them to be seen as part of the “Danish us”. As the parties have little say in how their conflict is represented, the courtroom professionals uphold a great representational power.

HINDERING ACCOUNTABILITY AND HEALING

Some defendants expressed a want to reconcile and to apologise to the plaintiff. In one trial, the defendant got asked about how he felt when confronted with the plaintiff’s experience of harm. The defendant expressed that he would like to give her an apology:

Defendant: *I got really sad of course. When you just had a flirt with a girl, and then it's a misunderstanding and she has not felt it the same way. Then it is... And also because Martha [a common friend] was sad.*

Defence lawyer: *So, what was it that you wanted?*

Defendant: *Just to let things be. I wanted to talk to [the plaintiff] about it, but then it became a case. I wish I could just sit and talk to [the plaintiff] now, and say that I am sorry. And if I have read the signals wrong, then I am real fucking sorry. I just think she's cute (...).*

As the fieldnotes illuminate, the defendant opened up for the possibility of having read “the signs” wrong. One might see this as just an easy way out, but I experienced it as a real intent of accountability. Such a process is however not possible to initiate within trial, nor does the process of trial help the harmer to recognize how their actions might have harmed others. The messiness of

violence in sexual encounters were part of both the defendants' and the plaintiffs' stories. The courtroom professionals on the contrary were searching for more fixated categories: can violence be proven or not. When a defendant admits the possibility of having done something wrong, they are simultaneously giving aim to the prosecutor in portraying them as guilty. The court system thus creates conditions which actively hinders the harmer to self-reflect, and instead pushes them to remember and present all the ways they were not responsible for the harm done to avoid state violence. The ones admitting to have harmed will get punished. From a TJ/CA approach this does not make sense at all. This initial attempt of accountability would be a fruitful beginning to embark on an accountability process. The defendant tentatively recognized the possibility of harm done, but it was clear that he needed assistance to fully understand how he had misunderstood the signals, and how his socialisation might have contributed to that. The defendant was not aided to change his behaviour or how to think about his positionality in various hierarchies. He wanted to make right, but his want of giving an apology might not correspond with the need of the plaintiff. In court the plaintiff never got to express her needs, nor how she potentially could see the role of the defendant in her process of healing. He was finally claimed "non-guilty" as it was not "fully proven" that the plaintiff had been in a stage where she could not resist. The harm experienced was not recognized, and no consequences was initiated for neither of them.

In another trial, an e-mail from the plaintiff to the defence lawyer was presented: "*I do not wish for something bad for him, but I want him to get help, so that he can become a good father*". The plaintiff was explicitly aiming for this conflict to be generative and wanted the defendant – her husband and future father to their child – to learn from the experience and to become accountable. The only consequences court can initiate are however carceral ones, which from a TJ/CA perspective indeed are "bad" and violent, and not pushing for good parenthood. In a TJ/CA process an intervention could be created which centre around her wants and needs. It seemed that a core need for her was for the defendant to realize how his actions affect other people. Thus, an invention could entail that he should go to therapy or coaching with this specific goal in mind, and that he in various ways and at an appropriate time should show the plaintiff that he understands the consequences the harm had for her, and the ways in which he has changed the behaviour patterns which caused harm.

CONCLUDING REFLECTIONS

I have presented how the logics of conflict processing embedded in trials play out in various ways and constrain possible conflict resolutions by imposing *one* carceral model. Turning to the very design of the courthouse and courtroom with its fixated furniture, I have alluded to the fixation of professional roles. More so, by casting a victim and perpetrator the assessment of past actions is rendered unnuanced as the courtroom professionals attempt to (d)establish the parties' innocence and/or guiltiness/complicity, mimicking the liberal idea of "free will". The act-oriented epistemology of court fails to recognize the social fabric where sexual violence plays out, as well as how the court by "its" very practice (re)produces mainstream narratives of rape. I have argued how the base model work against the insights of intersectionality and feminist accountability. The parties are not encouraged to critically reflect about their own actions or positionality but are instead questioned in a manner which will assist the courtroom professionals in presenting a specific version of the past.

The courtroom professionals as well as the parties are expected to behave in a certain manner. The trials do not enable flexibility but must proceed by certain steps. Through "its" *raison d'être* in assessing and ruling over the past, the court system neglect the experiences and needs of the parties. The people experiencing and committing harm are not able to present their own conflict nor have a say in how it should be solved. A (carceral) consequence is only initiated when the harm is recognized by the police, the prosecution service and finally the court system, and the people personally affected by the conflict are not part of designing that. As a consequence of the logics of trials, I argue that the court cannot be a place for ensuing conditions for healing and accountability.



