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Performing impartiality

A qualitative socio-legal study on impartiality and emotional regulation in lay judges

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Master Thesis (SOLM02)
Spring 2023

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Abstract

A fundamental principle for democracy and the rule of law is that the courts are independent and impartial, which extends to the conduct of judges and lay judges during the trial. In addition, there is the expectation of the courtroom being an unemotional setting, and seeing emotional displays in lay and professional judges could lead to a feeling of partiality in the audience. The aim of this thesis is to investigate and explore lay judges' behaviours in court in relation to judicial impartiality and emotions by answering two interlinked research questions: *How do lay judges reflect on their own and other lay judges' performance, behaviours, and emotional regulation during trials?* and *What expressions and behaviours are prevalent among lay judges during trials?* Furthermore, a third research question will be answered: *What can the answers to the above questions divulge about lay judges performance of impartiality and management of judicial emotions?*

The empirical data has been collected through the use of two qualitative methods; semi-structured interviews and observations and the material has been analysed using the theoretical frameworks of *dramaturgy and performance*, *emotional regulation,* and *feeling rules*. The analysis and conclusions show that impartiality can be performed both through the utilisation of a poker-face or neutral expression as well as treating all parties equally. Furthermore, the lay judges use several strategies for managing their emotions to conform to the feeling rules of the courtroom. There are indications that there are discrepancies between the appropriate behaviour in court as described by the interviewees and the actual behaviour of lay judges observed in trials. This suggests that lay judges might do more than they potentially realise.

Keywords: District courts, Emotional management, Emotional regulation, Impartiality, Lay judges, Performing impartiality, Sweden.

Acknowledgments

With the completion of this thesis, five years of studies at Lund University has come to an end. As these are likely the last sentences I am to write as part of my studies, I would like to extend a sincerest thank you to my friends and family for your endless support and patience with me in the pursuit of my degree in Sociology of Law. To my fellow students and friends in the program, thank you for your feedback, constructive criticism, and support during this intense and at times frustrating process. Thank you Ole, for your feedback and challenging me. I also take this opportunity to thank Lisa Flower who not only inspired me during my bachelors but also took the time to help me with my inquiries and worries when everything felt hopeless in the beginning of this project. Lastly, I want to express my deepest gratitude to the participants in this study for without you it would not have been possible.

Thank you!

Linda, May 9th 2023, Lund

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Introduction

> ”I (name) promise and affirm on my honour and conscience that I will and shall impartially, as to the rich as well as to the poor, administer justice in all matters to the best of my ability and conscience, and judge according to the law of the Realm of Sweden; that I will never manipulate the law or further injustice for kinship, relation by marriage, friendship, envy, ill-will, or fear, nor for bribes or gifts, or any other cause in whatever guise it may appear; nor will I declare guilty who is innocent or innocent who is guilty. Neither before nor after the pronouncement of the judgement of the court shall I disclose to the litigants or to other persons the *in camera* deliberations of the court. All this, as a honest and righteous judge, I will and shall faithfully observe.” (The Swedish Code of Judicial Procedure, chapter 4 section 11, translation in Ds 1998:000)

A foundation for the rule of law and democracy is that the courts are independent and impartial, and that judges and lay judges act impartially and with transparency in the extent that it is possible (Nämndemannautredningen 2013: 119). The quote above is an official translation of the oath that Swedish judges (including lay judges) take before they start their term.

The relationship between law and emotion has been debated throughout history and in the legal realm, emotions act as a symbol for all that the law aspires to counteract such as irrationality, prejudice, partiality, subjectiveness, and the imperviousness to reason (Bandes & Blumenthal 2012). Judicial dispassion itself is believed to be one of the core elements of the rule of law, in which the perceived irrationality and partiality of our collective past is overcome (Maroney 2011a). The very basis of the script stems from the dichotomy between emotion and reason as well as emotion and law which is likely a remnant from the ideals from the Enlightenment where emotions were associated with forces which the Enlightenment sought to be freed from, such as religion, ignorance, prejudice, and reliance on traditions (Maroney 2011a). Although there is the ideal and tradition in legal discourse of emotional

dispassion and that legal decision-making should be free of emotion and emotional influences (Maroney 2016: 261, Maroney 2011a, Anleu Roach and Mack 2019, Craciun 2018, Wettergren & Bergman Blix 2016), courtrooms and trials are inherently emotional (Maroney 2006). Judges and jurors witness gruesome evidence in court when they decide on verdicts and punishments, and they are likely to both experience and express emotions as a result (Salerno 2021). Judges might choose to exclude evidence as the emotional responses in the jurors might obstruct their ability to reason (Maroney 2006), motives such as jealousy or anger are considered when deciding on manslaughter or murder, law often seeks to measure emotional suffering and so on. While emotions are present in court but still considered illegitimate, it is important to note that the judge is not supposed to be a robot but that emotions must be carefully handled as to not communicate bias (Blanck, Rosenthal & Cordell 1985). Some judges argue that amusing testimonies might result in a smile or laugh, and shocking evidence could cause a frown or a scowl without it meaning that an irreversible error has been committed (Ibid: 95).

As we expect the courtroom and judge to be unemotional, seeing emotion in lay and professional judges might result in a feeling of partiality and unsatisfactory appearance of justice (Blanck, Rosenthal & Cordell 1985). However, acting unemotionally might be worse than acting based on or showing emotions as that could give the impression for the people around us that we are detached or even inhuman (Ekman 2007: 52-53). Ekman (2007: 52) claims that emotions are what guides us and directs us to do and say what is right in the situation when they arose. Anger, for example, motivates a response to injustice and anticipating the feeling of regret can result in avoiding a risk (Solomon 1993). It is against the backdrop of this that there is the argument against the dominating view of emotions as secondary to reason, and that reason is in fact the slave to the passions (David Hume 1978/1738 in Lerner, Li, Valdesolo & Kassam 2015). Emotions can nonetheless also prove to be overwhelming and make us do things in the heat of the moment that we later regret (Ekman 2007: 52).

1.1 Research problem

Public trust in the rule of law and courts is earned through the court's communications with the public through both media and the publics direct communication with the courts (Nämndemannautredningen 2013: 119). Court employees and lay judges contribute to this trust through the way that they act (Ibid.) and although both legal theorists and judges have asserted that judicial emotion is sometimes inevitable, the 'cultural script of judicial dispassion' continues to persist (Maroney 2011a). According to the prevailing script, it is considered inappropriate for emotions such as anger, sadness, hatred, disgust, or fear to affect judicial decision making and, in those instances where a judge feels emotions, they should put them aside (Ibid.). Having an emotionless demeanour, which is assumed to be necessary to display impartiality, is in a way a script of judicial dispassion (Anleu Roach & Mack 2019: 840-841). Achieving impartiality can thus require the judicial officer to regulate (i.e., manage) or supress their own subjective feelings (Ibid.). The way a judge act and the demeanour that is displayed plays a key part in criminal proceedings as they must conform to the normative expectations of the judicial role, which is impartiality (Mack & Roach Anleu 2010). The way we portray ourselves can thus play a part in the legitimacy of our roles (Ibid.). Despite this, some researchers (e.g., Bergman Blix & Wettergren 2019a) have actively excluded lay judges from their research of emotions and judicial objectivity as they argue that lay judges must heed the judicial expertise of the professional judge, and that their power therefore is limited. There is also limited research on lay participation in civil law criminal trials in general (Johansen 2019). This even though lay participation in court has been debated and has been a point of contention for many disciplines during history and has been subjected to public scrutiny during recent years in Sweden (Roos 2022: 18). The opinion and belief that lay judges tend to judge based on facts outside law and praxis is common in media where lay judge rulings are brought to attention (Ibid.). This argues for the necessity of research on lay participation in court.

1.2 Aim and research questions

The purpose of this thesis is to investigate Swedish lay judges' emotional displays and behaviours to broaden the existing knowledge about judicial emotions as well as inquire how judicial impartiality is performed and experienced by lay judges in Swedish criminal trials in the district courts. This thesis thus aims to explore and provide an in-depth analysis of an area of judicial emotion and impartiality which has been rather unexplored and neglected to date, lay judges and judicial impartiality. This is examined through the interlinked research questions below:

- How do lay judges reflect on their own and other lay judges' performance, behaviours, and emotional regulation[1] during trials?
- What expressions, emotions, and behaviours are prevalent among lay judges during trials?
- What can the answers to the above questions divulge about lay judges performance of impartiality and management of judicial emotions?

The first two research questions should be understood as an operationalisation of the broader aim of inquiring and providing knowledge to the research field of judicial impartiality and emotions in lay judges, which will then be further analysed through the third research question.

The study will not take part in the 'to be or not to be' debate regarding the lay judge system nor analyse the influence of political affiliations or demographics on the performance. As the aim is not to determine the degree of emotional influence on judgement nor to investigate certain emotions the focus of the thesis will rather explore how lay judges perform impartiality in Sweden.

[1] Emotional regulation and emotional management are used interchangeably in the text.

1.3 Relevance for sociology of law

Sociology of law concerns itself with the relationship and intersection between law and society and provides a unique perspective on socio-legal issues that sociology or law alone may not capture (Baier, Svensson & Nafstad 2018; Banakar 2019). Lay judges are democratic representatives in court (which is further discussed in the next chapter) and judges with equal power in the implementation of justice and deliberations during criminal trials. Through this definition, lay judges are in essence bridging the divide between the rule of law and sociology by being the embodiment of both. The lay judges' position and power in the justice system in Sweden has been debated and discussed in media (e.g., Lifvendahl 2023; Sjödin 2021; Westling 2022, c.f. Roos 2022) during the recent years, which makes them an interesting subject for academic and socio-legal inquiry within a Swedish context.

1.4 Disposition

This thesis is divided into six chapters. **Chapter one** is the introduction which covers the research problem, the aim and research questions as well as the relevance to sociology of law. **Chapter two** provides the background and previous research related to lay judges and court proceedings in Sweden, and emotions and impartiality in legal contexts. **Chapter three** describes the theoretical frameworks used in the analysis and key concepts in relation to performing impartiality and managing emotions. **Chapter four** presents the methodological choices, method for data analysis, ethical considerations and the theses validity, reliability, and transparency. **Chapter five** presents the empirical material and analysis based on the theoretical frameworks. **Chapter six** completes the thesis with the conclusion and a discussion for future research. Additionally, the thesis includes **Appendix A** and **Appendix B** for supplementary information[2].

[2] The attached documents are written in Swedish and have not been translated as they were used in the communication with participants. They were not translated as the context could potentially have been lost if translated and the authenticity could have been compromised.

Background and previous research

This chapter will introduce the court proceedings and lay judge system in Sweden as well as an overview of previous research pertaining to the relevant aspects of the research questions. As the aim of the thesis was to investigate judicial emotion and to judicial impartiality in relation to lay judges, an overview of relevant literature will be presented to enable an adequate framing of the thesis in current research and necessary background information.

2.1 The court proceedings in criminal trials

There are several steps to a criminal trial in the district courts in Sweden that are in essence identical to all main hearings and are regulated in the Swedish Code of Judicial Procedure (1942:740)[3] chapter 46. The main hearings[4] are a structured and ritualised proceeding led by the presiding judge[5], which is a legally trained judge, who initiates the hearing by checking attendance and assuring that there are no obstructions to continuing with the proceedings (Sveriges Domstolar 2022). Potential hindrances are, among others, if a witness did not arrive or if new evidence has been presented (Ibid.). The second step of the trial is that the prosecutor presents the lawsuit and describes the crime, what has happened and what the defendant is suspected of. Thereafter the defence, the defendant or defence lawyer[6], either denies or acknowledges the act (Ibid.). After the lawsuit and the presentation of the defendant's plea, the prosecutor presents the evidence for each crime in detail which is called a statement of facts (Ibid.).

The fourth part of the trial is the examinations and cross-examinations, by the opposing party, of both the victim and subsequently the defendant. Lastly, potential witnesses are also questioned under oath, and the party who called them starts. If

[3] Hereafter referred to as the Code of Judicial Procedure or CJP
[4] Hereafter referred to as trials
[5] English translations based on the official Swedish/English Glossary (Sveriges Domstolar 2019a)
[6] I use the term 'defence lawyer' throughout the thesis, although not all defenders in the observations were members of the Swedish Bar Association and hence allowed the title 'lawyer'. This was done for ease of reading.

necessary, the court may also ask questions to both the victim, defendant, and witness/-es. The personal circumstances of the defendant are presented, and the court reads a transcript from the defendant's criminal records. The trial then commences with the parties giving their closing arguments to the court. (Sveriges Domstolar 2022)

2.2 Lay participation in Swedish district courts

The Code of Judicial Procedure, chapter 1 section 3b, stipulates that criminal trials in the district courts must consist of one legally qualified judge and three lay judges. There are a few exceptions to this rule, if; I) one lay judge is prevented from participating after the trial has begun, the proceedings can continue with just one legally qualified judge and two lay judges, II) the prescribed penalty for the offense is not greater than six month imprisonment or a fine and the crime does not necessitate a sanction beyond a monetary fine, a legally qualified judge can rule without lay judges, III) the crime is not prescribed more than two years imprisonment and the court hearing can be held simultaneously with the detention hearing, lay judges are not required.[7]

The argument for lay judges in Swedish courts is to enhance the legitimacy of the rule of law as citizens participate in the administration of justice through their representatives in the court (Nämndemannautredningen 2013: 120). Lay judges for the district courts are appointed through election for a period of four years by the municipal councils after being nominated by a political party represented in the municipal council (CJP chapter 4 section 5, 7, Sveriges Domstolar 2023a). Although lay judges are nominated by a political party, it is important to emphasise that the assignment itself is not political as that would go against the legal certainty as well as the constitutional right to be tried by an impartial court (Sveriges Domstolar 2023b). That the lay judges are politically appointed is to ensure that

[7] Lay judges also judge in criminal cases in the appellate courts, although they are in a minority in the panel. The appellate court in criminal cases consists of three legally qualified judges and two lay judges. (The Code of Judicial Procedure, chapter 2 section 4)

they are ‘democratic’ and to ensure that the court is independent and exempt from any influence (Nämndemannautredningen 2013: 121). Each lay judge has equal authority in the rulings and final verdicts of each case and there is generally no differentiation between lay or professional judges during the deliberation. If there are dissenting opinions on a judgement, the panel members vote and the members of the panel who do not agree with the final verdict must present their reasons for their dissenting opinion (CJP chapter 29, section 1). The vote of the majority is the one that shall prevail, but if the vote is equal the opinion that is most lenient or least intrusive for the defendant prevails (CJP chapter 29, section 3). If no opinion can be considered more lenient or intrusive, the opinion that holds the vote of the presiding judge wins (Ibid.).