Picture 5: Courtroom 32

AFFECTIVE RESPONSES

The logics of the court trials constrains possible actions and ways of solving conflicts. Building on top of the previous analysis, I attend to how the logics structure the courtroom professionals' (lack of) reactions to the parties' affective responses. The analysis begins with depicting the professional detachment, I then analyse the parties' affective responses to having their conflicts attended to through the imposed logics of court; being represented, interrogated, and subjected to the power of the carceral state. Beginning with the plaintiff¹⁶, I analyse how they in various ways expressed a need for support, and then turn to the defendants' and their close relations' responses to the immediate threat of state violence. As it will be clear, the affective atmosphere of the courtroom is loaded, but the logics of court insists on putting that aside in order to follow the predetermined proceedings.

PROFESSIONAL DETACHMENT

A lot of time in court passed while waiting. When they were not actively performing their role, the courtroom professionals quickly got preoccupied with preparing, organizing and texting. The courtroom professionals did not interact much with the defendants, whom often expressed distress. I will share a section from my embodied transcripts, describing the kind of atmosphere formed in the times-in-between in one trial. The translator had cancelled last minute, and another was called in. The judge and lay judges adjourned to the deliberation room, and left in the courtroom were the prosecutor, the defence lawyer, the defendant, two police officers, a law-student and me.

The defendant takes a tissue and wipes his eyes and nose. He looks down at his hands again. Officer1 has gone to the toilet. The other officer has already been.

Reverberating sounds from the empty stone hallway is hearable in the courtroom. The silence feels expecting.

One officer has again taken out his mobile and is looking at Facebook.

The defendant blinks. A soft tear. I've had eye contact with him a few times and tried to find a suitable grimace - a compassionate smile - but I do not seem to hit it.

The bells of town hall ring in the background. Half an hour has passed.

¹⁶ As the plaintiff only takes part in the courtroom during their interrogation, I have less material on this position.

The defendant unfolds his paper again and squeezes it. The defence lawyer sits further away from the table than the defendant, so they do not sit parallel.

The prosecutor looks through papers. (...) The defence lawyer yawns, while holding his hand over his mouth.

The defence lawyer takes out his headphones and folds them neatly. They were entangled before.

The prosecutor looks through papers.

Officer2 drums with his hands on his thigh.

The defendant wipes his nose.

In contrast with a lot of TJ/CA processes, the ones active in handling the conflict are not themselves engaged in the conflict nor in the communities of the parties. For the defendant and the plaintiff, the trial had a great significance; for the courtroom professionals it was another day at the office. The mismatch between those attitudes was quite unfortunate at times. In another trial, the complainant's lawyer passed documents to the defence lawyer to which he cockily replied: "*What then! How much do you want?*" referring to the economical compensation. By responding to the compensation as a playful game, the defence lawyer illustrated not acknowledging the gravity of his job and its effects on people's lives. Making argumentation into a game to master was also visible in yet a trial. Here the prosecutor had presented the sexual engagement as not being likely to have happened willingly. The defence lawyer commented on this in his closing arguments:

An 18-year-old who is with an older stranger? It might be that the prosecutor has personal empirical evidence to draw from, but I don't consider it unlikely [Smiles boldly].

The prosecutor and the defence lawyer were both men, and the defence lawyer's rejection of the prosecutor's evaluation of the sexual engagement as "not being likely" turned into an attack on his manhood, suggesting that though the prosecutor might not have been successful in attracting younger women, others - as his client - might have.

Other professional groups also expressed detachments in various ways. The police officers and prison guards (mandated when the defendant is in pre-sentenced arrest) often complain about time. In one trial, the court was summoned but had to – yet again – be postponed, as the translator did not show. As this was declared, the two officers' turned to each other smiling, and one jokingly stated: "*Well, that was a quick one haha*". At other times the police officers were on their phones or having eyes closed. In one case, a police officer reacted on my eyes on him. During the documentation

section, medical examination photos of the plaintiff's body were assessed. The officer rose from his chair as they went through the photos, glancing towards one of the copies. The defence lawyer declared that they could jump pass the photos of the vagina, as no evidence had been found in that area. At this point I caught eye contact with him. It was a weird moment. He quickly sat down, picked up his phone and started scrolling.

In two trials, journalists were present; one as the defendant is a social media influencer and the second due to the severity of the case. As one trial ended, and we were getting ready to leave the courtroom, a male journalist from a populist newspaper said to his female colleague: "*Now, watch out when you are spooning hahaha*", referring to a disputed element in the trial. The journalists were live tweeting from the trial, and I kept thinking about the fact that his written statements are read by a greater public, and how it might affect peoples' ability to recognize the harm of sexual violence. Trials of sexual violence are allowed to be reported on, circulating information, but information about circumstances enabling harm are not sought to be reacted on.

THE PLAINTIFFS' NEED OF SUPPORT

By the time the plaintiff gets access to the courtroom, their trial has already been processed for some hours. They are immediately seated in the witness chair in front of the judges, and then questioned in great detail about a happening in their lives, they experienced as harmful. The plaintiff in one trial had her arms close to her legs, almost hugging herself throughout the entire interrogation. A few times the complainant's lawyer sat close to the plaintiff, but often they sat alone. In one trial, the complainants' lawyer seated himself at the table of the defence. Throughout her interrogation, he kept his face very close to a pile of papers he had put forward. He looked sleepy and even had moments with eyes closed. The plaintiff did not seem to feel secure in the space, and I experienced her as wanting more direct support, which he neglected. The family members and friends whom sometimes accompanied the plaintiffs were seated in the spectators' row. Their presence might have comforted them, but they were not allowed to do any comforting during trial. I consider this yet a way the community is pushed away in order for the state to take on the role of protector.

Generally, I experienced that the courtroom professionals acknowledged that being a plaintiff in a rape trial is demanding. This recognition however did not translate into changing the order of

procedures. Often, the plaintiff broke down in tears when interrogated. In one trial, the defence lawyer handed a handkerchief to the plaintiff, as she started crying during his interrogation of her. The defence lawyer sat down in his chair directly after, leaving the plaintiff to be accompanied only by the handkerchief. When the prosecutor later on wanted to present some text messages, the plaintiff asked if she could hold her hands by her ears to avoid hearing. The judge refused, as being in court entails listening to all evidence presented and responding to them upon request. The logics of court thus outweighs a concrete desire from the plaintiff; not to listen to something that makes her uncomfortable. No other arrangements were made in order to help her cope. In another trial, the prosecutor tried to comfort the plaintiff, as she started crying.

Prosecutor: *Is he between your legs?*

Plaintiff: *Yes*

Prosecutor: *Has he penetrated you?*

Plaintiff: *I can...* [She begins to cry]

Prosecutor: *You should know, we have heard these stories many times.*

The plaintiff is sobbing.

Prosecutor: *Just take some time.*

The prosecutor looks at the plaintiff almost like a worried friend.

The prosecutor tried to ease the plaintiff's emotional distress through normalising her reaction and looking at her kindly. The plaintiff was however still exposed in the courtroom, the interrogation continued and when ending, the plaintiff left on her own and the trial continued by its predetermined proceedings. The prosecutor's role is to portray the version of reality in where the defendant is guilty of rape, but I pose that they practise distance towards the plaintiff in order to perform that version of reality as neutral and objective, and not informed by subjectivity. The role of complainants' lawyers does not entail the same expectations of performing neutrality, but – as already presented – should not overstep their role by disregarding the court's ruling over the past. The complainants' lawyer in another trial was to a much higher degree attentive towards the plaintiff than others I observed. Upon the interrogation, she took a chair from the spectator row to sit next to the plaintiff. When the plaintiff explained that she had been afraid of resisting as it might worsen the situation, the complainants' lawyer stroked her back and calmly said: "*there, there*". At the end of the interrogation, the prosecutor asked the plaintiff if there was something else, she would like to include; an open question I did not encounter in other trials. The plaintiff turned to the complainant's lawyer asking if there was something more she should say. Strikingly, this was the only trial where the plaintiff sought guidance by their complainant's lawyer. I experienced that the complainants' lawyer's clear expression of

support, contributed to the plaintiff trusting that the lawyer wanted and could assist her in the trial. Yet, the complainants' lawyer is still bound, and she smilingly replied that she could not present the plaintiff's statement. The rules of court restrict how assistance may be expressed. In order for a statement to be legitimate, it must come from the mouths of the parties and witnesses.

EXPERIENCES OF HARM

The expectations to express oneself in a unified narrative clashed with the plaintiffs' experiences of assaults. To me it seemed that they sometimes did not experience the happening as one thing, but were navigating between versions, struggling with processing how to grasp and understand it, as evident in one trial:

Prosecutor: *How did you feel about it?*

Plaintiff: *Strange... it's hard to explain but .. just strange.*

Prosecutor: *Is it on the mouth?*

Plaintiff: *Yes.*

Layjudge2 looks around a lot, seems a little impatient.

Prosecutor: *What happens next?*

Plaintiff: *I have a hard time remembering the details.*

Prosecutor: *You can also present it generally?*

Plaintiff: *First, so... um... She pushes me down against a bench.... um ... [long pauses between words] And then she pushed me up... I think...*

The judge frowns, does not seem to fully understand.