There are a few requirements to be eligible for duty according to the Code of Judicial Procedure chapter 4, section 6 which are a Swedish citizenship, being over the age of majority, and registered in the area of the court. You must also be considered suitable regarding common sense, independence, obedience to the law and similar to be eligible. This is to ensure that the lay judge is a good role model when passing judgement on others. In addition to the eligibility requirements, there are a few exceptions to who can become a lay judge, which is regulated in the same section. That means that those who are employed by the judiciary as a judge, other court employees, prosecutors, lawyers, police officers or anyone who can advocate for litigants in judicial proceedings cannot be lay judges. (CJP chapter 4, section 6) The purpose of lay judges in Sweden is thus to create trust for the Swedish courts and provide common sense and a variety of knowledge (Sveriges Domstolar 2023a). All new lay judges are required to participate in the mandatory introductory training at the court where they are assigned, and they must take the judicial oath before serving (Sveriges Domstolar 2023b). The training teaches them what the assignment means, which cases they will judge in, some training in law and legal sources as well as the routines at the court (Ibid.). Each individual court is responsible for determining the eligibility of the elected lay judges and for the education of new lay judges.

Although lay judges are representatives of the people in the judicial process in Sweden, the basis for all court rulings are that they must be founded in legal facts and evidence that has been presented in court (Nämndemannautredningen 2013: 121). However, recent research in Sweden shows that the basis of lay judges' verdicts is either based on personal beliefs, values, or prejudices or a consequence of being emotionally affected by some aspect of the case or a combination of both (Roos 2022). Another study conducted by Anwar, Bayer and Hjalmarsson (2019) using data from the Gothenburg District Court found several systematic biases based on the political parties that the lay judges were nominated by. The results thus revealed that lay judges from the Swedish Democrat party (nationalist, far right) convicted a substantial number of defendants with Arabic sounding names compared to Swedish sounding names (Ibid.). In contrast, lay judges from the Left party (feminist, far left) had higher conviction rates in cases with a female victim (Ibid.). This indicates a need for additional research on lay judges in Sweden.

2.3 Emotions and legal judgement

This section provides a brief overview of previous research pertaining to emotion and legal judgement to situate this thesis within the academic discipline and give context to what other researchers have done as there are many ways in which emotions can affect judgement. The research presented in this section was conducted in an international context with jurors or mock jurors.

Research from the cognitive sciences shows that emotions affect the way we process information and make decisions (e.g., Douglas, Lyon & Ogloff 1997; Solomon 1993; Tiedens & Linton 2001; Lerner, Li, Valdesolo & Kassam 2015). Mock jurors who viewed autopsy photographs experienced more feelings of anxiety, anguish, shock and being disturbed than those who did not, and the more anxious and shock the mock jurors experienced, the guiltier they believed the defendant to be (Douglas, Lyon & Ogloff 1997). Jurors' emotional reactions have been shown to significantly relate to their legal judgement and can both be probative and prejudicial (Feigenson 2016). Emotion also affect judgement through the effect

of directional processing, which is the processing in which moods affect the judgement in the same way, i.e., a sad individual is more likely to judge that sad events are likely to occur (e.g. DeSteno, Petty, Egener & Rucker 2000) or that a judge in a negative mood is predicted to perceive and recall more negative information about the judgement target (e.g. Forgas & Bower 1987). These results are from incidental emotions that are not directly related to the judgement task or target. Emotions that are integral to the judgement task can also feed back into the reconstruction of the judgement target and thus continuously shape the interpretation of the evidence and judgements as they are less likely to consider the emotions as irrelevant (Feigenson & Park 2006). In addition to the way that emotions affect the content of thought, emotion can also influence the depth of information processing. A positive affective state result in a higher degree of heuristic information processing based on attractiveness or likeability (e.g., Feigenson & Park 2006) of the source as well as a higher reliance on stereotypes (Lerner, Li, Valdesolo & Kassam 2015). A negative mood, in contrast, signals a threat and increases vigilance and systematic processing as the negative emotions signals that a situation needs more attention (Ibid.). This is however a bit simplistic, as other research (i.e., Tiedens & Linton 2001) has shown that emotions such as happiness, anger, and disgust (high-certainty emotions) increase heuristic processing.

2.4 Impartiality and objectivity in court proceedings

As there is a lack of previous research pertaining to lay judges and judicial impartiality or emotional management, this section will provide in-depth insight into what has previously been done on other judicial actors. Most research on judicial impartiality and emotional regulation in the courtroom centres around legally educated actors such as prosecutors, judges, and lawyers. Consequently, most literature and research presented in this section will be of legal professionals.

The civil law system of mixed courts or tribunals as utilised in Sweden is a very different system with other processes than the separate roles of juries and judges in

common law systems (Johansen 2019). Mixed courts rely on a continuous interaction between the professional judge and lay judges, and it cannot be directly compared to jury trials (Johansen 2019: 587). However, the difference between the two systems does not hinder a comparison between internationally produced research and Sweden, as the Swedish civil law system is still adversarial in nature (c.f. Bergman Blix & Wettergren 2016: 32; Flower 2018). That means that although this thesis was geographically limited to Sweden, research produced internationally was included in this and the previous section. There is also not much research on lay participation in civil law systems in general, but there is an abundant of research on jurors in common law systems showing that; race and income of the jurors affects the conviction rates for the defendant (Anwar, Bayer & Hjalmarsson 2012, 2021; Flanagan 2018), a more advanced age results in more convictions (Anwar, Bayer & Hjalmarsson 2014), physical appearance and attractiveness as well as race and gender influence judicial decisions (Stewart 1980; Johnson & King 2017; Sargent & Bradfield 2004). There are also multiple similar studies on a mock jury (see Maeder, Yamamoto & Saliba 2015; Young, Levinson & Sinnett 2014; Sommers & Ellsworth 2001). These will not be described further as they do not relate to judicial impartiality, emotional regulation nor judicial behaviour. Judicial behaviour is, in short, what courts and judges do (Howard & Randazzo 2017).

Emotions in legal proceedings are often controlled and regulated (Dahlberg 2009: 175-176) and the Swedish legal system is known for its controlled environment with its general lack of dramatic confrontations (Ibid.; Bergman Blix & Wettergren 2016; Flower 2018). However, previous research has shown that judges deliberately manage their emotions to display impartiality and fairness before the public (Roach Anleu & Mack 2005; Scarduzio 2011; Bergman Blix & Wettergren 2019a, 2019b). Performing impartiality is particularly vital in the lower courts as for many defendants, their entire experience of judicial authority and the judiciary is through their appearance in court (Roach Anleu & Mack 2017: 115). The displayed demeanour of impartiality during the trial is thus a crucial mean for enhancing or diminishing legitimacy (Ibid.). To be judged by an independent and impartial

tribunal is also a fundamental principle stipulated in the European Convention of Human Rights article 6.1 (ECHR 2021).

The Oxford English Dictionary (OED, 2023) defines impartiality as a quality where one is free from prejudice and is fair and being impartial means that one does not favour one part or side more than another. So how can a judge show impartiality? According to judges in Bergman Blix and Wettergren's (2016) interview study, one way to adhere to the appearance of impartiality is by not interrupting the speaker even if they speak of irrelevant things as such that could give the impression of partiality. Another essential factor to communicating independence and impartiality is the 'stone-face' or 'mask' that expresses no human reactions in one's demeanour (Roach Anleu & Mack 2017: 113-114). The appearance of impartiality thus requires the emotional management of the judges' emotions, e.g., when a judge shows patience, they must also manage their own feelings of impatience (Bergman Blix & Wettergren 2016). The role of emotion in court also differs depending on which emotion it is. Expressing sympathy and failing to manage their emotions can be a source for professional shame for judges, but showing empathy can rather be a sign of impartiality (Ibid.). Judges also experience professional pride when there is the appearance of a rational and unemotional procedure (Bergman Blix & Wettergren 2016). However, unguarded emotional experiences can be valued by some legal professionals as it can reassure them that they have not become cynical or inhuman (Ibid., Ekman 2007). This experience is dependent on the empathic process not interfering with their professional performance even though empathy can aid both the process in which a judge or decision maker reaches their conclusion as well as the process in which they justify that conclusion in a way disembodied reason cannot (Bergman Blix & Wettergren 2016; Henderson 1987).

Objectivity is defined by OED (2022) as the ability to consider facts and information without being influenced by personal feelings or opinions and where one is impartial, but are objectivity and impartiality the same thing? Objectivity and impartiality are in essence synonymous to each other, and objectivity in legal proceedings is connected to impartiality, neutrality, and fact-based judgement

(Bergman Blix & Wettergren 2019b: 141). Bergman Blix and Wettergren (2019a) argues that objectivity and impartiality are not synonymous as they can take on different shapes wherein impartiality is the outward displays and objectivity is the internal dialogue (c.f. Archer 2000). This has analytical implications as one can 'act' partially but 'be' objective and 'act' impartial but not 'being' objective.

The notion of objectivity in Western legal systems result in the juxtaposition of emotion and rationality and equates professionalism with a detached and non-emotional, rational, behaviour (Barbalet 2001). Although the notion of a positivistic objectivity has been abandoned in most areas of social life and academic inquiries, the legal system persistently acts as if it is possible to view events from the outside as a complete observer and still understand who has done what (Wettergren & Bergman Blix 2016). However, to reach legal understandings of events, it is necessary to partially imagine and emote the event whilst continuously relating the information to legal codes through empathy (Ibid.).

The problem with the script of judicial dispassion and positivistic objectivity is that it does not allow legal professionals to reflect on how they use emotion in work (because they do) and that could lead them to miss the occasions when their personal emotions interfere with judicial decisions that should be objective (Bergman Blix & Wettergren 2016). Objectivity is the foundation of democratic justice and what gives legitimacy to the legal system, it is thus not in question as an ideal, it is the legal definition of objectivity as unemotional and external to any feeling subject that is problematic (Wettergren & Bergman Blix 2016). The positivistic notion of objectivity in Swedish courts can rather open for personal prejudice to bias the sentence (Bladini 2013). Professional judges should according to Bladinis (2013: 373) findings see without being seen, but the author also note that this is difficult without introspection. Without a critical self-reflection and introspection, the judges' values and prejudices cannot be uncovered, and those can influence and bias what they see and how they judge (Ibid.).

So, based on this, what place does emotion have in law? Distinguishing between emotion and law has been an inconsistent practice, and in the field of criminal law, the distinction is unavoidable (Conway & Stannard 2016: 3). Emotions in legal discourse has traditionally either been described as absent, or its presence as an indicator of judicial incompetence implying that normatively, legal decision-making is supposed to be free of emotion and emotional influences (Maroney 2016: 261- 262). This continues to hold precedence even though scholars pose that emotion "pervade the law" (Bandes 1999: 1) and researchers of law and emotions must thus constantly counter the misconception and perceived illegitimacy of the role of emotion in law (Bandes & Blumenthal 2012*)*. As the previous section on emotions and its relation to decision making showed, emotions are an integral part of decision making and emotions may even be necessary for judicial decision making (Maroney 2013). Maroney (2016: 286) hence argues for a combined discourse where emotions is seen as one contributor to judicial decision-making which reflects and encourages emotional integrity and thoughtfulness. Research also proposes that judicial decision making is not dependent on a dispassionate judge but rather a judge who has high emotional granularity which is the practice of distinguishing of when emotional experiences are called for and when they are not (Gendron & Barret Fieldman 2019). The necessity for this so that feelings are not connected to irrelevant circumstances, as with for example incidental emotions (e.g., Tapias, Glaser, Keltne, Vasques & Wickens 2007; Feigenson & Park 2006; Feigenson 2016; Lerner & Tiedens 2006).

The script of judicial dispassion, where ideal judges are supposed to eliminate all emotions to be able to make rational choices, does not really fit with the reality of judicial work (Maroney & Gross 2014). Judges are professionals who are regularly exposed to emotional testimonies and stimuli and are expected to eliminate those in a manner that could be harmful, and they should thus rather manage than eliminate emotion (Ibid.; Smith & Blumberg 1967). Emotions and especially displays of emotions such as anger has also been shown to be more common in

instances where the person in power feels superior to the other subject (Kemper 2011).

This chapter has provided background on the Swedish legal system as well as the Swedish lay judge system. Additionally, the chapter also presented research on the performance of impartiality and objectivity by legal professionals, and highlighted that judges deliberately manage their emotions to demonstrate impartiality and fairness to others. It further showed that there is the ideal of judges being detached and unemotional. The next chapter will describe the theoretical frameworks and concepts used in the analysis.

Theoretical frameworks and concepts

This chapter will introduce and present the theoretical frameworks and concepts that will be used to analyse and understand the expressions and experiences of lay judges in relation to impartiality and emotions that this thesis aims to investigate; emotional regulation, rule reminders, feeling and display rules as well as performance and front stage/backstage.