I experienced that the plaintiff had trouble finding words that felt right for her and to account for the very order of the happening. Refby (2001) suggest that when a harmed person experience that their experience cannot be integrated in a specific discourse it leads to an exclusion and fixation. She argues that this positioning produces trauma (Ibid.). By not assisting the harmed person in making sense of the experience and translate it from embodied to socially recognizable, the harmed person is left with an experience that cannot be unfolded nor healed. The courtroom professionals expressed discontent with the plaintiff's statement as she failed to be "coherent, detailed and consistent" and did not help her with understanding her experience. The harm the plaintiff experienced was not recognisable within the logics and epistemology of court.¹⁷ Furthermore, the plaintiffs' experiences of the rape sometimes happened as a sliding overstepping of their boundaries (N: 3). As the law does not

¹⁷ The case got acquitted.

recognize violence as a continuum but an either or, it contradicts with many victim-survivors' versions of what had happened.

A part of the complainants' lawyers' job is to present an economical estimate of the damage inflicted on the plaintiff. Correspondingly, the defence lawyer is expected to lessen the inflicted harm to create better conditions for their client to be "off the hook" and pay less. I noted that the plaintiff often looked down or had a travelling glance during this negotiation. In one trial, the judge seemed to be aware that it can be experienced as a neglect and an unfortunate simplification of the harm done:

The complainant's lawyer sets the economical compensation to be 30,000.

Defence lawyer: *Without documentation, no compensation can be established. And the damage is not that serious in nature.*

The judge addresses the plaintiff with kind eyes: *Emma, would you like to hear their exchange?*

Plaintiff: *No.*

Judge: *Then you are welcome to go out again.*

The plaintiff goes out and her friend from the spectator's row goes along. They slam the door slightly.

This was one of the only times I saw the judge stopping an interaction with the needs of the plaintiff in mind. By slightly slamming the door, I experienced that the plaintiff expressed a resistance towards the defence lawyer's deflation of her experienced harm. Thinking about brown's observation that conditions for healing begins when the harm is really listened to, it seems that the very practise of the court system counteracts to create these conditions. The plaintiff needs to find the conditions for healing outside the system. In another trial, a friend of the defendant and the plaintiff witnessed that the experienced rape was happening, while the plaintiff was at a stage of non-consciousness. The friend explained how she panicked when she saw her friend doing something to another one of her friends, which did not seem willingly, as she did not move. Her emotional processing of this incident was however not aided by the justice system. She was not considered a party in the logics of the court, but a witness. The harm she experienced was not acknowledged, as the act did not happen to her.

During the trials, other experienced harms got exposed. The parties told the court about substance abuse, mental health issues, monetary issues, homelessness, violence and sexual abuse. One defendant was a war refugee and had since suffered mentally. In a personal investigation report presented in another trial, it was stated that the defendant had experienced sexual violence committed

by her mothers' partner and had been kicked out of home at the age of 16. The defendant was crying while this was read out loud and her pain exposed to everyone in the courtroom. The harm was however only used to create a sympathetic life-story and lessen her "risk-factor". There was not initiated any process for her to get aided. The harm of sexual violence was exercised and experienced in the midst of other harms and hierarchies, as already recognized from an intersectional and anti-carceral feminist position. Many of these harms are arguably structural harms that the state could act upon, which following a TJ approach is necessary in order to combat harm continuing being committed. The state institution of court did however not acknowledge these harms as something to handle but left them aside only to attend to the issue of the reported sexual violence: did it happen or not.

BEING SUBJECTED TO THE POWER OF THE STATE

Even though the system in-itself does not encourage them to do so, the defendants expressed how being enrolled in the justice system had impacted them negatively (N: 3). Some had experienced panic, stress, and one said it had inflicted an alcohol abuse. I observed how the defendants tried to comfort themselves in various ways. In one trial, the defendant took off his flip flops and massaged his foot, and in the trial where two alleged rape cases were processed simultaneously, the defendants comforted each other throughout the interrogations. One of them had a stutter, which was highly compromising for his possibilities of expressing himself, and he – as well as parties who relied on translators – used his hands a lot when speaking. It was clear that the stuttering increased during his interrogation. The other defendant nodded encouraging towards him when the stuttering was excessive.

Unless they are able to pay for a private attorney, the defendants are dependent on the assigned defence lawyer regardless of how well they do. As one trial was about to start, the defendant expressed that he still did not know how the court would proceed. In yet a trial, the defendant expressed irritation and discontent with his defence lawyer:

The defence lawyer reads out text messages from a computer screen. (...). The defendant looks dissatisfied with the defence lawyer in general, and the messages that are read out. The prosecutor points out that many of the messages have already been documented Wednesday. The defence is messing up yet some appendix.

Judge: *We cannot have you documenting something in a way where the prosecutor works as your personal assistant.*

Defence lawyer: *Well, that's why I asked for an appendix summary from the prosecutor.*

Judge: *Can you describe where we are in the appendix?*

Defence lawyer: *I got it electronically!*

Prosecutor: *Yes, but I send it to you with appendix numbers.*

The defendant looks at the computer screen and notes: *It's the 16.08!*

As the example illustrates, the defendant finally had to step in to assist the defence lawyer in providing the appendix number. This was one of the trials where the defence lawyer was assigned at a very late stage which arguably had negative consequences on how the lawyer was able to represent the defendant and might have affected the outcome.

It was quite varying how much attention the defence lawyer paid to the defendant. I experienced a tendency of the defence lawyer expressing more interest and care towards their clients when they were young, white and seemingly middle-class. In one trial, the lack of attentive response had particular severe consequences. The defendant was a black man, who in various ways expressed that he experienced that the system “was out to get him”. Considering institutional racism, he might not have been all wrong, but it quickly became clear that he also spoke from a place of grave frustration and despair, and was not able to process what was going on nor to control his anger. Although it is vulnerable to expose such a scene, I will share some of my notes as it illuminates how the prescribed court logics allowed for a person to lose grip on himself and inflicted more harm.

[Before the trial began, as we were waiting for a translator]

Defendant: *I have barely slept or eaten. I'm so worried about this little complaint.*¹⁸

Defence lawyer: *I know that,*

The defence lawyer does not raise his gaze but keeps looking at his computer screen.

(...)

Defendant: *Where is this person making this complaint against me?*

Defence lawyer: *I don't think she has arrived yet.*

Defendant: *I just don't understand how these things work in court.*

No one is answering him.

In the beginning of the court day, there was a number of exchanges like this where the defendant expressed clear frustration. The courtroom professionals largely ignored his statements and was not attentive towards him. To me, the defence lawyer seemed to deflate on his open questions and

¹⁸ The defendant spoke English. The statements are thus not translated.

statements as a misunderstood strategy to deescalate which on the contrary lead to an escalation. At lunchbreak, the judges and translator had left the room, and the defendant was highly affected and desperate.

The defendant speaks out in the room: *This is not right, you understand!?*

He is frustrated and expresses this more and more. The defence lawyer does not react. At first, he spoke with his back to the rest of us. Then he turns around.

Defendant: *These fucking people! I tell you if I fucking go to jail, I will tell her that I'll repay, I'll do something to her. This is not right! Why the hell did she not say that she took more drugs?*

He walks around in the room and seems aggressive in his tone of voice and body language. The defence lawyer is still not responding.

Defendant: *Also you! [approaches the prosecutor while standing very close to me], I'll slice you up, you prosecutor bitch! This is not right, it is not a just country, you are all cruel, and I'll get you!*

The prosecutor is backing away from her desk and goes up on the judge's repo to ensure the defendant does not get too close. The defendant walks past me. Me and the prosecutor exchange glances; we are nervous. The defence lawyer keeps looking down at his computer screen, still not reacting.

The defendant walks towards the prosecutor again with quick movements - she backs away, and he leaves the room.

Prosecutor: *I'll call and get some officers in. I simply will not accept this!*

Defence lawyer: *I can understand that.*

Defence lawyer looks down at the computer screen and seems distant and passive. He does not take the initiative to act in any ways. The prosecutor calls and goes out.

As I walked past her, I can hear her suddenly start crying as she tells what has happened: *"He said he would cut me"*. She is very affected by the situation.

Although other defence lawyers might have been more attentive towards their client (and their colleagues), I argue that the important baseline is that the logics of court allow for the courtroom professionals to ignore affective responses of parties. Their professional role does not entail to listen or react on the needs of the parties. Surely the prosecutor was affected but responded primarily by carcerality: getting (armed) police officers to take part in the courtroom. The court system does not allow for other ways of dealing with people with varying needs and capabilities but pushes a one-size model over every conflict and every person. The prosecutor ended up filing a police report against him, which leads to a court trial this fall where I will witness. The defendant is likely to be put in

prison for at least a couple of months, and how might that affect him and his outlook on life? He clearly was in a stage where he needed assistance in sorting out his emotions. This was not accounted for, nor will it be in the trial to come. The case got me to reflect on misogyny as a result of the workings of court. In some trials (N: 6), I experienced that the defendants expressed a frustration or slight despair about “why this was happening to them”, others seemed more angry (N: 2). Overwhelmed by the threat of state violence, it hindered them in seeing the harm others experienced they had done. As people are not assisted in seeing how their actions might be harmful, they focus on how they themselves are being harmed, and perhaps project this blame on the person accusing them, which in all the trials I observed were women.

RESISTING AND ACCEPTING ENFORCED PUNISHMENTS

During the closing arguments, different enforced punishments are presented; prison in 2 years, community service, cost covering, deportation, or no punishment at all. All these reactions are possible realities which the defendant has to live by. Which one it will be is completely out of their hands. It does not matter what life circumstances the person has had, or if they are committed to reflect on their actions and work towards being accountable, what matters is if the court rule the social happening to has been a rape. When the courtroom professionals present the possible consequences, the defendant often had strong affective responses, as in one trial:

Prosecutor: *Is it sufficient for punishment?*

The prosecutor reads out a previous conviction from a similar case. The defendant tries to say something to the defence lawyer, but he makes a deprecatingly hand movement. The defendant cries and frowns, she is clearly provoked by the prosecutor’s interpretation. (...)