3.1 The dramaturgy of the courtroom

The Code of Judicial Procedure has clear boundaries of what not to do or what to do when and structures the proceeding which turns the court hearing into a ritual (c.f. Bergman Blix & Wettergren 2019a: 735; Flower 2018). A professional etiquette is a body of ritual that also preserves the common front of the profession before the audience (Goffman 1956: 56).

The performance refers to all the activity that an individual does and engages with which occurs within a period where the individual is present before observers and can influence the observers to some extent (Goffman 1956: 13). The performer is a subject that can be looked upon at length for engaging behaviour by persons in an

‘audience’ without taking offence (Goffman 1974: 124). By this definition, lay judges are performers as they can be looked at incessantly in a way that would not be appropriate in other face-to-face interactions. Within Goffman’s interactional theory all social interactions are thus a performance for an audience aimed towards giving an impression about the role that they are playing.

Likening all interactions to a performance also implies that the individual is playing a role. This means that it is possible to distinguish between the ‘role’ and the ‘role performance’ (Goffman 1966: 85). The role is the normative and expected actions that an individual holding a role engages in (Ibid.). In other words, a lay judge is a role with expectations of what normative actions of a person in the position should engage with, i.e., how they should and should not behave. However, the role performance is the actual demeanour of the individual on duty in the position (Ibid.), namely the demeanour of the individual playing the role of a lay judge. Logically, it is then also possible to behave out of character and communicate things that are not in line with the impression that the lay judge wants to convey.

Another part of the performance of front stage is the ‘personal front’ which is the expressive equipment the performer uses so that the audience identifies with them and that follows the performer wherever they go (Goffman 1956: 14). Some such characteristics of personal front includes clothing, sex, age, facial expressions, body language and gestures and speech patterns (Ibid: 14-15). Such expressions mediate information such as social class, occupation, competence, and intent to others (Goffman 1969: 5). However, since lay judges do not speak as part of their performance, speech patterns are not likely to occur as part of their personal front in this study. In face-to-face interactions, the observer gains information from the subject’s expressions, and the subject can choose to control and manage the information that the observer obtains (Goffman 1969: 10). Thus, the subject can influence the observer by inhibiting or fabricating expressions in a game-like and strategic manner (Ibid.). The performer can also communicate disinterest, disrespect, impropriety, incapability and more by acting inappropriately. Examples of such behaviour given by Goffman (1956: 33-34) is stumbling, yawning,

belching, scratching themselves or making a slip of the tongue. Expressions as forms of communication and as information occurs through and between individuals where the information seeking party must attend to the expression of the transmitter to know how to interpret the communication (Goffman 1969: 9-10).

The dramaturgical perspective of social interactions likens all interactions to a stage performance where the individual plays a role on the scene. The scene is then a setting which involves furniture, the physical layout and other items which supply the scenery and creates a stage for human action to be played out before, within or upon it (Goffman 1990: 28). The setting is generally geographically fixed and those who use the setting as part of the performance is dependent on being at the appropriate place for the performance (Ibid.). In the present study, the scene of the lay judges' performance is the courtroom. The courtroom is a structured setting with a fixed design, with the bench being slightly elevated so that the power of the judge(s) is symbolically accentuated. The seats are assigned to the different actors present, where the judge is seated in the middle with the court clerk and a lay judge to their left and two lay judges to their right. Before the elevated bench, the prosecutor and victim are seated to the left and the defence lawyer and defendant to the right. Sometimes a counsel for the injured party is seated next to the victim. From this perspective the prosecutor, victim, defence lawyer, defendant and potential observers are all part of the audience.

The 'backstage' of a scene or performance is hidden from the audience and the conduct there is more informal. As vital secrets of a performance are visible 'backstage' and performers often behave out of character there, audience members are seldom welcome there so that the appropriate impression is upkept (Goffman 1956: 70; c.f. Gadd 2017). This is comparable to the deliberation being behind closed doors or the room assigned to lay judges in court, and it is not possible for an outsider to observe. Goffman (1956) also proposes that the distinction between frontstage and backstage is not always well defined, and that performance will likely sustain the frontstage impression of a worthy character even among the team-mates such as other professional judges or lay judges.

3.2 Emotional regulation

Emotion regulation is when the individual adjusts their feelings and expressions consciously (Hochschild 2012). When the emotional management creates an observable display aimed to induce a state of mind in others, the individual engages in emotional labour (Ibid: 6-7). It is thus the mental work required to fulfil the role or position. Managing emotions is a deliberate process in which one adjusts to the feeling norms and rules of a particular group and the social exchange of emotions in interactions (Hochschild 2012). ‘Feeling rules’ are the accepted and expected feelings and emotional displays in a social group or setting such as the courtroom (Ibid.).

A judge who has an emotionless appearance or ‘stone face’ does what Hochschild (2012) calls ‘surface acting’, which is when the expressed emotion is not congruent with the experience of it. Such acting involves emotion management in order to conform to the feeling rules of the courtroom and it could take shape in the crossing of their arms and by leaning back in the chair (Bergman Blix & Wettergren 2019b). However, the emotion management and surface acting of ‘foreground emotions’ such as anger (Barbalet 2011) can turn the judge’s attention away from the proceedings. ‘Background emotion’ like curiosity have low expressivity and is more likely to enhance involvement rather than being disruptive (Ibid.).

Emotional socialisation begins early (as in infancy) and helps us understand and express our emotions within situated feeling rules (Hochschild 2012) and emotions are often managed more unconsciously without many reflections. In professional settings, however, actors are more often required to manage emotions deliberately (Hochschild 2012; Bergman Blix & Wettergren 2019a, 2019b). As lay judges serve within a very situated environment (the courtroom) but are to be uneducated in the legal sphere, their experiences and reflections of emotional management and experiences of emotion in court proceedings are an interesting intersection to research. Lay judges are nonetheless expected to conform to the feeling rules in the courtroom and if they depart from the ‘stone-faced’ norm of the Swedish courts

they are considered to commit a more serious breach than a professional judge (Bergman Blix & Wettergren 2019b: 28). If one breaches the feeling rules in a setting, such as a prosecutor being too aggressive in their examination, the judge often reprimands them which serves as both a ‘rule reminder’ and a strategy for emotion management (Hochschild 2012).

As established by the previous research above, emotions are generally not desirable in the courtroom, which can lead to them being regulated and managed through several strategies by the lay judges so that they behave in accordance with the feeling rules. Maroney (2011b: 1505-1510) present several groups of emotional regulation strategies wherein suppression strategies is one which involve the action of avoiding the emotional stimulus are one. This strategy would require the individual to understand likely features in a situation, and what the expected emotional responses would be (Ibid.). That could imply avoiding a situation entirely, as in not meeting a person who one knows will incite anger, but it could also include modifying a situation if it cannot be avoided (Ibid.; Maroney & Gross 2014: 145). Modifying it is to change the environment enough so that it will not affect oneself, but also chose whether to pay attention to emotion-provoking aspects of the situation, for example by closing one’s eyes, which can also be called attentional deployment (Maroney 2011b; Maroney & Gross 2014: 146). It is also possible to suppress emotions by distracting oneself internally, as by thinking of something entirely different (Maroney 2011b: 1505-1510).

One other category of emotional regulation strategies is the anticipatory suppression of emotional experience where the individual steels themself to not feel anything in a situation one expects to be emotional which can be called an ‘emotional lockdown’ (Maroney 2011b: 1506-1507). Another strategy in this category is denial and repression (Ibid.). Denial is to when the individual does not acknowledge the emotions because they might not adhere to their self-image or when they claim that the emotion has passed (Ibid.). A strategy aimed at controlling expressive behaviour, facial expressions, verbalisations, or bodily movements is behavioural suppression (Ibid.). Hochschild (2012) calls this ‘surface acting’ or

masking and it corresponds to either a poker-face (i.e., neutral) or a desired one (e.g., a fake smile). Once a reaction to a stimulus has caused a reaction, it is possible to change the perception (e.g., it is not what I think, it is something else), evaluation of the situation (e.g., it is not something dangerous), or the goal (e.g., I don't value my safety) through cognitive reappraisal (Maroney 2011b; Maroney & Gross 2014: 146). Hochschild (2012) calls this 'deep acting' and this strategy can be both anticipatory and reactive (Maroney 2011b: 1508). Another cognitive change the emoting individual can use is to deliberately change perspective, for example by adopting a professional attitude (Maroney & Gross 2014: 146). The last two strategies described by Maroney (2011b) are disclosure and mindfulness. Emotions can be regulated by sharing them with others (i.e., disclosing them) and getting support or help reframing a situation, but it could also be used to find a way to live with the emotion more comfortably (Maroney 2011b: 1509). Mindfulness directs attention to the emotion rather than away and strives towards acceptance, which is a strategy where the individual strives to gain control by letting go (Ibid: 1510).

This chapter has presented two main theoretical frameworks of dramaturgy and emotional regulation. The dramaturgy of the courtroom is a theory which posits that each social interaction is a 'performance' in which the individual behaves in front of an audience and where the individual can then behave as expected for the 'role' or outside of the expected. To adhere to the expected 'feeling rules' of an environment such as the courtroom, i.e., when an individual behaves as expected and accepted, the individual might manage their emotions through several strategies of emotional management. The next chapter will provide the method for data collection used in the thesis.

Method

The following sections in this chapter will describe the empirical process and data collection as well as present ethical considerations, reliability, validity, and

reflexivity throughout. As this thesis is a qualitative study with an empirical approach aimed at exploring lay judges in relation to judicial emotion and impartiality, observations and interviews were conducted during an integrated process to understand and explore how they behave and reflect about their behaviour in court more thoroughly. This also means that although the data was collected through separate methods, the research design was not sequential.

4.1 Data collection

4.1.1 Interviews

The interviews were qualitative and semi-structured and followed a pre-determined interview guide[8] which allowed for flexibility and additional questions to be asked depending on the interviewee's answers (Bryman 2018: 563). As qualitative research often seeks a deeper understanding about an area, the value of the interviews is in what the interviewees find important in relation to the research question. Deviations from the interview guide was thus inevitable (Ibid: 621-567). The interview questions in the guide were formulated to be conducive to self-reflection and strived to be as neutral as possible to avoid inducing certain answers. Striving towards having a more conversational interview with broad questions allowed for a more natural flow of consciousness that hopefully generated more nuanced information about emotions and impartiality in judicial work that narrow questions about specific emotions might not capture (Anleu Roach & Mack 2019: 837). Furthermore, although I had some previous knowledge about the topic through the literature review, as well as my previous studies during my bachelor's degree in criminology, I tried to not take anything for granted during the interviews. I rather asked many follow up questions (which might have given the interviewees the impression that I was repetitious) to ensure that I understood the interviewees answers and captured their perspectives.

[8] See appendix A.

A limitation of interviews is, however, that the researcher is dependent on the perception that the interviewee wants to give and that there might be a misalignment between what the interviewee describes and what they did or felt in the situation (Ibid: 843) which is one of the reasons for why it was combined with observations. Observations allowed me to see behaviour that lay judges may not be aware that they are doing, and that the interviews hence could not cover. The method for the observations will be described in the next section. Questions about political affiliations were excluded not only due to it being considered sensitive personal data (The Swedish Authority for Privacy Protection 2019), but also as they were not related to the research aim or questions. They were also excluded to not risk any potential bias due to the interviewees possibly being affiliated with parties that have values that differs greatly from my own political beliefs. Some interviewees briefly discussed politics without being asked questions about it, whilst others avoided the topic entirely.

The interviewees were conducted in Swedish both over phone and in person depending on the availability of the interviewee and were recorded so that they could be transcribed verbatim. Additionally, it was important for me to be conscious of the different power dynamics that were potentially in play during the interviews (Kvale 2006: 483-484). One of which being me having more control of the outcome of the interviews. The interviews that were conducted in person were held in meeting rooms at public libraries to ensure that potential power-relations were not skewed in my favour, but further ensuring that there was no way to overhear the interview by outsiders, as could have been a risk at other public places like cafes.

Recording the interviews was crucial so that I could be active and think critically and reflectively during the interview (Bryman 2018: 577-578). Recordings also assures that the result is as close to the interviews as possible (Ibid.). It was also done to decrease the risk of misrepresentation of the interviewees' answers as I have the monopoly of interpretation during the analysis (Ibid.; Kvale 2006: 483-484). Although there are many incentives to record the interviews, it could also have led the interviewees to want to self-censure which could result in the interviews not

being as fruitful as predicted (Bryman 2018: 577-578; Flick 2023: 400). Assuring that the recordings and transcripts would be kept confidential beforehand was done to minimise this instinct and the interviewees were also asked whether anything had hindered them from answering truthfully. The recordings were stored on an external hard-drive and as the transcripts did not contain any personal or identifiable information they were stored as passcode protected files on my computer for easier access during the writing of this thesis.

Sections of the interviews that were not relevant for the aim of the thesis or could potentially be identifying were not transcribed to ensure both manageability of the material and the anonymity of the participants (Flick 2023: 402). Only the excerpts used in the analysis were translated into English and lightly edited for ease of reading. The transcripts and excerpts utilise several transcriptional conventions (c.f., Flick 2023) such as brackets [ ] for contextual and additional information needed to understand the excerpt, dots within brackets [...] to show where parts of the interview has been removed, and hyphens '-' to show where a word or sentence was broken off. Text written in cursive within brackets [*example*] are non-verbal behaviours the interviewees did during the interviews.

4.1.2 Observations

In addition to interviews, observations were utilised as a method for data collection in this thesis. Observations are a way to understand behaviour and interactions that occur in a specific context as either an outside observer or participant (Flick 2023: 287). It is therefore an optimal method to investigate the judicial behaviour of lay judges during trials.