The prosecutor sets the punishment to be unconditional imprisonment for 1 year.

The defendant cries a lot and looks at the ceiling. Completely red face.

Layjude2 looks a lot at the defendant. (...) The defendant looks towards her friends and partner, seeking comfort.

To sit still in a courtroom, and just accept that imprisonment might be a possible outcome which you cannot hinder, demands a lot of suppressions of emotions and thoughts. In the example, the defendant tried to resist the ruling from above, but was cut off by her defence lawyer; *you need to surrender to the state*. The stakes are especially high when the defendant has migrant experience. Notably, this was the situation in 4 of the 11 trials. One was from Eastern Europe, one from Sub-Sahara, and two from the Middle East. As the Danish politicians have increased so-called ”non-westerner’s”

deportability, a possible consequence for them is to be punished with a conditional or unconditional deportation order and sometimes with a further entry ban to Denmark (Villadsen, 2020). In one trial, the defendant had to listen to the prosecutor presenting deportation as a possible outcome, while having a child born and raised in Denmark. He teared up. When the verdict finally was stated, and he was acquitted, he cried. His defence lawyer poured him some water and gave him a napkin. He was however left alone to deal with the emotional stress and relief of potentially being forced to leave his child.

RESPONSES FROM THE COMMUNITIES

The friends and family also reacted and got affected by the happenings and atmosphere of the courtroom. The harm exceeds the two parties, and it was clear that the various communities had needs that were not attended to, following the logics of the court. Close relations to the defendants often reacted strongly to observing their loved ones subjected to the power of the state and having their relation to them restricted. In one trial the father of a defendant wanted to hug his 18-year-old son (BIPOC), who had been detained for about 2 months, but the police officers harshly refused this, as one cannot touch a detainee. It was evident in all his expression how painful that was.

In one trial, four of the defendant's friend had showed up. They were effectively pushed aside from where the defendant is placed due to the number of journalists attending. During the plaintiff's interrogation, the friends look deeply moved. The plaintiff at one point explains that she decided to pretend to be asleep, so the defendant would "leave her alone", and after he asked if she was asleep without getting an answer, he started kissing her. At this point I noted that:

Several of the defendants' friends look deeply affected, they look down and then up from their hands. One of them is tearing up, one rubs his face. Yet ones' jaw is tensed up.

Surely, I can only speculate what was going on for them. One reading is that they were reacting with empathy to the plaintiff's story, and perhaps reflected on things they had done themselves. Another reading is that they were fearing for their friend, and the consequences enforced on him. When the verdict was stated and he got acquitted, they fists-pumped each other. They were around 20-22 years old, and I experienced the "out-of-place" reaction as a result of being overwhelmed and not able - nor allowed at this point - to articulate words. In order to at least have some reaction to their friend not

being put in prison, they fist-pumped. In another trial, the friends and partner to the defendant clapped and exclaimed: “*Yes!*” as she was acquitted. The defendant herself collapsed in the chair in relief. The judge rapidly reacted to this, proclaiming: “*No! One does not clap in court!*”. In one trial the defendant got a verdict. The family reacted with expressing disbelief and grief, and after the judges left the room and bodies finally were able to move freely, they took turns in hugging the crying defendant.

TAKING UP SPACE

Whereas some affective responses which took up space was received as disturbing, others were received positively by the courtroom professionals. In one trial, it was clear that the defendant’s family and friends were determined to take ownership of the atmosphere when possible by telling small jokes, talking in an intimate and personal manner with the defendant and in general show support. They sometimes succeeded in shifting the atmosphere from professional detachment to personal commitment. I experienced that the defence lawyer to a greater extent paid attention to the defendant and his close relations in this trial. The privilege of having resourceful relations, seems to influence how the courtroom professionals relates to the affective responses of parties.

It seemed easier for spectators and witnesses – than parties – to take up space and be more reckless with undermining the expectations of court, as they were not as dependent on the outcome of the trial and less affected by the conflict. After one of the trials was finished, I heard the judge tell the prosecutor that a trial like that would be a good case-study at law, as the “*whole narration changed after [witness 3] was interrogated*”. Witness 3 was very assertive and reluctant to submit to the formalities of courts. He vividly explained how the plaintiff had a tendency to blow things out of proportions, and that he did not want to participate in incarcerating an innocent man. The witness is a Danish author and this rhetorical privilege has great impact in a setting where depictions of the past are centred. It further speaks of the fragility of rulings, if one person’s statement can shift an entire verdict.

In another trial, a power play between the defence lawyer and the plaintiff occurred. The defendant was placed in another room during the plaintiff’s interrogation, and in-built microphones

at the desks were used to transmit sound. They had to turn them on and off when speaking, as it could stir the sound when they all were on.

The defence lawyer continues reading: “(...) *the interrogated reflected...*”

The plaintiff interrupts: *You forgot to turn on the microphone!*

This is the second time the plaintiff comments on this. The defence lawyer pauses and smiles wryly, even a bit provocatively back at the plaintiff. It seems a bit like a power play. He turns on the microphone.

Defence lawyer: “... *on that she often has been in stations where she has done more sexually than she wanted to*”. *That's what you told the police.*

By commanding the microphone practise, the plaintiff got to position herself and correct the defence lawyer. As she could not affect the proceedings of court, a way of gaining space and power was to master them. I read this as her resistance and reaction towards the defence lawyer's attempt to redress her story and lessen her experience of harm done.

CONCLUDING REFLECTIONS

The parties and their communities had a range of affective responses in relation to being enrolled in the justice system and being present in the courtroom. In this chapter, I have analysed some of the responses. The logics of the court system constitute the basis of what the parties were affected by, how they were abled and hindered to express such affect, and how that affect was reacted on by various courtroom professionals. While some of the courtroom professionals expressed an interest in and care towards their needs and experiences, they did not diverge from the proceedings of trial. Regardless of how the parties responded, it did not change the predetermined structure or purpose of the trial. In this one-size-model there are a lot of unfits, and the ones needing most support also seem to be the ones suffering the most. The logics of court in practice outweigh an attentive, sensitive and organic response to the affective responses of the parties, and it even allows for the courtroom professionals to ignore them. The logics of court thus do not accommodate to respond to the affective responses of the parties. Throughout the analysis, I have pointed towards how this inflicts more harm and leaves the parties and their close relations with an emotional burden.



Picture 6: A painting from courtroom 41.

CONCLUDING DISCUSSION

From my seat in the spectator's row and informed by anti-carceral feminism and the work of TJ/CA scholar-activists, I have investigated the practises and logics of trials. Attending to the matter of sexual violence and the current justice system as a model, allowed me to analyse how the court's response to sexual violence is insufficient and harmful. The rigidity of legal paragraphs does not account for the dynamic nature of social relations; of desire, fear, trauma, lust, insecurity, and domination. Thinking through harm opened up for other ways of engaging than thinking through crime. As the law does not recognize violence in sexual encounters as a continuum nor account for norms, positionality or societal structures, it contradicts with the experiences of many people and fail to recognize harm done. Already before reaching trial, a lot of cases of sexual violence have been rejected by the police or the Prosecution Service, and the harm is thus not attended to by the state institutions. I suggest that the statistical discrepancies should be seen in relation to the court ignoring structural factors and fail to reflect on how its ways and rulings are coproducing the construction of "guilt" and "credible" in relation to myths of rape and stereotypes.

The parties expressed great discomfort being in trial in various ways. The logics imposed on them and their conflict did not create good conditions to move on, but actually inflicted more harm. The plaintiffs often showed insecurity and vulnerability. I experienced that the complainant's lawyer whom is supposed to ensure attendance to the plaintiff, failed to do so. The plaintiffs often struggled to fully recognize their experiences of harm, which never got listened to in their own right. According to brown (2017) that is crucial for learning to live with the harm done. They had a difficult time translating their bodily experiences into the logic of court, as they often could not meet the expectations of unified narratives and an indisputable act of violence. I have shown how only minor reactions from the courtroom professionals to the parties' affective responses occurred during trials. The reactions were delimited to what the logics of court allow for (a warm look, giving a handkerchief). When overstepping the logics, it got reprimanded. Since the logics do not enable flexibility nor to step away from the professional performance of objectivity, it unfortunately creates poor conditions for the parties to cope with their experiences and they are left with an arguably even bigger emotional burden. From this analysis, I assert that the logics of trial constrain the courtroom

professionals greatly and enable them to ignore the parties' affective responses as attendance to them is not necessary to uphold the proceedings and function of court.

The only reactions the court system is able to propose are carceral. The defendants expressed overwhelm and often disbelief that the state response of trial was actually happening "to them". The immediate threat of state violence seemed to hinder to recognize how their actions might have been harmful. Sometimes the defendants expressed insecurity about what had happened, opening up for the possibilities to have read signals wrong. This step of reflection is however not rewarded in court but can be used against them. To admit possibility of responsibility is translated into a liberal understanding of "guilt" which neglect how people have been conditioned to behave towards each other and considers the individual solely punishable for the act done. I have argued that it does not create a positive change that some are cast as guilty perpetrators and others as innocent victims. My analysis provide aim to move away from thinking through these binaries to account for the interconnectedness of our identities and experiences in relation to harm exercised and experienced. In a feminist construction of "free will", the social fabric in where harm is exercised is necessary to account for to understand an action. Accountability requires cultivation, not penalty. It demands to work from one's position in various hierarchies towards changing harmful behaviour. TJ/CA approaches challenges the relationship between state violence and the idea of safety, to consider how to transform society and our relations to combat harm.