The observations were conducted at both Lund district court and Malmö district court where I attended trials that will be further described in section 4.2.2. I chose to sit at a position where all lay judges were visible, but in some cases other actors were less visible. As they were not the focus for neither the observations nor the thesis, it was not deemed an issue. Observations require the researcher to have a

thorough understanding about the role and impact that observing can or will have on the setting or environment (Mason 2018: 144, 147). They thus necessitate a high level of reflexivity. I chose to take fieldnotes with paper and pen and not wear any signifying clothes or merchandize with the Lund University logo that could potentially influence the setting unduly (c.f. Flower 2018). As an observer in a courtroom, I was to an extent participating in the setting, but I was not engaging in the setting or affecting it to such a degree that I could claim to have been participating in it.

As it is impossible to fully understand a culture, behaviour, or meaning without participating in the field (Payne & Payne 2004) it is prudent to combine non-participatory observations with interviews as a complement to each other. At the beginning of this thesis the research plan was to only use observations for the data collection, but after some consideration it was decided that using multiple methods would enable me to explore the topic more comprehensively. That means that the interviewees answers were used to understand some behaviours that was observed in court, and some observed behaviour was then asked about in the interviews. Although there are typologies for emotional and facial expressions (e.g., Ekman 2007; Ekman, Friesen & Ancoli 1980; Darwin 1872/1998) it is also possible that emotional displays, such as crying, is driven by different emotions, such as anger, frustration, or sadness (Roach Anleu & Mack 2019). Thus, I strived towards not jotting down the impression I was given of specific emotions or behaviours during trials but be clear in what I saw. An observed smile was therefore not described as the lay judge being happy, nor raised eyebrows as doubt, but rather jotted down as a drawing or descriptions of the expressive behaviours.

Taking fieldnotes is an interpretive, subjective, and constructive process where the researcher presents a version of the world (Emerson, Fretz & Shaw 2011: 45-46). What this entails is furthermore that the fieldnotes presented in the analysis is a representation of the subjective jottings and was dependent on what was considered relevant to observe. To be time efficient, the jottings consisted of both drawings and uncompleted words, shorthand, and symbols. It was important to keep the

jottings short during the trials to ensure that my attention was focused on the lay judges and interactions before me. Drawing instead of writing was one way to lessen the amount of time that my attention was diverted from the lay judges (Hammersley & Atkinson 2019: 159). Another strategy that was utilised in the field was to be selective and direct my focus on the lay judges that were the most expressive. In other words, I made a conscious choice to mostly observe what was most relevant in relation to the research questions rather than attempt to capture all behaviour. That does not mean, however, that I did not observe all lay judges, simply that the attention was not divided equally if not justified. As the observations occurred with the purpose of answering the research questions, the focus on jotting down behaviours was already predetermined. That means that when lay judges acted in accordance with their role and hence the feeling rules and display rules of the courtroom, no notes were written as they were not expressing much.

That observation is a subjective method became clear to me during one of my observations, as I was speaking to other auditors of the trial:

> During the lunch break another audience member and the third witness asked me if I was a student and after a short introduction about myself, I mentioned that I am studying lay judges. A second observer said in response that 'they almost looked like they were sleeping, right?' to which I responded noncommittedly. (**Fieldnote 6**)

The conversation above illustrates how my previous knowledge and understanding of the judicial norms is potentially different from other observers'. The statement that the lay judges appeared to be sleeping differs from my perspective as a researcher, in which they seemed like active listeners but not very emoting, which would be in line with what previous research establishes as ideal. This shows how the behaviours that I noted during the trials were influenced by the knowledge I had based on previously read literature and performed interviews of accepted and not accepted behaviour, ideals for conduct and similar.

4.2 Sample

4.2.1 Interview sample

To reach lay judges for interviews, an e-mail was initially sent to both Lund and Malmö district courts (due to proximity) but only Malmö district court replied with contact information for their local association for lay judges (who later declined to distribute information about the research to their members). Additionally, an e-mail was sent to the contact person for the local associations in region 9 (Blekinge, Helsingborg, Skåne-Bleking HR, Hässleholm, Kristianstad, Lund, Malmö, Ystad) who's contact information was available through the National Association of Lay Judges (Nämndemännens Riksförbund, NRF) webpage. The contact person did not reply which led me to send a request to the NRF with information about my thesis and a request to get help getting in contact with lay judges who might be interested in participating in my study. The chancellery manager for NRF then distributed my request to the chairpersons for all the local lay judge associations in the area closest to me.

Although qualitative research often utilises a purposeful sample which can enable information rich cases to be selected (Patton 1990), the interviewees were not selected so much as volunteering to participate, which means that it was, in a sense, an opportunistic sample (Bryman 2018: 497).

The chancellery manager and chairpersons for each local lay judge association acted as a gatekeeper for the people that I wished to interview (Mason 2018: 79-80), and as was the case in Malmö, my research was reliant on their willingness to grant me access to their members. As I did not anticipate that the interest to participate would be so low and I ideally wanted to perform all the interviews in person, I limited the request to the associations closest to me, which retrospectively might have been a mistake as it limited the sample. Due to the time constraints for the thesis, I decided not to contact the chancellery manager for NRF again for additional help distributing my request. There are approximately 8500 lay judges

in the Swedish courts (Sveriges Domstolar 2023a), and less than 3000 of them are members of NRF (Nämndemännens Riksförbund 2022). Five lay judges have been interviewed for this thesis.

4.2.2 Observation sample

Lay judges are a part of the court panel in criminal cases in both the district and appellate courts (see *Background and previous research*) as well as in a few civil law cases specific to family law (Sveriges Domstolar 2023a). That means that the cases eligible for selection are naturally limited to cases where lay judges appear. The sample is further limited to criminal court cases, as those were expected to be the most emotionally fruitful (c.f., Flower 2018). The criterion for the trials to concern criminal charges limits the available trials to observe additionally. From there, the cases for observations were selected from Lund and Malmö district courts aiming towards maximum variation (Bryman 2018: 497; Flower 2018: 81). A sample for maximum variation is a purposeful sample method used when the aim is to capture and describe central themes across one dimension (Patton 1990; Bryman 2018: 497). That means that each day of fieldwork I strived towards observing new cases with new lay judges.

Initially the goal was to observe trials longer than one hour for practical reasons, as fieldnotes (from jottings) ideally should be typed out as soon as possible to enable as information rich descriptions as possible to be captured (Emerson, Fretz & Shaw 2011: 49) and I feared that observing several trials for one day might cloud my memory and make it more difficult to differentiate between several trials. However, plans sometimes change in research, and this became evident during one of my field days as the trial that I had selected along with many others was cancelled when I arrived, and the only available trials were 45 minutes each. Deciding to make the best of the situation, I chose to observe both. This highlights the necessity for sometimes using an opportunistic sample, which is when one takes on the spot decisions in the field (Patton 1990).

The sample size for neither the interviews nor the observation was reliant on whether it was statistically representative of the population since that is not the aim with purposive (or opportunistic) sampling (Mason 2018: 69-70). Neither is the purpose of this thesis to provide generalisable data but rather gain insight into an area of socio-legal research on lay judges that has been unexplored to date. The number of cases observed was decided based on the amount of data they generated and whether I could make meaningful inferences based on the sample size (Mason 2018: 69-70). In total, seven trials were observed as I achieved information saturation at this point.

4.3 Methodological considerations

Observations are inherently subjective as a method, considering that they are based upon the perspective of an individual's understandings and previous experiences (Mason 2018: 144, 147). Being reflexive to in which ways my own preconceptions and knowledge may influence the results are thus critical to both minimize the risk of confirmation bias and ensure that the data is carefully selected. This was done by trying to not assume knowledge during the interviews, as well as trying to keep an open and broad perspective during the observations even after having focused on some individuals more than others. As there were three lay judges in every criminal court trial I observed, the attention was naturally divided between the individuals, which consequently means that it was difficult to capture every nuance of the setting. As this is a natural consequence of observing and it is impossible to observe every detail it should not be considered a deterrence nor issue (Wästerfors 2018: 7).

Observations is an appropriate method to use to study emotions, expressions, and behaviours in courtrooms as it would be difficult to investigate those through interviews, questionnaires, or court transcripts alone. Interviews (or questionnaires) are not as suitable by themselves as a method since those require a high level of self-awareness and a willingness to disclose certain practices or emotional displays that might occur from the participant (Buscatto 2018: 4). However, by being

immersed in the courtroom and observing the emotional and spatial dimensions of the lay judges, first hand data is collected (Mason 2018: 139; Wästerfors 2018: 2). Interviews also allowed me to inquire about the intentions and reflections behind lay judges during trials. The two methods thus complement each other as interviews can uncover emotional connections that are not as accessible through observations alone (Pugh 2013: 53). Hence, using multiple methods enhanced the capacity to understand judicial emotion as observations allowed me to *reveal* judicial emotions and behaviours whilst interviews enabled me to *ask* the lay judges about their thoughts, feelings, and experiences (c.f., Roach Anleu, Bergman Blix & Mack 2014: 148).

As with most empirical research, inquiries about emotion and judging separately presents challenges, but studying the combination and intersection between the two can be particularly difficult (Bergman Blix, Mack, Maroney & Roach Anleu, 2019). These difficulties pertain specifically to research regarding emotional aspects of judging as it both requires access to a population that can be difficult to access whilst simultaneously inquiring about a topic that is regarded as illegitimate in law, which emotion is (Ibid: 555). These difficulties were present in the sample for, primarily, the interviewees, as the quest for participants was met with some resistance. Furthermore, it is possible that the interviewees did not give honest answers about their experiences and behaviours.

4.4 Data analysis

Qualitative data analysis has the purpose of making sense of and interpreting data and it can be done using several methods (Flick 2023). The fieldnotes and interview transcripts in this thesis were analysed inspired by a thematic analysis (Flick 2023: 440-443), which means that I first familiarised myself with the material, which happened during the entire data collection and transcription period. As all the observations, interviews and transcripts were conducted and completed by me, the empirical data was read and reread several times. Initial 'codes' were generated from the material relating to the research questions, the aim, and the theories (i.e.,

both inductive and theoretical ‘codes’) (c.f. Flick 2023: 441). This was done to remain open to the interviewees perspectives and look for similarities between the materials but not lose touch with the theories or concepts. The codes were then contrasted and compared to find overarching similarities or dissimilarities, i.e., ‘themes’ (Bryman 2018: 703). The ‘themes’ are thus relating to the aim and focus of the thesis as well as the theories and what the interviewees and observations disclose.

Although findings from both the interviews and observations are included and are woven together throughout the analysis, no definitive comparisons can be made between specific statements and observations as the lay judges in the interviews were not the same as those observed during fieldwork. Some inferences are made between the materials, but they are interpretations and cannot be considered definitive evidence. The findings are presented in the analysis based on the overarching themes.

4.5 Ethical considerations

Informed consent is when the participant comprehends and voluntarily agrees to participate in the research (Israel 2015), and it is a fundamental principle for ethical research in Sweden. The Act (2003:460) on ethical review of research involving humans, section 16 stipulates that the research participants must be informed of the overarching plan of the research, its purpose, the methods that will be used, potential risks of participation, who is responsible, that the participation is voluntary, and that consent can be withdrawn whenever. The interviewees gave consent in accordance with this both at time of contact, where brief information was given, and before the interviews to get updated consent. In addition to this, information of which personal data would be recorded, how it would be used and when it would be deleted was included and consented to (in accordance with the General Data Protection Regulation, GDPR). The consent for GDPR and the interviews was documented either by recording it (for interviews conducted over

phone) or by signing the consent form[9] as required by the Act (2003:460) on ethical review of research involving humans.

Court proceedings are public according to the Code of Judicial Procedure (1942:740) unless there are extenuating circumstances that warrants holding the trial behind closed doors[10]. This implies that there is generally no need for a gatekeeper to grant access (Mason 2018: 150). The semi-public setting of a court room does not necessarily mean that consent is not required, but performing covert observations could have merit (Ibid: 152; Wästerfors 2018: 4). My choosing to not disclose the role as a researcher was carefully considered against the potential impact or harm that could have on the people involved (Denscombe 2016: 309). Disclosing my role as a researcher during the observations would disrupt the environment in the court room due to the observers right to attend, and it could possibly have influenced the way that the people act, which is called the Hawthorne effect. The Hawthorne effect is the tendency for people to modify an aspect or all their behaviour in response to their awareness of being studied and observed, which can distort the research findings (Payne and Payne 2004). Additionally, it is not allowed to disturb the trial by talking as an observer in the audience (Sveriges Domstolar 2019b). Getting informed consent from the lay judges in the study was thus not possible nor feasible, but there is a lack of evidence that ethnographic research has resulted in harm for the participants (Atkinson 2009: 24). As the environment for the study does not facilitate participation in the field but only to observe it, avoiding influencing the field was therefore of primary concern. This was done by being conscious about my note taking as it could be experienced as intrusive and it was important to respect the individuals involved (Mason 2018: 158). What this means is that when there was reason to suspect that my presence or note taking was disturbing the trial or potentially harming the individuals involved,

[9] See appendix B.

[10] The court may choose to hold the proceeding behind closed doors in instances where it is of particular importance to protect personal information, and it is common when the trial concerns sexual violence or child pornography among others as well as in every proceeding with questioning of a minor under the age of 15 (the Code of Judicial proceedings, chapter 5 section 1)

I put down my pen to signal that I was not taking any notes. One such a time was when I met the eyes of a lay judge several times and suspected that they became uncomfortable. The notes were then continued from memory. My role as a researcher and student was disclosed to those who asked (such as others in the audience before the trial or during break) and information about my purpose was given. Based on the anonymised fieldnotes and the exclusion of information as trial numbers, the possibility to identify the observed lay judges is extremely unlikely. As such, the potential risk to the individuals was subsequently deemed very low as well.

Furthermore, much consideration was given to the presentation of the participants in this study. As the aim of the thesis was not to investigate the potential effect of gender nor age on the performance of impartiality, nor differences in behaviours or perspectives depending on those factors, the decision was made to exclude gendered pronouns from the analysis to make the thesis gender neutral. Consequently, no pseudonyms were assigned to the interviewees. The assigning of fictitious names was contemplated as it could possibly have made the analysis livelier, however it was deemed to potentially risk giving an impression about not only gender, but also race and age of the participants. As gender, race or age are not part of the thesis' focus, neither names nor gendered pronouns were necessary. The interviewees are therefore presented as IPx, interview person, and they/them/their/themself are used as pronouns (Marriam-Webster n.d.). It was also important for me when conducting this study to not reproduce potentially harmful norms in the portrayal of the participants i.e., gender stereotypes (c.f., Brinkmann & Kvale 2015; Flick 2023: 12-14). The lay judges presented in the fieldnotes from the trials are titled as LJx, lay judge, and numbered from 1-3 based on their seat from left to right where 1 is seated to the left and 3 is the lay judge seated on the right side of the clerk.

4.6 Validity, reliability, and transparency

Validity and reliability are measurements primarily aimed towards determining quality in quantitative research and there are still no standardised measures to assess the quality in qualitative research (Bryman 2018: 465; Flick 2023: 489). There are other measurements like credibility, trustworthiness, and perhaps most importantly transparency to assess qualitative research (Flick 2023: 496-499) where the main aim is to be transparent enough about the procedures, inferences, and data to make it visible for others to evaluate. As they are not as established, validity, reliability and transparency will be discussed below.

Conducting research with high (external) reliability means that the extent that the research can be replicated is high and that the methods utilised are suitable (Bryman 2018: 465). Judicial behaviour occurs in a context (Roach Anleu & Mack 2014), which implies that it would be improbable that the same individuals observed in this thesis would be in the same constellation again during a similar trial. This is thus indicative of a low replicability and reliability (Bryman 2018: 645). However, the inherent changeability of social environments is the same in all qualitative research and should not discredit it (Ibid., Mason 2018: 35). The courtroom is nonetheless a structured, ritualistic environment with a high degree of predictability, which means that there is a level of replicability of the environment and culture of the courtroom even if the dynamics would likely be different. Reliability can furthermore be achieved to some extent through transparency and careful consideration of choice of method (Mason 2018: 236).

Validity is the measure that asses how well the research and conclusions correspond to the aim and research questions of a study (Bryman 2018: 465; Mason 2018: 35). That is, whether the thesis investigates what it claims. The present study has high validity as the aim and research questions has guided the observations and interviews throughout the entire process. Validity can also be ensured through transparency. Using a lot of excerpts from both the interviews and observations in the analysis is to be transparent and ensure that the reader can be aware of the

thought process and make inferences of their own (Flick 2023: 494). Some of the details of the research process cannot be disclosed, such as the entire process for sampling the interviews to ensure the participants anonymity, but the general steps are described for transparency.

Analysis and presentation of empirical material

In this chapter, excerpts from the interviews and observations are presented and analysed using the theoretical frameworks presented in chapter three to understand how lay judges might regulate their emotions to present an impartial front and reflect about their behaviour. The analysis is structured based on themes and commonalities in the material, but some overlap between the themes was inevitable. The main themes were *performing impartiality*, *acting professionally,* and *performing the role.* Excerpts from both the trials and interview transcripts are presented and analysed entwined in the analysis.

5.1 Performing impartiality

The first theme includes excerpts from the material that relate specifically to how the interviewees describe certain actions as giving the impression of being impartial or partial, as well as instances where specific behaviour was observed in court. It also discusses the place of emotions in court throughout. In addition, it is structured based on two ways that the performance of impartiality can be done; by doing nothing, or behaving equally.

5.1.1 The act of doing nothing

When asked how lay judges should act in the courtroom, several interviewees mention the necessity to be *neutral*, and equates neutrality with impartiality. IP4 says that:

> "Yes, well it's that you're supposed to be neutral and shouldn't show anything but look completely blank and

> then you shouldn't have any prejudices about people and something like that." (Excerpt from IP4)

The interviewee explains further by saying that by doing nothing and just sitting there looking neutral, one can communicate impartiality to others. What IP4 touches on in the excerpt above is both that a lay judge is supposed to be neutral and not show anything, which can be said to be an embodiment of the unprejudiced mind and objective mind. This perspective is shared by IP2 who gives more examples of when they feel the need to regulate their facial expressions to not give the impression of partiality or sympathy with one side:

> "So it's both physiognomy and trying to be neutral, because sometimes it can happen that one expects-, and it is an interesting game-, expects that the prosecutor is going to- that 'now it's only reasonable that the prosecutor objects to this', or adds this or like that, and you recognize it and they you have to try to have a poker-face in spite of that because it could be misinterpreted that I smile when I hear the defence lawyer say something just because I expected [it] 'yes there it is, what I was waiting for' and I can't show that because that could possibly show that I had maybe sympathy for one side or the other. So, the poker-face is pretty important, to have the eyes open but a neutral face." (Excerpt from IP2)

What the excerpt illustrates is not only that the interviewee considers smiles and other forms of body language as potential indicators of partiality, but also that they regulate the potential emotions through surface acting and suppresses impulses to show emotion so that feelings do not show in their facial expressions or body language (Hochschild 2012; Maroney 2011b). Surface acting is the change in outwards displays rather than the alteration of feelings so that observers are not privy to the feelings of the emoting individual (Hochschild 2012). The poker-face, as IP2 describes it above, is in a way *the act of doing nothing* and by doing nothing, the interviewee means that they can avoid giving the impression of sympathy to others. Sympathy is considered less legitimate than feeling empathy by professional judges as it is considered an emotion rather than the capacity for understanding (Bandes 2009: 136). As such, it is not as compatible with the impartial demeanour

in the way that empathy can be (c.f., Bergman Blix & Wettergren 2016). According to Bergman Blix and Wettergren (2019b: 142) an impartial demeanour is the actions which communicates that no one is judged until the trial is over.

An almost identical experience as IP2 mentions above is expressed by IP5 below where they believe that nodding as a self-affirmation when something they expected to happen occurred could be misinterpreted by either the prosecutor or defence lawyer as them being on the right track.

> ”No I don’t think-, we decide the outcome of the case later and it shouldn’t-, I don’t think-, neither of the parties should have any kind of idea when they leave about what we think, and then it could be possible that it could affect that if I were to nod at something the defence says, the prosecutor can use that because they see that we expressed something or that we think in a certain way and then they can elaborate on that or the opposite and the defence sees that I’m nodding to what they said, then they can continue with that argument.” (Excerpt from IP5)

Nodding is an action that was observed during several of the trials and according to several interviewees it is an action that could be interpreted as potentially being biased, even in cases where the lay judge identifies with what is being said as something they anticipated.

> ’What made it physical?’ the prosecutor asks the defendant, who answers in a curt tone that they don’t know. The prosecutor continues asking what the defendant did that is physical, as the defendant don’t deny the actions and they answer that they only threw one snowball which is the one that was shown on the film. LJ1 nods and the defendant adds ‘but only that’. (**Fieldnote 5**)

The same lay judge during the same trial both nods and shakes their head during several occasions when different actors in the room speaks and it appears as if the lay judge either agrees or disagrees with their statements. It might be an unconscious act of self-affirmation such as the ones that IP2 and IP5 mentions or a so-called non-verbal slip (Ekman 2004).

> “Yes, you have to like be cautious with your body language and you can’t like in any way react that you- you are not allowed to nod either or shake your head and like that […]” (Excerpt from IP1)

As nodding and other expressions through body language according to interviewees could be misinterpreted by the audience during the trial, it appears important for the lay judges to rather keep a neutral expression. Several characteristics of the personal front (e.g., expressions) during the performance can communicate information about the intent and competence of the performer (Goffman 1969).

> ”Not even [yawns] would- would be accepted but you sit there and look unmoved, but you keep your head sharp and you don’t sit and stare at the defendant because you think that ‘yes they are the one who did it so I am going to stare you to death’, you don’t do it. [...] but I can’t answer for the other lay judges, but I can answer for myself, and I certainly wouldn’t do it. Then, in some ways, you have already decided that it’s you who are guilty if you sit and stare. [...] I could of course fix my eyes on [the defendant] because they sometimes look at me and looks at the others but usually at the [lay judge] who is closest and there- I show absolutely nothing and should not do it either. It’s like an obvious thing for lay judges to not show in any way who you are rooting for, so to speak, or who you don’t like.” (Excerpt from IP3)

The necessity to not show whether they as lay judges might believe the defendant is guilty before the trial is over is described by the interviewee in the excerpt above, and they mention the taboo of staring at the defendant as a way to signal their potential belief of guilt. However, where the line is drawn between acceptable and non-acceptable behaviour in court appears to be different between the lay judges in the interviews. IP1 shares their perspective on the appropriateness of showing emotion as a lay judge by stating that “it cannot be [wrong]” (IP1), perhaps because they are also human (Ekman 2007). What the interviewee punctuates, however, is that burgeoning emotions can never be allowed to get to the point where they interfere with the lay judge’s ability to be an active listener (c.f. Wettergren & Bergman Blix 2016). If it does, they must ask for a break. If IP1 themself feels like

they might react to something in court, they shield their face and make some notes so that their face becomes less visible to the audience.

> ”No, I don’t do anything, sometimes I- but then I have done it earlier during the trial-, that I take my right hand, put it up by my forehead and then I make some notes. So, I can shield- can you picture how I am doing it? I take my left hand and then the elbow on the table and then I write and then I maybe write like that a few times. Then I could shield if it is possible to see in my face how I react because there are a few lay judges who-, they start to cry and say ‘can we take a break?’… and that is also correct. You shouldn’t sit there and become more and more affected as a lay judge because then you’re not listening. Then you’re blocked.” (Excerpt from IP1)

Shielding their reactions from the audience is a way for the interviewee to keep in line with the role and ideal of impartiality and not appear as if they are either emotional or biased. Putting a hand to their forehead and writing was also observed during trial two, but the significance of it being a potentially deliberate act to shield the face was not considered before the interview with IP1. Shielding the face or mouth from yawning was also observed during trial three, four and seven and during all trials several lay judges sat with their hands over their mouths in a manner that could be pre-emptive or mean nothing.

> “Yeah like, I don’t think I would dare to show any emotions at all because it could have been wrong, and I think its desirable to not show any emotions, not even empathetic ones which actually wouldn’t hurt anyone at all but it is still two parties even if one party is the state and the other is the individual human, it is still two parties so I think it is desirable that you have poker-face. It could be perceived as inhuman, [...] but I still don’t think that there’s any room for it in court.” (Excerpt from IP2)

Although there appears to be indications of a consensus among both professionals in court (see previous research) and the lay judges in the present study that (some) emotions do not belong in court, empathy and other emotions can serve as reminders to the actors in court that they are human (c.f. Wettergren & Bergman

Blix 2016: 30). IP2 says that it affects them on the inside to see others suffer during questioning, but that the surge of emotion and lump in their throat is a healthy sign. It is important to the interviewee however, to note that showing emotion, even empathetic ones, is not desirable even if they might not cause any harm. Whilst it is possible that it is perceived as inhuman to have a cold exterior (c.f. Ekman 2007), IP2 does not think that the court have room for emotions. What IP2 is discussing here is the display rules and feeling rules of the courtroom (Hochschild 2012).

It is possible to manage the impression one gives through body language and emotional expressions through controlled movements (Goffman 1969: 12-13; Ekman & Friesen 2003: 19-20). The reasons for controlling facial expressions of emotions can vary, it can both be due to the social norms or display rules of a setting, or because it is to give the observer a specific impression (Ibid.). This is mentioned by several of the interviewees in relation to displaying emotion. IP2 says that they need to have a cold façade even if they start to feel emotional. The following excerpt from IP3 illustrates how they differentiate between thoughts and actions to perform impartiality:

> "They had-, so they deny it and it annoys me that they don't- that they don't dare to stand for what they've done, it annoys me, but it is nothing that I can in any way show, neither with a look nor with body language or in any other way that-, rather you sit and look interested but you don't get involved in any way so that you show with your body language that 'I don't like this'. You are not allowed to do that. But you can think, you are allowed to do that." (Excerpt from IP3)

The acceptance of thinking but not showing indicates that the interviewee conducts surface acting to adhere to the appearance of impartiality. With surface acting, that of biggest importance is to not *show* what one is feeling rather than changing the emotion through deep acting (Hochschild 2012). The excerpt from IP3 illustrates that there might be a difference between performing impartiality and being objective, where the primary objective is to not show indications of partiality (c.f., Bergman Blix & Wettergren 2019b).

5.1.2 Behaving equally

The act of doing nothing as a way to perform impartiality which was described above can be compared to how IP5 describes the act of communicating impartiality as *behaving* or *performing equally*. When asked if it is possible to show to others that they are impartial IP5 says the following:

> ”Yes well it is probably what we discussed a bit about taking notes, that you try to take notes about as much on everybody, that you look at the defendant when they speaks as often as you look at the prosecutor when they speak or the victim. So, you don’t sit and take a lot of notes when the prosecutor talks and then when it’s the defendant you put down the pen and look like this [*sits back with their arms crossed],* so yeah try to behave the same way depending on which party it is like…” (Excerpt from IP5)

What IP5 is describing is that they show impartiality to others in the courtroom by consciously trying to behave the same way despite who is speaking. This is further described as being increasingly difficult in cases where the defendant is representing themselves or if the victim is talking as it often becomes less concise. It is explained as being more difficult to write everything down, but the interviewee says that “I still try to make it as fair as possible” (IP5). IP5 also says that they try to be conscious of when they have not written anything in a while or that they might be thinking about other things and need to get back to writing. This is a sort of rule reminder that both IP5 and IP2 use to behave equally for all parties.

> ”I take quite a lot of notes and I’ve made a little system of four squares where I write the different sides for and against and so on and it works well for me, and then you have to try and think that you maybe draw a small figure if you don’t have anything to write when the defender does their pleading. Maybe you think that ‘this is what I expected’ but you still write a little bit so that they see that you follow everything.” (Excerpt from IP2)

Furthermore, the use of purposeful gazes is not something that only professionals in court employ as a communicative technique (c.f. Bergman Blix & Wettergren

2019b: 92-93) but something that lay judges also uses to show that they are engaging equally with all parties. This was also observed during several of the trials when the lay judges looked at the person who spoke.

Apart from using the gaze note taking was one of the most common behaviours observed during the trials, and it is such a common act in a courtroom that it could mean nothing and simply be a strategy for remembering what is being said. One interviewee asserts that it could also be a hindrance to listening if a lay judge takes to many notes: ”Because if I'm sitting and taking notes on everything all the time, I'm not exactly listening… That's how we humans work. You can't just write everything because then you don't have time to listen to what the person says.” (IP1). Another interviewee (IP5) had, when asked directly, not considered that such a line might exist where they could take too many notes.

Excessive note taking for one party but not the other, is one way that the interviewees described a potential risk of being perceived as partial. It is also possible that note taking is a strategy employed by lay judges as emotional management and surface acting as posited by IP1:

> ”Sometimes when I've like… Been in a situation where I could have sighed or done something similar, then I lift- I have said to myself that in those situations you don't do anything, just lift the pen and if nothing else just pretend that you take notes and then put the pen down again.” (Excerpt from IP1)

By telling themself not to do anything or react outwardly by sighing or doing other things that the interviewee considers inappropriate, IP1 gives an example of how an internal rule reminder works (Hochschild 2012: 57-58). An internal rule reminder is characterised by a private thought or internal dialogue, and it serves to remind the individual of the feeling rules in a setting, which is the accepted and expected feelings and emotional displays in a social group or setting (Ibid.). This suppression of behaviour is a strategy for emotional regulation (Maroney 2011b). When IP1 chooses to pretend to take notes in a situation where they could have

done something that the interviewee considers inappropriate, they once again perform within the expected for the role they hold (Goffman 1961: 85). According to Goffman (Ibid.) the role is the activity that the performer engages with that is in line with the normative expectations of the position.

> ”[...] So it’s- I definitely think that there are many things [that could communicate impartiality] and also the body language. It’s a bit limited because you’re sitting on an office chair you have a table in front of you so it is pretty limited, it is not appropriate to, for example, turn to the side, and it can also be a way to show less interest. /…/” (Excerpt from IP2)

According to IP2, turning to the side can be a way for a lay judge to signal that they are paying less attention or showing less interest. It is also possible that it is a way to show partiality as the judge is not behaving equally towards all parties. The excerpt below shows a situation during trial where a lay judge was observed sitting turned.

> The screens went down on each wall of the room and LJ1 leans back in their chair. They are sitting turned towards the defendant but looks at the prosecutor with their head turned when the prosecutor talks about the preliminary investigation report. (**Fieldnote 3**)

That the lay judge is sitting turned towards the defendant and is only turning their head towards the prosecutor when they speak can be interpreted as the lay judge being more engaged with the defendant. This behaviour of sitting with a turned seat was observed during several trials and most often, the chair was turned towards the defence. Another common behaviour among the lay judges observed in the trials was that they turned their head, gaze, and attention to whomever was speaking. In some trials during intense questioning, it appeared as if some lay judges were following the ball during a ping pong match as the speaker shifted often and their head was facing the speaker. In the excerpt below, IP2 discusses the trial as an interesting game, where everything constantly changes and requires attention. As a

result, the interviewee tends not to get emotional as they are able to put the feelings aside and focus.

> “So as a rule, the game is so-, so interesting. Like we sit and watch a really exciting tennis match so in those cases [when I might get emotional], soon something new exciting will happen which puts it in the back of the mind. So, it’s just a matter of wating. Should I feel that I get frustrated by someone saying something or behaving-, it can sometimes be that a witness who is very... disrespectful or expresses himself stupidly or disrespectfully in some way about one or the other, which can provoke, yeah after-, in a minute or two the defence will come in or the prosecutor will come in and the match will continue. So, it's easy to get it to fall back because things are happening all the time.” (Excerpt from IP2)

According to IP2, the ritual and stringency of the trial can then serve to manage the lay judges’ emotions, which IP1 discusses as well. IP1 says that a lay judge sighing or rolling their eyes could give the impression that the court has already decided, and that the stringency and order of the trial decreases that risk. The excerpt below is one example of when a lay judge sighed during a trial, but it was a behaviour which was observed in more than one trial.

> When the defendant searches the victim on the video all lay judges looks at the screen behind the prosecutor. LJ3 looks up at the ceiling and sighs and then looks at the screen behind the defendant. (**Fieldnote 6**)

5.2 Acting professionally

This section is a theme which depicts how lay judges walk the line between behaving professionally whilst still being laypersons. Although lay judges are democratic representatives of the people in the courtroom without legal education (Nämndemannautredningen 2017), the excerpt below illustrates how IP2 still believes that they should act professionally.

> ”You can feel that it crawls a bit inside of you that ‘must we torture this human being?’ yes, but we must because the

> defendant or if it's a witness so sure it- we have to expose them to this, but it can creep up on me sometimes that the empathy takes over from the professionalism that we even as a layman try and must show." (Excerpt from IP2)

The way the interviewee contrasts empathy with professionalism can be interpreted as them being perceived as opposites where professionalism is held in a higher esteem than the capacity for empathy. The need for a professional performance is also mentioned by IP5 who says that they can catch themself nodding or giving a small smile sometimes or even relaxing a bit in their chair, but that those are not appropriate behaviours. IP5 explains why in the excerpt below:

> "No but it's because I don't think that you should-, exactly- you should signal that you take it seriously and be professional and so on because for those who come here, for some of them it's like the biggest thing in their lives that they need to go to the district court and then you have to be professional and show that you take it seriously [*puts on a serious expression*] and aren't nonchalant or slack or anything like that." (Excerpt from IP5)

Acting relaxed or too slack is not congruent with a professional appearance according to IP5 as it is important for the victims and defendants to know that the court takes their situation seriously. IP4 is of the same opinion and believes that it is "pure decency that you don't sit there and like fall asleep" and explains that it is enough for the interviewee remind themself to show respect to remain focused and alert. Another example of a more relaxed behaviour during a trial was observed in trial one.

> When the defendant starts to answer the prosecutor's questions, LJ2 twists their chair so it is turned towards the defendant and LJ3 leans forward. The prosecutor asks the defendant to tell them what a 'tag' is, and they respond with describing the differences between a group tag and a personal tag. LJ2 puts their ankle on their knee whilst leaning back in the chair in a position that looks relaxed. (**Fieldnotes 1**)

Whilst it is possible that a relaxed demeanour does not implicate that the lay judge is unfocused or not listening, it can give the appearance that they are not as professional. Sitting comfortably or leaning back in a chair could also give the impression that the performer is not as interested with the interaction going on before them (Goffman 1956: 34). Lying down in the chairs and swinging it from side to side was also observed in trial three and seven, which gave me the impression of both a relaxed demeanour as well as them looking restless.

The ambition that both IP5 and IP2 describes to act professionally also indicates that they wish to be part of the team that the bench of judges and committee of lay judges are (c.f. Goffman 1990: 83). They are thus not (only) representing themselves during the performance, but they represent the court and the people (Ibid.). IP2 discusses in the excerpt below how the lay judges in their local association discusses clothing and uses the legal professionals as a frame of reference of how their personal front (Goffman 1990: 34) should appear.

> ”[…] we have pretty good discussions about these things. Even for example clothing, that you maybe- 'should you have a short-sleeved shirt? You might have a nice short-sleeved shirt', no but no one else has- the prosecutor and lawyer and presiding judge doesn't have a short-sleeved shirt so then maybe we shouldn't have that either even if it would be allowed. […]" (Excerpt from IP2)

Being well dressed and having a decent appearance is also discussed by IP3 and IP5. IP5 says that what it entails to be decently dressed can be different depending on each individual definition and that they have seen lay judges dressed in a suit and others in a hoodie. IP5 mentions furthermore that lay judge colleagues of theirs has gotten rule reminders from the judges when they have been dressed inappropriately (e.g., short sleeves, showing certain tattoos) but follows up with saying that they do not believe that the infraction is big enough to postpone the trial by being one lay judge less.

For the lay judge to adopt a professional attitude can according to Maroney and Gross (2014: 146) be a regulatory strategy aimed towards changing the way that

the mind processes different stimuli. By adopting this attitude, the case unfolding before the lay judge can become more clinical. It can thus be a form of cognitive change in how information is processed from a personal perspective into a 'third-person perspective'. IP1 illustrates how this clinical perspective could be conducted when they describe how it is important to not react even when seeing more gruesome pictures.

> ”No it can't be [wrong to show emotions]. It must- you can't tell a lay judge to 'stop crying now' or 'you are not allowed to cry, you can't show emotions', but if you get to the point where you can't [stop it]… then you have to ask for a break, that you 'need to go to the bathroom' or whatever it may be, you have to take a break. [...] So, it is handled very well, but that- that lay judges should show emotion, yeah it's about trying to not with your body language-, not in these very sensitive cases like rape and child pornography or maybe bestial murders or something, when it comes up the worst imaginable scenes you can't jump and like 'oh!' or something like that so it's just a matter of keeping it together. So it is a balancing act. Because you mustn't be in the situation where you 'now the lay judges-, now the district court has already ruled' it must - it must never happen.” (Excerpt from IP1)

According to the interviewee, showing emotion is not necessarily wrong, if it does not interfere with their performance and abilities, and it is a balancing act of how much is too much before there is the risk of giving the impression that the court has ruled (c.f., Bergman Blix & Wettergren 2019b: 142). Furthermore, IP1 says above that a lay judge cannot jump or react. The below excerpt from trial 5 is an example of when LJ2 reacts to something that the presiding judge says.

> During the examination of the personal circumstances of the defendant, the presiding judge reads that the defendant takes medication for ADHD and LJ2 nods once. When the presiding judge reads that the defendant wants to quit to medicate LJ2 whips his head around to the left and looks at the presiding judge. **(Fieldnote 5)**

Although LJ2 does not show an extreme reaction to hearing that the defendant wants to quit taking medication for their ADHD, it gives the impression that the lay

judge is chocked or surprised at what they hear. The action of quickly turning their head was arguably an undeliberate gesture that disclosed the lay judge's surprise (c.f., Ekman 2004).

Another interviewee was also more lenient in their consideration of the place of empathy in the courtroom, and despite that they consider it wrong to show emotions as lay judges in court, even empathy, it could be visible through subtle changes in the performer's demeanour or expression as depicted in the excerpt from IP4 below.

> ”You shouldn't smile or anything and you could probably smile in some way with the eyes without smiling with the mouth, but I try- I probably avoid that as well, it's not my role in this, I am no therapist.” (Excerpt from IP4)

The interviewee speaks here about their role and how it is not to be empathetic to the people involved or to be anyone's therapist, which can be likened to IP5:s statement just below.

> ”It's always-, or of course when it gets emotional it becomes natural that you get more sympathy for the person who is sad, but there is probably some biological explanation for that… but you have to be a little aware of that it will be like that and I think that I tend to be that. Just because you're sad doesn't necessarily mean that you're right, you must keep that in mind.” (Excerpt from IP5)

5.3 Performing the role

In this section, the last theme is presented in two parts: setting the scene, and going off script. These include excerpts where inferences to the courtroom and trial as being a performance with a start and an end as well as having specific rules is more explicitly described.

5.3.1 Setting the scene

> ”[...] It took a little bit of time until the penny dropped [for me] that it is naturally so in the courtroom that it is furnished with the members of the court, that is to say that

> we sit there in good order when everyone comes in and when they leave, we are still there. It's like a part of the game, at the beginning I didn't realise that whole 'well now everyone gets up and it's like a meeting at [work] or whatever, now the boss gets up so now we get up too', but you don't. We stay because when you enter a courtroom, there must be a court there who is present and prepared."
> (Excerpt from IP2)

Within Goffman's interactional and dramaturgical theory, all social interactions are a performance before an audience aimed towards giving an impression about the role that they are playing. I interpret 'the game' that IP2 discusses as the interviewee likening the courtroom and the bench to the frontstage by Goffman's (1956) terminology, and that the performance does not end until every member of the audience has left the room. The way IP2 talks about the difference between the courtroom and meetings at work, also signals that the interviewee identifies the different feeling rules and display rules between the settings. What is deemed acceptable behaviour in one setting such as the workplace can hold a different meaning in the courtroom.

In some of the observations this shift from performing on stage to being back-stage (Goffman 1956) appeared to occur before the audience had fully left the room. The shift happened once the presiding judge thanked the parties, and it appeared as if the participants were released from their roles. The atmosphere became more jovial, and participants started joke and laugh with each other, something that would not be acceptable during the performance.

> The prosecutor starts to pack up their computer when the judge says 'however it goes, good luck. Thank you everyone' to the defendant, victim, and the rest of the room. After this, the audience starts to leave, and the presiding judge thank the translator for being able to appear at such short notice and ask him for their cost analysis. People starts to leave around them and the translator responds in a joking manner that it is free because they are so nice. LJ1 and LJ3 laughs and smiles at this. (**Fieldnote 7**)

> The defence lawyer says thanks, and the presiding judge tells the room that the judgement will be announced in two weeks. 'Thank you for today' the judge says and LJ2 nods. The defence lawyer says that tells the judge that he's working on their cost analysis in a happy tone and LJ2 smiles. The judge says, 'shall we have so much fun today too?' and LJ2 slaps the judge's arm with the back of their hand whilst they laugh. (**Fieldnote 5**)

In both excerpts the audience gets to see a glimpse of the performers in a less staged interaction. Goffman (1956: 13) poses that the setting a performance takes place during tends to stay put, and that the performance begins and ends with the performer's presence on the stage. Although IP2:s experience of the game, as they put it, is in line with this, the excerpts from trial seven and five above indicates that it is possible for the performance occurring within it to end before the performers left the setting. Goffman (1956,1990) proposes that the line between frontstage and backstage is not always clearly defined, and that the performance might also continue to the backstage where the individual is among other team-mates. One of the interviewees mentions however that lay judges are more emotional in the lay judge room (backstage): "Then it's- in the lay judge room and such, there you tend to talk sometimes, and it has been experienced as maybe a bit more emotionally then, but not during the main hearing […]" (IP5). The interviewee speaks here of the line between what is allowed on stage and backstage, and that IP5 experience the backstage as being more emotional.

5.3.2 Going off script

Feeling rules and display rules are not only internal reminders but can also be identified by the external reactions of people reacting to things that they believe others are feeling (Hochschild 2012: 58-59). By seeing the reaction or getting reprimanded, the feeling rules become clear (Ibid: 57). A rule reminder such as this is described by IP5 when two lay judges during a trial sent notes between them, and the defendants noticed:

> "[...] I think it was one time when they had writ- written something on their note and sent it to the colleague who sat next to him. There are two lay judges sitting [to the right] and one sits [to the left] and the clerk and the judge sits in the middle. So, I was sitting on the [left] side and they sat [to the right]. Yeah something like that and after that happened, the [other lay judges] had the perception that they [the defendants] looked at us a little extra." (Excerpt from IP5)

What IP5 mentions in the excerpt indicates that observers in a courtroom, such as the defendant(s), are aware of when the performers go of script and do something that goes against what is expected of the role. Hence, the way the audience reacts to a performance can provide the performer with crucial information about their performance (Goffman 2956: 33) and it can be likened to what Hochschild (2012) calls a rule reminder. By noticing that others started to observe them more frequently, the lay judges in the excerpt above might realise that what they did was not in accordance with the display rules of the courtroom. According to Goffman (1961: 85) there is a difference between the 'role' and the 'role performance' which is the actual conduct of a specific individual whilst occupying the role. Sliding a note to another lay judge was not only discussed as inappropriate behaviour and not in line with the 'role' of a lay judge in the interview with IP5 but also noted as a behaviour during one of the observations, an actual 'role performance'. The trial that the excerpt below is taken from was a trial where the defendant did not speak Swedish and required the help of a translator to communicate. This consequently led to some misunderstandings during questioning where the prosecutor had to repeat their questions several times before getting a satisfactory answer.

> The translator says that the defendant sent the employee to the accountant both so that they could check if there are any personal issues that could hinder him to work and if the employee apposing to working nights as well as if there were any issues with the authorities to hiring him. LJ2 turns towards LJ1 and whispers something and giggles in a low tone when LJ1 turns to LJ2 and whispers their reply. The prosecutor asks the question again to see whether it was agreed upon that the accountant was responsible for checking the defendant's potential employee's legal status.

> LJ2 slides something to LJ1 on the table and LJ1 shakes their head and whispers something before LJ2 pulls the paper back. (**Fieldnote 4**)

The lay judges who sent the notes and whispered to each other did so after the prosecutor had asked the question to the defendant several times and started to become increasingly frustrated with not getting a clear answer. Whilst it is impossible to know what the two lay judges where whispering about and what the note said, it is a behaviour that appears to be unprofessional, both as an observer and by other lay judges. The excerpt also illustrates other behaviours that were described as inappropriate by the interviewees, whispering (IP1), and giggling or laughing (IP4, IP5).

> During the pleading, the defence lawyer says that the witnesses accounts should be taken with a little caution as they and the victim are friends and LJ3 nods. They continue by saying that the information the witness gave during the police questioning is not the same as the information they left today. LJ2 looks at the witness in the audience and smiles. (**Fieldnote 7**)

The smile that LJ2 gives the witness, in the fieldnote above, when the defence lawyer tries to discredit their testimony appears to be a show of support and empathy, as the witness is an outsider who might not be as aware of the performance as the defendant or victim might be. Smiles were observed more often towards people who were not a 'fixed' part of performance (i.e., translators, witnesses, parents) than towards prosecutors, victims, defendants, or lawyers. Those occurred, but in less frequency, which can be interpreted as it being easier to go off script and show support to 'outsiders' through smiles than those more informed of the feeling rules in the courtroom.

When asked if they had ever smiled when they noticed that someone became uncomfortable IP5 explained that they have smiled sometimes, and that they believe it is more difficult to control happy emotions.

> ”I must admit that I have smiled sometimes. Yeah, I know some lay judge colleague who also happened to laugh at some occasion, it’s quite difficult to control. I think it’s harder to control happy emotions, so to speak, than sad emotions. I think it becomes more spontaneous with the happy emotions.” (Excerpt from IP5)

Emotional displays of happiness are described above as being more difficult to control as they are more unexpected, which could indicate that lay judges are usually steeling themselves against feeling sad emotions in an anticipatory suppression (c.f. Maroney 2011b). The anticipation and expectancy of feeling sad or perhaps even angry or irritated during trial could make it easier for the lay judges to suppress and lock away those feelings. The regulation of unexpected emotions is thus experienced as more difficult and can result in emotional expressions that are not in line with the script.

During face-to-face interactions, the participants tend to act out their lines, which is the verbal and non-verbal acts where the individual expresses their view of the situation (Goffman 1967/2005: 5). If the participant acts outside of the expected behaviour, it is likely that the individual feels ashamed and that their reputation is at risk (Ibid.). When asked what the consequence would be for going ’off script’ and behaving in a way that is considered unacceptable or potentially partial, IP3 replies that it would most likely result in a reprimand, or ‘external’ rule reminder (Hochschild 2012) from the professional judge.

> “I would probably get a reprimand, maybe not before the court, but certainly after, probably by the judge who is here that 'this is not how you do it' and surely the other lay judges would also agree that this-, however you show it. But I have never witnessed any lay judge shown-we have good discipline. We think and we act completely unaffected by what happens in the courtroom. /…/” (Excerpt from IP3)

> “No I couldn’t claim that, you just don’t do that [behave partially], or comment or anything and that- I don’t know, I have never experienced that anyone would even try doing that but I think someone would tell them to shut up anyone did that.” (Excerpt from IP4)

These excerpts above show that both interviewees expect to get external rule reminders if they step over the perceived line of accepted and non-accepted behaviour in court to not risk being considered partial. Although both IP3 and IP4 expect the judge or others to reprimand them or react to going off script, the setting and furnishing of the judicial bench is not conducive to such rule reminders as all judges are positioned in front of a straight table with a potentially limited visibility of the rest of the panel.

> The prosecutor asks why the witness involves the defendant in the conflict between herself and the victim, and LJ3 crosses their arms. Instantly when the witness replies that they didn't ask the defendant for help, the lay judge uncrosses their arms. (**Fieldnote 5**)

The crossing of one's arms is a gesture that could be interpreted as showing disapproval or distancing oneself from what is being said. That LJ3 in the excerpt above crosses their arms when it is initially believed that the witness instigated the sequence of events that led to the alleged abuse but then instantly uncrossing them when they denied it could either be an action that is conscious by the lay judge or unconscious. If it is a conscious action to not give the appearance of disapproval, it is possible that the lay judge told himself that it was not appropriate (i.e., a rule reminder). It is also possible that the uncrossing of the arms was an unconscious gesture as a reaction to the witness's statement that they were not involved and had thus not done anything 'justifying' disapproval.

Unexpected gestures or non-verbal communication can be compared to slips of the tongue and is something that the performer is usually unaware of (Ekman 2004). During the interviews, some of the respondents were very firm in their understanding that they had never expressed partiality or any emotions that they regret in the courtroom, and whilst it is very possible that this is true, it is also plausible that they either did not want to disclose of situations where they have done something inappropriate during the interview or that they are simply unaware of when they might do it. Some interviewees such as IP1, IP2 and IP5 acquiesced that

it is possible that they have done something unconsciously or that they do not remember, whilst others like IP3 were firm in their statements that they have never.

> ”No, I actually don’t think so, or rather I don’t think I have noticed such a time.” (Excerpt from IP2)
>
> ”No, no it would probably be my own bad memory that have been the biggest limitation in that case.” (Excerpt from IP5)
>
> ”No, I have not done that. /…/” (Excerpt from IP3)
>
> ”No not-, I have never experienced that, I am pretty neutral as a person. I have no issues with that.” (Excerpt from IP4)

The lay judges above appear reluctant to admit having gone of script in the sense that they have done something inappropriate, and this may have several causes. Bergman Blix & Wettergren (2019b: 28) proposes that it would be considered a bigger infraction if lay judges show emotion. IP1 also notes that lay judges are subjected to much scrutiny in media to an extent that legally educated judges are not.

> “[…] And then its, if we take the- you are probably familiar with the or at least have heard of the so called ‘snippa-trial’[11] […] and I start to think how it is handled in the press? Because if you’re acquitted in the court of appeal, there it is five judges where two of them are lay judges and to be acquitted you need three-two. That is to say that one of the legally educated judges has also acquitted in the court of appeal. But that is never mentioned. It is always a picking on how bad the lay judges are, and that the lay judges make mistakes. Here we have legally educated judges who have acquitted but you never hear about that in the press […]. We have an uphill battle as lay judges” (Excerpt from IP1)

[11] ”Snippa” is a Swedish word for the female sexual organ (Svenska Akademiens Ordlista 2015) specifically aimed to be used by and in conversations with children (Riksförbundet för Sexuell Upplysning 2023). The trial was highly noticed in media as the appellate court acquitted the defendant suspected of raping a child due to them being unsure of the meaning of the word ‘snippa’. The case will not be discussed further.

During the highly noticed 'snippa-trial' in the appellate court, much attention was given to the lay judges during the vote although they are a minority (e.g., Lifvendahl 2023; Rundquist 2023) This could serve as an indication that lay judges are held to a higher standard or are not protected by the professional community in the same extent as professional judges might.

Conclusion and future research

The final chapter of this thesis will provide the answer to the research questions and aim as well as a concluding discussion and suggestions for future research.

The aim of this thesis has been to understand and investigate judicial impartiality and judicial emotion as well as how they can be understood and performed by lay judges by answering the two interlinked research questions: *How do lay judges reflect on their own and other lay judges' performance, behaviours, and emotional regulation during trials?* And *What expressions and behaviours are prevalent among lay judges during trials?*

The two research questions above were utilised to operationalise the broader aim of inquiring and providing knowledge to the research field of judicial impartiality and emotions in lay judges. This was further analysed through the last research question: *What can the answers to the above questions divulge about lay judges performance of impartiality and management of judicial emotions?*

Hence, this thesis contributes to the field with knowledge of how impartiality is performed by lay judges and how they might regulate their emotions to achieve the appearance of impartiality in the courtroom. By conducting five qualitative interviews with lay judges serving in district courts as well as observing seven trials of varying length and severity, empirical material was collected for analysis. The theoretical frameworks and concepts of dramaturgy and performance (Goffman 1956), emotional regulation (Maroney 2011b; Maroney & Gross 2014) and feeling rules (Hochschild 2012) were used to analyse the interviewees excerpts and

fieldnotes from the trials along with previous research conducted on legally educated actors. This chapter provides the conclusion to this endeavour by summarising the main findings presented in the analysis and thus answering the research questions and aim.

6.1 Conclusion

Impartiality is a fundamental human right as stipulated by European Convention for Human Rights 6.1 and a principle for court proceedings in Sweden according to the Code of Judicial Procedure. This suggests that impartiality is a principle that cannot be compromised. All the interviewees discuss the importance of showing impartiality in the courtroom. The lay judges are expected to be neutral and not show any partiality towards any of the parties involved in the trials and several interviewees emphasize the need to regulate facial expressions and body language to avoid giving the impression of partiality. Nodding or smiling during the performance could according to the interviewees be perceived as professing sympathy for one side, which is considered less legitimate than empathy which could have a place in court (c.f., Bandes 2009: 136; Bergman Blix & Wettergren 2016). Both nodding and smiling was behaviour observed during the trials in a few instances, often towards witnesses. The lay judges in the study appear to regulate their emotions through surface acting (Hochschild 2012) and suppressing their impulses to show emotion so that their feelings do not show in their facial expressions or body language (Maroney 2011b). However, the ability to regulate happy emotions is described by one interviewee as more difficult than managing sad emotions due to them not being anticipated. Several characteristics of the personal front (Goffman 1956), such as clothes and facial or body expressions, during the performance can communicate information about the intent and competence of the performer. Therefore, it is crucial according to the lay judges in the study to keep a neutral expression throughout the trial to avoid any misinterpretation by the audience (e.g., defendants, victims, or auditors) as well as having a professional appearance in terms of clothing.

The analysis further illustrates a way that the lay judges in the study perform impartiality during trials, namely the necessity of acting equally towards everyone. One way in which lay judges do this is by taking notes on all parties and trying to behave equally, even when it is difficult (e.g., when the defendant represents themselves and are less concise in their arguments). The lay judges also use purposeful gazes to show that they are engaging equally with all parties and were thus not sympathising with either side. Note-taking was a common behaviour observed during trials and may serve as a strategy for remembering what was being said or as emotional management and surface acting by hiding potentially biased behaviour or emotions (c.f., Hochschild 2012; Bergman Blix & Wettergren 2019b). One interviewee believes that there could be a line for when a lay judge writes too much.

The observations showed not only behaviours noted by the interviewees as being inappropriate (e.g., yawning, smiling, sitting turned, rolling of eyes, sighing) but also behaviour like a poker-face, note taking and looking engaged which was described by interviewees as a way to show impartiality. This could indicate, in relation to the interviewee's statements, that lay judges might do more or show more partial or inappropriate behaviour than they might be aware of. The lay judges also use internal rule reminders (Hochschild 2012), prompting themselves to behave in ways that are appropriate for their role. The analysis also highlights that the body language of lay judges can also communicate partiality, such as sitting turned towards the defendant, rather than sitting facing forward, which was also observed during several trials. Additionally, some lay judges in the study expect to be reprimanded and reminded by either other lay judges or the presiding judge if they transgress which suggests that they may not feel the need to be self-reflexive and manage their behaviour themselves. This is in line with how professional actors like prosecutors are reprimanded by the presiding judge if they are too aggressive in their questioning (Bergman Blix & Wettergren 2019b). Furthermore, some research (e.g., Bladini 2013; Gendron & Barrett Fieldman 2019) suggests that a potential lack of self-reflection could result in unintended emotional influences or

biases in the verdicts. The analysis also suggests, in line with previous research (e.g., Bergman Blix & Wettergren 2019b) that impartiality and objectivity are not necessarily synonymous, as a few interviewees state that it is allowed to *think* but not *show* partial behaviour. Arguably, impartially is from this perspective then a performance and construction aimed at assuring the parties that the court has not passed judgement until all parties are heard. Impartiality is especially important as it often is laypersons first time in court, which is supported by previous research as well (e.g., Roach Anleu & Mack 2017).

Several lay judges also discuss their aspirations to act professionally. A professional demeanour is considered an important contributor to demonstrate that the court and judges take the proceedings seriously. Clothes and general appearance are also discussed as important components of professionalism (c.f., Goffman 1956, 1969), where the lay judges emulate the legally educated judges on what is appropriate. Adopting a professional attitude could furthermore help lay judges process information more clinically (c.f., Maroney & Gross 2014).

This thesis contributes to the field of judicial impartiality and judicial emotions through the exploration their embodiment and performance in lay judges. Based on the conclusion above it can be understood that the lay judges participating in this thesis discusses and reflect about the performance of impartiality and management of emotions from both a normative perspective, as in the expected behaviour of the role of a lay judge, as well as discussing their own (and others) behaviour during the trials. By saying that they perform impartiality by either having a neutral expression that shows no emotion or by consciously behaving equally towards all parties, the lay judges expressed that they managed behaviours and emotions that could risk this performance. In order to appear impartial, behaviours or emotions that could be construed as partial by the audience had to managed. These statements and reflections presented by the interviewees in the analysis have been complemented by observations of lay judges in court where several behaviours that

might convey partiality or impropriety, but also behaviour in line with the expected demeanour, was noticed. Such behaviours and expressions were, among other, having a poker-face, but also the turning of their chair or sighing. The findings presented in the analysis suggests that there might be a discrepancy between what lay judges believe they do and what they actually do during trials, which could affect their ability to regulate their behaviour and emotions to keep the appearance of impartiality.

6.2 Concluding discussion

Based on the analysis and conclusions presented above, some aspects of the material can be discussed further.

The lay judges in the study appear to be in a consensus about a few things, for example that it is important to appear impartial during the trial. It is suggested by a few, however, that it is acceptable to think partial thoughts without it being an issue, as long as it is not visible. This finding is supported by some of the previous research done by Bergman Blix and Wettergren (2019b) on other legal professionals. That impartiality and objectivity are not synonymous is hence clear based on the material, and objectivity is subservient to the appearance of objectivity. It is however possible that the interviewees discuss impartiality rather than objectivity due to the aim of the thesis being presented before the interview and through the interview questions.

That the court is supposed to be unemotional, as presented in the background and previous research is somewhat supported by the findings in this thesis but could be problematised further. There are some discrepancies among the interviewees of how much emotion that is acceptable as a lay judge to show and feel. In some instances, emotions, or rather the capacity for understanding other's emotions (i.e., empathy), are discussed by interviewees as reminders that they are still human whilst other interviewees are decidedly against displays of any emotions in court. This could relate back to the legitimacy of their roles in relation to how lay judges are portrayed and discussed in media. It could therefore be interpreted as them

feeling the need to assert themselves as professionals who are held to a different standard and who do not need to justify themselves in the same extent. The role of emotions in law is therefore discussed by the interviewees without it being established (or really investigated) whether they believe that it is legitimate or not.

Additionally, some discrepancies between the observed behaviour in court and the statements given by the interviewees indicate that there may be more transgressions of accepted behaviour than the lay judges are aware of themselves. Appearing too relaxed, yawning, smiling, or sighing were examples given by the interviewees of inappropriate behaviour and behaviours they had also never seen in court. Notably, some interviewees acquiesced that they had nodded or smiled when asked more directly, but the behaviours were discussed more in terms of normative behaviour of the role as lay judge.

It is important to note, that the choice to not analyse the lay judges' gender, age, ethnicity, or political affiliations as part of this thesis does limit the knowledge that it has produced. Previous research in Sweden shows that lay judges' political associations influence the way that they judge the defendants and delivers their verdicts (Anwar, Bayer & Hjalmarsson 2019), which relates to their ability for objectivity and impartiality. Although the thesis does not focus on the deliberations, verdicts, or politics, nor has a sufficient sample to make claims about potential differences in behaviour during trials between the politically appointed lay judges, some interviewees do mention differences in deportment between different party members in relation to, among other, appearance. Other behaviours not relating to emotions, such as potentially racially discriminatory actions (e.g., lay judges behaving differently towards ethnic minorities) were not covered by the knowledge that this thesis has produced either, but that was not the aim to study. Comparative studies on the performance of impartiality between political parties could, however, be difficult to perform without utilising mock-trials, as lay judges are selected randomly for trials, and serve between 10-20 days a year (Sveriges Domstolar 2023b). Studies using mock trials can however be misleading and not as reliable as there is a lack of corroboration from authentic trials (Downs & Lyons 1991). The

generally advanced age of lay judges in Sweden was also brought up by a few interviewees. These factors were not analysed as they did not relate to the research questions or aim of this thesis but do suggest that there are several dimensions that requires further research.

6.3 Future research

Although this thesis is a contribution to the study on lay judges and the performance of impartiality, research available on lay judges in Sweden is still limited. Some researchers (e.g., Bergman Blix & Wettergren 2019a) have argued that the power of lay judges is limited compared to legally educated judges, but one interviewee brought up a case where their dissenting opinion changed the outcome of the case. This suggests that it could be an interesting phenomenon to research further although similar studies have been conducted, e.g., Roos (2022) in Sweden on motivations behind verdicts between lay judges and the presiding judge or Johansen (2019) in Denmark on the interaction between lay judges and professional judges during deliberation.

As suggested above, there are aspects and factors that were neither analysed nor covered by this thesis as they did not relate to the aim, such as the potential differences in deportment depending on political affiliations or age. Potentially discriminating behaviour towards minorities by lay judges could also benefit from additional studies to capture a more dynamic view of the topic.

Furthermore, it could also be interesting to inquire more thoroughly about where the perception of impartiality in court as being neutrality or equal treatment originates from that is presented by the lay judges.

Another aspect that could benefit from further research is the way that lay judges are portrayed in media. This was discussed briefly in the analysis in relation to a quote form an interviewee who believes that lay judges are scrutinised more in media than the presiding judge or legally educated judges (in the appellate courts) but was not covered by the aim of this thesis. Researching whether media attention

affect the way that lay judges might act could shed light on this issue. Additionally, it would be interesting to study if the demeanour of lay judges in court differs depending on whether the case has been discussed in media prior to the trial or not.

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Appendix A

Intervjuguide:

- Har du några frågor innan vi börjar?

Inledande frågor:

- Hur länge har du suttit som nämndeman?
- Hur många huvudförhandlingar har du varit med och dömt i?
    - Vilka typer av åtal har det gällt?
- Varför ville du bli nämndeman?
- Hur såg utbildning ut som du fick av tingsrätten innan din första rättegång?
    - Tycker du att det är något som behövs, är det tillräckligt eller något som kan ändras?

Om opartiskhet, beteenden och rättegångar:

- Som nämndeman under en rättegång, vad behöver du tänka på då?
- Hur gör du för att minnas rättegången? Tar du anteckningar?
    - Tror du att anteckningstagande kan göra att man uppfattas som mer eller mindre uppmärksam och noggrann av andra?
- Om du känner att du börjar tappa fokus, vad gör du då?
- Vilka egenskaper anser du är bra eller nödvändiga för en nämndeman att ha?
- Vad tycker du att det innebär att 'agera opartiskt'?
- Kan man som nämndeman bete sig på ett sätt som förmedlar opartiskhet för andra i rättssalen?
- Hur gör du för att agera opartiskt i rättegången? Finns det något du tänker extra på? Beteenden, tankar, uttryck.
- Du kanske har hört om de nämndemän som uppmärksammats i media för att ha somnat (eller sett ut att somna) under en huvudförhandling. Detta beskrevs av en anhörig till offret som respektlöst och att hon tappat förtroendet till rättsväsendet (Westling 2022). Kan du tänka på något annat beteende som du tycker är olämpligt i en rättegångssal?
    - Får ni instruktioner om hur man ska agera under huvudförhandlingen av ordföranden?

- Finns det något beteende som du tror skulle kunna ge intrycket för andra i rättssalen att du (eller andra nämndemän) var partiska?
- Om du tänker tillbaka på den senaste huvudförhandlingen du deltog i, hur agerade du dig då?
    - Vad var det för åtal?

- Har det någonsin hänt att du känt att du behövt anpassa eller ändra ditt beteende under en huvudförhandling?
    - Hur gjorde du det?

- Om du tänker tillbaka till en huvudförhandling, kan du beskriva någon gång när du känt att dina känslor eller ditt humör påverkade din medverkan antingen positivt eller negativt?

- Har det hänt att du gjort något under en huvudförhandling som du sedan ångrat? Det kan vara alltifrån små till stora saker. Exempelvis: petat i näsan

- Föreställ dig att du hör något som väcker starka känslor, ex. ett vittnesmål eller förhör, hur reagerar du då?
    - Vad gör du i så fall för att hantera känslor och uttryck? Vad tänker du på?
- Tycker du att det är fel att visa känslor i rätten?
    - Varför då?

Korta frågor om överläggningen:
- Hur brukar en överläggning se ut?
- Känner du att juristdomaren/ordföraren är lyhörd till er nämndemäns röster?

Avslutande frågor:
- Är det någonting som du vill tillägga som du känner att jag har missat att fråga om?
    - Några spontana tankar?
- Är det något som du känner har hindrat dig från att kanske vara helt öppen i dina svar? (ex. tystnadsplikt om överläggandena)

Tackar tackar, tackar tackar!

Appendix B

Information och samtycke till medverkan i studie

Information om forskningen:

Den aktuella studien är en del ett examensarbete för Masterprogrammet i rättssociologi vid Lunds universitet. Studiens syfte är att genom observationer och intervjuer undersöka samt förstå nämndemäns reflektioner kring sin egen känslohantering och beteenden i relation till (bland annat) ett opartiskt uppträdande (*eng.* judicial impartiality) under huvudförhandlingar och överlägganden.

Intervjun kommer att spelas in och transkriberas av den ansvarige för studien. Personliga uppgifter som namn och tingsrätt för tjänstgöring samt andra uppgifter som framkommer under intervjun och kan tänkas röja din identitet kommer att avidentifieras i både transkript och uppsats. Detta görs för att utomstående inte ska kunna identifiera dig som person samt säkerställa att du obehindrat kan prata om dina erfarenheter. Om du inte önskar att vara anonym meddelas detta till ansvarig. Uppsatsen kommer att publiceras i sin helhet på *Lup.lub.lu.se/student-papers* som del av examen.

Informationen som ges i intervjuerna kommer inte att användas i annat syfte än ovanstående ändamål, d.v.s som del av examensarbete inom masterprogram i rättssociologi.

Personuppgifter:

Personuppgifter som samlas in om dig är e-postadress och uppgifter som framkommer genom e-postkorrespondens såsom namn och tingsrätt för tjänstgöring, samt inspelning och tillhörande transkript. Dessa uppgifter kommer att hanteras tills den tidpunkt att uppsatsen är godkänd och uppladdad på *Lup.lub.lu.se/student-papers*, men som senast till september 2023. Efter detta kommer personuppgifterna att raderas. Ingen obehörig kommer att få ta del av personuppgifterna.

Ditt förväntade deltagande:

Ditt deltagande i studien kommer att bestå av en intervju där du tillfrågas om dina erfarenheter av nämndemannauppdraget med fokus på dina upplevda känslor och metoder för hantering av känslor samt upplevelser av objektivitet och uppträdanden i rätten. Intervjun beräknas att ta omkring 60 minuter och kräver inga förberedelser.

Du som deltagare förväntas inte att utsättas för någon risk eller obehag genom ditt deltagande.

Frivilligt deltagande:

Deltagandet i studien är frivilligt och du kan när som helst avsluta din medverkan utan anledning genom att avbryta intervjun eller genom att meddela ansvarig via mail eller telefon. Uppgifter som ingår i resultat som redan har åstadkommits kommer dock inte att påverkas om ditt samtycke återkallas.

Sida 1 av 2

Ansvarig för studien är:

Linda Träff Karlsson

MSc Sociology of Law, Lunds universitet

[E-mail to the researcher] / [E-mail to the researcher]

[Phone number to the researcher]

Genom att signera blanketten samtycker du till deltagande i studien och behandlingen av dina personuppgifter samt intygar att du förstått informationen.

Ort och datum: ____

Underskrift (deltagare): ________________________________

Namnförtydligande (deltagare): __________________________

Ort och datum: ____

Underskrift (ansvarig): _________________________________

Namnförtydligande (ansvarig): ___________________________

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