Relating this work to Christie (1977), he noted that by submitting a conflict to the court system, people get pushed away from how their conflict is represented and solved. From this analysis, I contend that the court system not only does that, but actively hinders processes of healing and accountability. The predetermined order of trials creates a highly restricted space for conflict resolution. Neither the plaintiff nor defendant is assisted in understanding what has happened between them or how to move forward. Rather, the court is imposing its binary understanding of guilty/not-guilty and victim/perpetrator on social interactions, which fixates the experience instead of unfolding the nuances, contradictions and complexities. Sexual violence becomes individualised and peoples' experiences of harm are neglected, in order for court to exercise authority over past happenings. Based on my analysis of the logics of court, I will pose that in fact there is no conflict to be solved in court, but a decision to be made of what has happened based on (false) promises of equality and objectivity.

With this thesis, I have contributed to reintroduce thoughts of TJ/CA and prison abolition in a Scandinavian context and to break with the epistemic occupation of carcerality. My arguments go beyond cases of rape in attendance to the very logics of court manifested in architecture, proceedings, expectations, professional roles and epistemology. Similar analysis could be done in cases of e.g. violence or divorce settlements as every conflict and every person is subjected to the same model. The arguments would benefit from further investigation on the Danish court system's ways of handling interpersonal conflicts through 1) observations in other courts, 2) other conflicts than sexual violence, and 3) with inclusion of parties. As my arguments are based on my experiences of being in court and reading of affective responses, the abstraction of logics would indeed be strengthened by being in dialogue with other scholars' observations (from an anti-carceral position). To get a more intimate knowledge about people experiencing and exercising harm's sensemaking of being in court, it would be fruitful to conduct interviews with them and perhaps collectively engage in producing reports, which carve out the effects of the court system's logics on people in conflict. It would further be useful to get a greater knowledge on their reactions towards TJ/CA frameworks as well as their own ideas on other ways of initiating consequence or improving the system.

When the conflicts we take part in are not generative but shut down, the harm will be repeated. From this analysis, I suggest that if we want to move towards ending the harm of sexual violence, we must be concerned with frameworks for recognizing harm, conditions for harm to be exercised and envision other consequences than trials and carcerality. This includes developing better ways of assisting the person who experienced harm in understanding their experience and moving forward; creating conditions for the person who harmed to embark on an accountability process, for communities to critically engage with norms, and a redressing of societal structures. It entails giving up on the idea that a state institution ever will be able to fairly enforce a ruling over a past event, to instead acknowledge different experiences and stay with the harm.

The imagination exceeds the heavy doors of court and walls of prisons.

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APPENDIX

A) TEMPLATE FOR EMBODIED TRANSCRIPTS

Case details from the court dockets

Date, time, courtroom X. Journal no. of the court: XXXXXXXX

Judge: Name Last Name

The case regards: Rape

Defence Lawyer: Name Last Name

The Prosecution: DP

Journal no. of the police: XXXXXXXX

Judge: *Name, clothes, age, gender, racialization*

Layjudge1: *Name, clothes, age, gender, racialization*

Layjudge2: *Name, clothes, age, gender, racialization*

Prosecutor: *Name, clothes, age, gender, racialization*

Defence lawyer: *Name, clothes, age, gender, racialization*

Defendant: *Name, clothes, age, gender, racialization*

Plaintiff: *Name, clothes, age, gender, racialization*

Complainant's lawyer: *Name, clothes, age, gender, racialization*

Witness1: *Name, clothes, age, gender, racialization*

Spectator1: *Name, clothes, age, gender, racialization*

Spectator2: *Name, clothes, age, gender, racialization*

Description of the courtroom:

Wall paint, pictures, furniture set-up, light, smell, sounds

Before the trial begins:

The trial begins:

Prosecutor's interrogation of the defendant:

Defence lawyers' interrogation of the defendant:

The complainant's lawyer enters:

Prosecutors' interrogation of the plaintiff:

Defence lawyers' interrogation of the plaintiff:

Break: XX:XX – XX:XX

Prosecutors' interrogation of witness1:

Defence lawyers' interrogation of witness1:

Documentation:

Prosecutors' closing arguments:

Defence lawyers' closing arguments:

The last words:

Deliberation:

Presentation of ruling:

After the trial ends: