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Tragic Tales of ‘Victims’ and ‘Villains’

A Study on Narratives and Emotions in Danish Rape Trials



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Abstract

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Given the fact that rape is difficult to prove in court and trials primarily are based on the defendant’s word against the plaintiff’s, it becomes highly significant to study the narratives about rape presented in criminal trials. This thesis is an ethnographic-inspired study conducted in Danish courts from January to May 2023. Observations of court proceedings during rape trials were conducted in four different county courts. Through a narrative theoretical perspective, which rests on the assumption that the form and structure (the genre and story characters) of a narrative become influential in the way it encourages particular emotions in its audience, this thesis investigates what characterizes narratives about rape in criminal trials in Denmark. The analysis shows that most defense narratives were characterized by an inversion of the claim to harm, in which defendants are constructed as “victim” characters in the form of a tragedy and the plaintiffs as “villain” characters who commit false allegations. In contrast, most prosecution narratives are characterized as melodramatic stories that construct the plaintiffs as the “victims” through a dramatization of their morality, innocence, and suffering, and defendants as bad, immoral, and in some cases even evil “villain” characters who commit rape with full intent. This study adds to the existing literature by showing how trial narratives’ internal organizations (genre use and character construction) are intertwined with prosecutors' and defense attorneys’ use of rape myths concerning both victims and perpetrators and how defense attorneys and prosecutors construct narratives to convey meaning and evoke specific emotions among its audience about who should get perceived as worthy of receiving sympathy.

Keywords: *narrative, trial, rape, emotion, genres, story characters, rape myths*

Public Science Summary

Given the fact that rape is difficult to prove in court, and trials primarily are based on the defendant's word against the plaintiff's, it is important to study the stories that defense lawyers, defendants, on the one hand, and prosecutors, and plaintiffs on the other tell during criminal trials about rape and how these stories become convincing.

In this study, I looked at Danish criminal trials about rape and the stories told in this setting. I observed four rape trials in four courthouses and wrote down all arguments presented in court by all the abovementioned parties. One of the main ideas behind this study is that well-known features from fictional literature, such as specific genres (tragedy, melodrama) and stereotypical story characters such as "victim" and "villain" characters, strategically can be applied by storytellers to impact the emotions in the people who listen to the story.

My findings suggest that the stories presented by the defense in the trials about rape were characterized by turning the claim to harm upside down. In these stories, defendants were constructed as "victim" characters of a tragedy, and the primary focus was on the defendants' suffering. In contrast, the plaintiffs were characterized as "villain" characters who committed false allegations of rape. The plaintiffs' victim status was challenged by how the defense positioned the plaintiffs and their behavior in relation to various false beliefs in society regarding whom we consider a "real rape victim" and how we think a "real rape victim" behave. In contrast, the stories presented by the prosecution were characterized by the way plaintiffs were established as the good and moral "victim" characters of exaggerated melodramatic stories and how the plaintiffs' morality, innocence, and suffering were dramatized. The prosecutor also reproduced or challenged false beliefs about victims when presenting these stories. Defendants were, in contrast, characterized as immoral "villain" characters in these prosecution stories and, in some cases, even as "evil" characters who committed rape with full intent. Here the lawyers also hinted at false ideas about how a "real rapist" looks and behaves.

This study's findings are important, as they show how lawyers, in different ways, spin stories by using well-known features from fictional literature to compel people in court, including juries and judges, to make conclusions about whether they find the defendant's or the plaintiffs' story as the "real version" of events, whom they find credible, and ultimately who they feel should receive sympathy from the court.

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1. Introduction

Since the #MeToo movement brought the world's attention to rape and other forms of sexual violence in 2017, these issues have been on public agendas in the Nordic countries and spurred interesting changes in the understanding of rape and the appropriate responses to this issue (Skilbrei et al., 2020: 5-6). Consent is now the central concept that separates legitimate from illegitimate sex in most northern legal systems (Andersson et al., 2019), including the Danish legal code that was changed on the 1st of January 2021. The new legal code on rape is expected to improve the victim's situation in the legal process, influence sexual and social norms, and lead to more convictions (Andersson et al., 2019). It has created a new situation for legal professionals to navigate as new jurisprudence emerges. For these reasons, I find it a significant time to investigate Danish criminal trials about rape¹.

As Katja Høegh (2021) has argued, one of the fundamental challenges to the legal processing of rape trials in Denmark is that they are difficult to prove due to a lack of witnesses and other types of evidence, and as a result, often are based on the word of the defendant against the word of the plaintiff². Thus, it is highly relevant to study the stories that are told in courtrooms and how these stories become convincing, as defendants ultimately can be said to get convicted or acquitted “[...] because of the well-formedness and force of the winning story” (Brooks, 2002: 2). In this line of thought, this study takes a narrative approach to contextualizing criminal trials about rape. A central assumption of this study is that people make meaning through narratives and that narrative can motivate our actions but also affect the actions of others (Presser & Sandberg, 2017: 85, Presser and Sandberg, 2015). This is formulated sharply by Catherine Riessman who states that: “[...] a speaker connects events into a sequence that is consequential for later action and for the meanings that the speaker wants listeners to take away from the story” (Riessman, 2008: 3). In essence, this study aims to get a better understanding of what is narrated in courtrooms during trials about rape and how it is narrated, as both the content and structure of narratives are viewed as influential (Presser & Sandberg, 2017: 85-86). This implies the assumption that the content and structure of trial narratives presented by defense attorneys,

¹ In this thesis, the term rape (sexual penetration without consent), is placed in the broader context of other types of sexual assaults. Thus, this study's definition also includes attempt at rape or unwanted sexual contact in the form of touches of any part of another person's body in a sexual way without that person's consent.

² This thesis applies the legal terms “plaintiff” and “defendant,” as I, through my observations, have immersed myself in the legal field in which this terminology is used.

defendants, prosecutors, and plaintiffs become influential by evoking specific emotions among audiences in courtrooms. This entails using genres that have particular structures of feelings attached to them (Smith, 2005) and constructing plaintiffs and defendants as “victim” or “villain” characters to encourage audiences to feel a certain way about them (Loseke, 2003; 2009). I will elaborate on these theories in chapter three.

The abovementioned theoretical lens allows this thesis to explore trial narratives presented in courtrooms in Denmark and their structure and content through ethnographic methods. Furthermore, this study includes a tentative exploration of how emotions are attempted mobilized among the audience through the observed trial narratives. Even though ethnography as a methodology cannot present “firm” causal explanations, I follow the argument of Fleetwood & Sandberg, who state that researchers should still explore and speculate about the relationship between narratives and actions (Fleetwood & Sandberg, 2021: 257). Thus, the following questions represent the focus of inquiry:

RQ: *What characterizes narratives about rape in criminal trials in Denmark?*

- a. *How are the defendants and plaintiffs constructed as characters in these narratives?*
- b. *What genres do these narratives represent?*
- c. *How do the narratives relate to emotions?*

1.1. Delimitations

This thesis is delimited to observing the narratives presented in public court proceedings of rape trials and analyzing how the defense and prosecution might attempt to encourage emotions among the audience through these. It would have been interesting to take the study a step further and investigate if or how the different narratives and their content and form did influence the emotions experienced by judges, laypeople, and juries and, ultimately, if they impacted their verdicts. Such focus would have required access to conducting observation of the judges' and laypeople's deliberations and their legal reasonings or conducting interviews with them which would have been difficult to obtain and impossible to carry out due to time constraints. Furthermore, this research is empirically delimited to observing trials in four county courts of Denmark in the same region.

1.2. Outline of Thesis

In chapter 2 of this thesis, I address previous research that has specific relevance to the topic of this thesis. This includes three fields of study investigating the role of emotions in court and studies exploring gendered narratives or rape myths in legal proceedings and reasonings. From assessing the limitations of these previous studies, I argue the relevance of adding a narrative lens to studying issues of rape in a Danish legal context.

In chapter 3 I describe the theoretical framework based on narrative theory. Here the key theoretical terms (genres, victim, villain, symbolic codes, emotion codes) are elaborated by presenting the work on genres by Phillip Smith (2005) and the work on how narratives and the construction of specific story characters become emotionally persuasive to audiences as laid out by Donileen Loseke (2003, 2009).

In chapter 4 I address the methodological approach and the specific method of courtroom observation that this thesis rests on. I argue my methodological choices and discuss the ethical considerations concerning investigating a particularly vulnerable issue. This chapter further includes a section about positionality, a description of the setting of the observations, i.e., the courtrooms, and an explanation of my strategy for analysis.

In chapters 6.1. and 6.2., I present my results and analysis. After an introduction to the observed criminal trials and a brief introduction to how the defense and the prosecutor each narrated the stories of “what happened” and their “plot” of the story, chapter 6.1. is dedicated to the trial narratives presented by the defense. This chapter zooms in on the character construction of plaintiffs and defendants in the defense narratives and the genre use. Chapter 6.2. investigates the trial narratives presented by the prosecution, including the same focus on its characters and genres. Throughout the analytical chapters, I speculate about the narratives’ relation to emotions.

Finally, chapter 7 concludes the thesis by presenting my conclusion on the research questions and discussing its relation to previous studies.

2. Literature Review

The following literature review presents previous literature of specific relevance to this thesis. This review doesn't exhibit a broad introduction to all literature about emotions, narratives, and rape. It primarily focuses on Scandinavian/Western European literature, as I have found this of specific relevance due to the structural similarities between the countries' legal systems.

2.1. Research on Emotions in Court

A growing body of literature has investigated how legal practice, the production of justice, and decision-making in law are related to emotional processes (Bergman Blix & Wettergren, 2018, Bitsch, 2019; Törnquist, 2022; Wallin et al., 2021, Flower, 2019).

In recent years, multiple ethnographic studies in a Nordic context have focused on emotion in the legal process through courtroom observations and interviews. Åsa Wettergren & Stina Bergman Blix have, for instance, shown how Swedish prosecutors use emotions of empathy as a professional tool. This tool helps them decide how to prosecute, anticipate the situation in court, and to manage their own emotions and the emotions of others to stage credible testimonies, convince judges, and calm victims (Wettergren & Bergman Blix, 2016).

Louise Johansen's ethnographic study of Danish judges found that these evaluate defendants' emotions from defendants' utterances, facial expressions, or bodily posture, and the judges' assessment is mediated through their cultural understandings and biases (Johansen, 2019).

Nina Törnquist has, through observations of court proceedings and judges' deliberations and interviews with legal actors, examined how sympathy informs legal thought and practices concerning victim status in Swedish courts. She argues that even if sympathetic feelings are mostly backgrounded, they are still central to court proceedings and deliberations. For instance, the better a victim fits the category of an "ideal victim" (Christie, 1986), which is characterized by being weak, involved in a respectable activity, in a legitimate place, and being unacquainted with and inferior to one's perpetrator, the more sympathy they will be granted in court (Törnquist, 2022: 268). She further suggests that prosecutors and victims' counsel strategically use "sympathy cues" to evoke judges' concern for the plaintiff and facilitate their empathic imagination of the plaintiff's situation (Törnquist, 2022).

Overall, these studies have focused on the presence of and the role that the performance of emotions plays in the courtroom among various actors in the legal field. However, contrary to

this thesis, they don't address how trial narratives presented in court proceedings relate to emotions. Furthermore, they don't specifically zoom in on the issue of rape and emotions.

2.2. Narrative Research About Rape

Turning to narrative studies of rape in the legal sphere, Monika Edgren's investigation shows how credibility, vulnerability, and agency are assessed in trials about rape in Swedish court, specifically analyzing written judicial decisions as cultural texts that carry meaning (Edgren, 2019). Edgren found that vulnerability is conditional and that various social positions, especially class, affect court narratives. Additionally, she discovered that victims who fit the "ideal victim" category get their vulnerability recognized in court. Still, it was difficult for rape victims to be recognized as both a victim of rape and as having sexual agency simultaneously because the court displays a dichotomous framing of vulnerability and agency.

A study by Olivia Smith that also focuses on narratives regarding rape, but through courtroom observation, found that lawyers created trial narratives rooted in three gendered master narratives. The plaintiffs were either narrated as "damaged" and thus delusional due to past abuse, emotional vulnerabilities, perceived social class, mental health problems, and learning disabilities. They were narrated as "deceitful" because the defendant had rejected them and thus were "scorned women" or because they timed their report of the rape to the police suspiciously (Smith, 2019: 84-85). Lastly, they were narrated as "capricious princesses" who acted in melodramatic, ungrateful, and moody ways and therefore were untrustworthy (Smith, 2019:86-88). Smith's study showed how these narratives were used to negate the rape as false allegations or blame the plaintiffs (Smith, 2019: 78).

Another Nordic study by Anne Bitsch analyzed judgments of rape cases in Norway and mapped out the mechanisms in trial narratives about rape. Bitsch's study showed how victims of rape who fail to stage themselves as respectable and honorable received less sympathy in their meeting with the justice system. She analyzed how defendants and plaintiffs were constructed in legal rape cases and found that these constructions were informed by notions of gender, sexuality, race, and nationality, in what she calls "shaming narratives" produced by the legal process (Bitsch, 2019). The study further showed that female rape victims frequently were gender stereotyped and that lenient sentencing was sometimes associated with the attribution of partial blame to the victim, who was expected to guard her purity and refrain from exposing herself to unnecessary risk (Bitsch, 2019: 946).

Although previous research on narratives about rape in the legal systems has been carried out, the abovementioned studies either have applied a thematic analytical approach (Smith, 2019: 2018) or have primarily focused on judicial decisions and judgments of rape as a base for their analysis (Bitsch, 2019; Edgren, 2019). Thus, they don't focus on the full court narratives obtained through observations and the form of these narratives, which this study does. Additionally, the reviewed studies that investigate narratives about rape have focused on the Swedish, British, and Norwegian legal systems, where no study, to my knowledge, has investigated trial narratives about rape in a Danish legal context as this thesis sets out to do.

2.3. Feminist Legal Research

In feminist legal research, rape has been a prominent issue of study. Within this field, multiple studies have researched how rape myths, which is a concept underlining sexual and gendered stereotypical attitudes with a cultural function of a myth, are reproduced in legal reasonings and throughout rape trials (Wallin et.al, 2021: 6).

Olivia Smith has gathered previous studies of rape myths in a table, and summed up commonly discussed examples of rape myths regarding victims of rape which are: *“People who get voluntarily intoxicated are at least partly responsible for their rape”*, *“People provoke rape by the way they behave and dress”*, *“If the survivor does not scream, physically resist, or get injured, then it is not rape”*, *“False allegations are common, mostly because of revenge, regret or for personal gain”*, *“Any delay in reporting rape is suspicious”*, *“Ongoing contact with the perpetrator means that it wasn't rape”* and *“All victims will be visibly distressed after rape when giving evidence”* (Smith, 2018: 55). Additionally, she has listed rape myths that are commonly found about perpetrators of rape as: *“Male sexuality is uncontrollable once ‘ignited’”* and *“Rapists are monsters, so someone perceived as a ‘nice man’ cannot be rapist”* (Smith, 2018: 55).

In line with the abovementioned focus on rape myths, a study based on courtroom observations in England and Wales, for instance, found that rape myths about rape victims' appropriate demeanor, delayed reporting, failure to cut contact with the accused, and physical resistance during the incident, were extensively and routinely used in trials (Smith & Skinner, 2017). In a similar vein, Temkin et al. observed English trials of rape. They found that rape myths were used to distance cases from the “real rape” stereotype, discredit the complainant, and emphasize

the case aspects consistent with rape myths (Temkin et al., 2018). In line with these studies, but focusing on judicial decisions, Wallin et al. researched the legal application of the Swedish legislation's key concept of voluntariness in rape trials. The study found that the judges' credibility evaluation entailed emotions such as sympathy, which were intertwined with gendered stereotypes. The study further confirmed previous research about the reproduction of rape myths in countries with consent-based laws, with a focus on gendered stereotypes of what constitutes a "real rapist" and a "real rape victim" (Wallin et al., 2021: 18).

As Franiuk et al. (2008) have argued, rape myths are critical to the perpetuation of rape as they lead people to question the truthfulness of rape narratives. A systematic review of studies of mock jurors and their rape myth acceptance showed that jurors' prejudicial and false beliefs about rape affected their decision-making in rape trials (Leverick, 2020). Despite this knowledge, an anthology about rape in Denmark points to the fact that there doesn't exist any research on the occurrence of rape myths in Danish courtrooms (Søberg et al., 2021). Thus, this thesis contributes to the knowledge gap by focusing on the interconnectedness of trial narratives and rape myths.

Overall, this thesis shares the previous studies' attention to narratives, myths, and emotions in trials about rape. Unlike previous studies, this thesis adds to the existing literature by focusing on how narratives presented in court relate to emotions among audiences. Therefore, this study does not focus on the performative aspect of emotions. In contrast to most previous narrative studies of rape that use verdicts as data, this study follows Smith's (2019) approach to "real life" narratives in courtrooms and focuses on how these narratives are intertwined with myths. In contrast to Smith's approach, this study doesn't limit itself to solely exploring the thematic content of trial narratives about rape. Instead, it adds to the existing literature by applying a narrative criminological lens to investigate the form and structure of narratives in rape trials in a Danish legal context, which hasn't been done previously.

3. Theory

As previously stated, this thesis places itself within the field of narrative theory and, more specifically, narrative criminology, which in many respects are in line with critical and constructionist perspectives (Presser & Sandberg, 2015: 1). In this line of thought narratives, and the

way they are told, can motivate, demotivate, and shape behaviors (Tutenges & Sandberg 2013), including courtroom behaviors and emotions. The following chapter overviews the theoretical background and key terms applied in the analysis. It begins by defining and contextualizing the term *narrative* in the legal system. Then follows an introduction to the work on genres by Philip Smith (2005) and the relation between narratives and emotions by Donileen Loseke (2003, 2009).

3.1. Definition of Narrative

According to Lois Presser, the term *narrative* can be defined as a specific type of discourse (Presser, 2018: 51). French philosopher Paul Ricoeur has defined a narrative as a temporal representation of an event or series of events (see Ricoeur, 1967; Smith, 2005: 18). Thus, one of the main features about narratives is that they relate experiences in “*causes and effects*” to explain events through a “*sequencing of events*” (Presser & Sandberg, 2017: 89). Another essential aspect about narratives is that they are imbued with intention and are constructed and exchanged to make sense of our lives and the world (Maruna & Liem, 2021: 127; Smith, 2005: 18). Peter Brooks argue the relevance of paying attention to narratives in the legal sphere, and stay attuned to how “[...] *incidents and events are made to combine in a meaningful story*” during court proceedings (Brooks 2002: 3), as the criminal trial can be interpreted as a competition of opposing narratives (Maruna & Liem, 2021: 126), where the legal conviction is created in the people who are judging the story i.e. the laypeople, juries and judges (Brooks, 2002: 2). One specific characteristic of trial narratives is that they are not open ended or ambiguous as other narratives about crime (Sandberg, et.al., 2015), but a particular type of closed narrative that is meant to make the listener arrive at a specific predefined interpretation. Having defined what a narrative means in the context of the legal system, I will now discuss the theory about genres laid out by Phillip Smith (2005).

3.2 Genres

To investigate what characterizes narratives and their form, this thesis also investigates the genres of rape narratives, as genres indicate what is said in a narrative and how it is said (Presser & Sandberg, 2017: 93). Drawing on literary theory Smith (2005) found four narrative genres to explain the decision of national leaders to go to war: the low mimesis, tragedy, romance, and apocalyptic genres. Smith argues that wars are rooted in how we tell and interpret stories

(Smith, 2005). In this thesis, I apply Smith's theoretical lens to the legal system and the narratives used to justify conviction and sanction in courtrooms instead of narratives that justify military action. Another important aspect of Smith's theoretical framework is his argument that narratives might have "real world" implications and affect how we feel, as he elaborates how genres have specific structures of feelings attached to them. In this argument, we interpret people and stories dependent on the genre through which we perceive them (Smith, 2005: 21). As Fairclough (1992) has argued, there exists no determinate list of genres or styles (Sandberg & Presser, 2015: 94). I have chosen to focus on the two following genres by Smith: the tragedy and the low mimesis genre and the melodrama laid out by Loseke (2009). This decision was made since they were the primary genres I found in court. What follows is a definition of the mentioned genres, including the indicators and tell-tale signs of each genre.

3.2.1. Tragedy

One of the features of the tragic genre is a strong sense of character movement and plot development that includes themes of descent. According to Smith, the core of a tragedy is the "[...] *futility of human striving, the fall from grace, the missed opportunity and the horror of suffering, the disintegration of society, and the movement from social integration to social isolation and atomization*" (Smith, 2005: 25). Often the tragedy features some moral hero figure or an "object of struggle," who generally are constructed as innocent or passive victims let down by bad luck, an error, or the evil doings of others. In this genre, emotions run high, and much is at stake, but the genre doesn't evoke activism or violent struggle. Instead, the tragedy genre evokes identification with the suffering, an understanding of suffering, and an atmosphere of pathos among audiences (Smith, 2005: 25-26; Sandberg & Presser, 2015: 94). Overall, Smith argues that the tragedy genre evokes powerful emotions of sympathy and sentiments of pity (Smith, 2005: 25, also Aristotle 1987, 16; Frye 1957, 36-37).

3.2.2. Low Mimesis

According to Smith, the low mimesis genre is the least plot-driven of all narrative genres and is described as a genre of the anti-story that revolves around the mundane, where there is no clear course to events. The characters of this genre are characterized as having nuanced and complex motivations and are essentially "just like us" concerning their ambitions and agency. Additionally, the characters are not strongly polarized in terms of their moral worth, and there

is no sense as if much is at stake (Smith, 2005: 24-25). In essence, the low mimesis is emotionally flat and therefore is a genre that does not provide a convincing justification for extraordinary measures (ibid.: 25).

3.2.3. Melodrama

In Loseke's description of the features of the melodrama genre, she, among others, draws from the work of Northrop Frye (1957) and Peter Brooks (1976). According to Loseke, one of the essentials of melodrama is that it has a specific "overwrought" or "exaggerated" quality. The melodrama typically features a plot that revolves around a "manichaeistic struggle of good and evil," including the typical melodramatic characters, the morally faultless victim and the ruthless villain, and ends in a "self-righteous tone" (Frye 1957:67) with the promise that virtue will triumph over villainy (Frye 1957:47). In this way the melodrama can be explained as an intense emotional and ethical drama. Another feature is the particular use of language, which includes a "*vocabulary of clear, simple, moral and psychological absolutes*" (Brooks 1976:28) and "rhetorical excess" (Loseke, 2009: 503). In essence, the genre deploys overwrought emotions and heightens the sense of emotional urgency and tension (Loseke, 2009: 503).

So far, this section has focused on genres and the role they might play in impacting "real-world" events. Additionally, it has touched upon how narratives are attached to specific structures of emotions. The following section will, in more detail, discuss how narrative can encourage particular ways of feeling by introducing Loseke's work on narratives and emotion.

3.3. Emotion and Narrative

This thesis is connected to Loseke's theoretical work by examining how narratives might become persuasive by mobilizing specific emotions among audiences in courtrooms. Throughout her authorship, Loseke has investigated how narratives in claims-making practices and presidential rhetoric about war encourage large audiences to feel a certain way (Loseke, 2003: Loseke, 2009). Loseke argues that emotion is cultural, confronting previous academic conceptualizations of emotion as an individual-level phenomenon. She conceptualizes emotion as both social, cultural, subjective, and biological. Additionally, she dissolves the dichotomy between cognition (thought) and feelings (affect). She argues that "[...] *it is not possible to separate thinking and feeling because feelings give rise to thoughts [...]*" and vice versa (Loseke, 2009: 499). To sum up, Loseke argues that it is impossible to understand how people think or make moral evaluations without understanding how they feel and vice versa (Loseke, 2009: 499).

Another critical point is that Loseke argues that experiencing emotions is interconnected with language and, thereby, is social. Following this argument, an individual's emotions are shaped by "symbolic codes" that are "[...] *historically and culturally situated, socially circulating, complex, and interlocking systems of ideas about how the world works, how the world should work, of rights, responsibilities, and normative expectations of people in this world*" (Loseke, 2009: 500). These "symbolic codes" are accompanied by what Loseke refers to as "emotion codes," or as cultural ways of feeling. "Emotion codes" are described as "[...] *cognitive models or socially circulating ideas about which emotions are appropriate to feel when, where, and toward whom, as well as how emotion should be outwardly expressed [...]*" (Loseke, 2009: 500). For instance, there are socially circulating ideas about when it is appropriate to feel sympathy, anger, or fear, which will be elaborated on later (Loseke, 2009: 500; Kusenbach & Loseke, 2013: 23-27). In this way, the symbolic codes and the matching emotion are systems of meaning used as building blocks by story authors to construct meaningful and emotionally compelling plot lines and characters. In response, the audiences then use their understanding of the systems of meaning to evaluate the importance, believability, and emotional content of the plot lines, characters, and overall narrative (Kusenbach & Loseke, 2013: 25- 26). With this theoretical framework in mind, the following section explains the connection between story characters and emotions.

3.4. Characters in Narratives

As Smith points out, evaluations of credibility, which is vital in trials, are not only about perceptions of the "story" that is told in court but also about perceptions of the "story-teller" (Smith, 2019: 71). This indicates that the production of a compelling story, also relies on how plaintiffs and defendants are presented and characterized in a court narrative. In line with this argument, this thesis also investigates the construction of the characters in the trial narratives about rape. According to Presser and Sandberg, many characters are similar across genres and standard stories, from folklore to political stories, including the victim, the hero, and the villain (Presser & Sandberg, 2017: 91). Presser and Sandberg argue that an understanding of a story's characters and the symbolic boundary work created between the characters within the story is crucial for understanding the narrative (Presser & Sandberg, 2017: 91). In fact, Presser argues that narratives that draw polarizing symbolic boundaries between "good" versus "bad" characters are the most arousing stories (Presser, 2018: 70-71, 84-85).

With this argument in mind, this thesis focuses on the stock character of “the victim,” found in many socially circulating narratives, but especially in criminal courts, which is all about determining victim status (Kusenback & Loseke, 2013: 25-26). According to Loseke, the symbolic code of a “victim” character and the emotion code of sympathy is interconnected. In Loseke’s view, courts can be interpreted as “sympathy contests,” where the evaluations of stories are about determining practical responses to story characters (Kusenback & Loseke, 2013: 26). This thesis primarily deals with the emotion of sympathy³ in courtrooms, as receiving sympathy plays a crucial role in sentencing practices (Nussbaum, 2006), and potentially impact if a person is exonerated or sentenced (Clark, 1987: 299-300).

This thesis further investigates the stock character of the “villain,” as they are the binary opposition to the character of the “victim” in most stories, such as a melodrama or tragedy (Loseke, 2009: 506). According to Loseke, under some circumstances, the “villain character” is interlinked with the emotion codes of fear or hate⁴. The following section elaborates on Loseke’s description of the various contents of the symbolic codes relating to the “victim character” and the “villain character” and how they connect to emotion codes of sympathy, fear, and hate.

3.4.1. The “Victim” Character and Emotions of Sympathy

Throughout her work, Loseke draws from Candace Clark’s study (1987; 1997), who argues that sympathy, like other emotions, has social roots. We learn the social rules for when to feel sympathy, how to express sympathy appropriately and when and how to ask for sympathy (Loseke, 2003). As Clark states, “[...] *not all claims to sympathy are honored. Sometimes people with problems receive sympathy; sometimes they do not.*” (Clark, 1987: 291). In this line of thought, not all people who experience harm will be evaluated as “victims.”

Turning to the features of a character that will lead to a victim evaluation, Loseke lays out three different features of the symbolic code “victim” that relates to the emotion code of “sympathy.” First, she argues, that to be required as worthy of sympathy, the victims mustn’t be evaluated

³ As there is no universally accepted vocabulary of emotions, and the emotion sympathy has a long list of synonyms (pity, compassion, empathy etc.), I will underline that this thesis uses the definition from the Cambridge Dictionary, which states that sympathy is “(an expression of) understanding and care for someone else’s suffering” (<https://dictionary.cambridge.org/dictionary/english/sympathy>)

⁴ As with sympathy, there are synonyms for hate (resentment) and fear (dread and terror). In this thesis, the term hate is defined as: “to dislike someone or something very much” (<https://dictionary.cambridge.org/dictionary/english/hate>), and fear is defined as “an unpleasant emotion or thought that you have when you are frightened or worried by something dangerous, painful, or bad that is happening or might happen” (<https://dictionary.cambridge.org/dictionary/english/fear>)

as responsible for the harm they experience (Loseke, 2003: 78). This feature is complicated in trials about rape, as the audience typically directly or indirectly ask questions about the victim's responsibility based on common rape myths that are present throughout society (Loseke, 2003: 78), why people often blame rape and sexual-abuse victims (Clark, 1997: 48). The second feature of the "victim" symbolic code is a need to be evaluated as moral. Loseke points to the fact that different people will have different perceptions of what constitutes a righteous person but argues that there exist patterns of social categories, where some people are understood as higher in a hierarchy of social morality. She gives the example of the different interpretations of morality between a "nun" vs. a "prostitute" (Loseke, 2009). Clark's study on the social rules surrounding sympathy found that sympathizers are influenced by people's social statuses and discovered that children often evoked more sympathy than adults who had experienced the same type of harm due to their social status (Clark, 1987: 298). In this way, the audience of narratives is more prone to assigning victims status and thereby feeling sympathy towards people of higher moral categories. Lastly, Loseke points out that a victim must be perceived as having been greatly harmed to receive sympathy. People are prone to feel sympathy toward people in very troublesome conditions, which will typically be compared and evaluated with a comparison between our own troubles and the other person's troubles (Loseke, 2003: 78-79). As there are considerable variations in people's evaluation of what is required to get assessed as a "moral person," of what constitutes "great harm," and "no-fault" or innocence, it follows that the narratives that will be most effective in encouraging widespread sympathy will be those featuring characters whose morality, suffering and purity is constructed beyond any doubt. In this way, dramatizing is a way to encourage such an evaluation and emotional response (Kusenback & Loseke, 2013: 26).

3.4.2. The "Villain" Character and Emotions of Fear and Hate

In Loseke's explanation of the construction of the "villain" character, she argues that villains are the people who are framed as responsible for the harm done to the victim in a story (Loseke, 2003: 83-86). Within the symbolic code relating to "a villain," villains are those evaluated as someone who unjustly creates harm "for no good reason" (Loseke, 2009: 506). Assigning blame and responsibility is, in some situations, accompanied by the emotions of hate or condemnation. Still, there are complicated reasonings around assigning blame, and people don't always feel condemnation, even when they assign blame. For instance, people tend to assign blame only when they are sure that the inflicted harm was no accident or if there were signs of obvious

intent. Additionally, to evoke the emotion of hate, narratives must construct the antagonistic character as an “*extremely evil villain*” who is a dangerous outsider (Loseke, 2003: 83-86). Not all people who harm will be evaluated as “evil villains.” Loseke gives the example of the college student who “talks his date into having a sexual encounter.” Such a person might do harm and be assigned blame, but audiences might not be persuaded that that type of person is “evil” (Loseke, 2003: 83-86). The reason is that the symbolic code of “evil” consists of features such as doing particularly horrifying kinds of actions, feeling no guilt, and being more monstrous than human” (Loseke, 2009: 507-508). According to Loseke, the symbolic code related to the “villain” character is connected to the emotion code of fear or hate (Loseke, 2009: 508). The emotion codes of hate and fear share the characteristics that both require the evaluation that there is a *threat* to something evaluated as *important*. The emotion codes of hate and fear differ in that fear involves an assessment of *uncertainty and uncontrollability*. In contrast, hate requires that the person or group who is posing the threat to be evaluated as evil (Loseke, 2009: 509).

The next chapter describes the procedures and methods used in this thesis.

4. Methods

4.1. Court Ethnography

I have chosen an ethnographic methodological approach to data collection in this thesis, where observational methods are employed to investigate the court proceedings in which the trial narratives of defense attorneys, defendants, prosecutors, and plaintiffs are presented (Travers, 2021: 514). The advantage of observing courtrooms is that it provides access to full real-life narratives of trials that don't rely on participants or other actors' reporting of events and behavior in the courtroom, and thereby holds the potential for providing detailed insight to embedded practices that are no longer questioned by those involved. In this way, courtroom observations provide insights that can't be obtained through other methods, such as interviews or surveys. Additionally, courtroom observations are better suited for this study than analysis of court transcripts or judicial opinions, as these typically have a retrospective orientation (Offit, 2019: 47) and are written in a formal tone stripped of emotions (Johansen, 2019: 254). Furthermore, courtroom observations allow me to capture the behavioral and emotional nature of storytelling, thus avoiding reducing people's stories to mere texts (Tutenges, 2019: 29).

4.2. Conducting Observations and Sampling Cases

In Denmark, criminal trials are open to the public, and court dockets are published one or two weeks ahead on each court's website, containing information about the date, place, and time of the trial and reference to the legal code or term regarding the criminal offense. When planning observations, I used the search words “§216” and “rape”⁵ on the online court dockets. I only searched for trials at county courts, but any county court in Denmark has approximately the same size and handles the same amount and type of criminal trials (Johansen, 2019). Thus, this choice didn't affect the type or the number of cases I could access. I didn't have information about the indictment or defendant and plaintiff before I entered the courtroom, which made it difficult to set up prior and strict sampling criteria regarding the nature of the trials I wanted to attend. As Smith argues, courtroom observations are difficult and time-consuming due to constantly changing court dates and cancellations of trials (Smith, 2018: 16), which I also experienced. Some court proceedings got canceled or rescheduled because witnesses, laymen, or translators didn't show. Due to the abovementioned uncertainties, my sampling of trials has been pragmatic and opportunistic, as methodological decisions were made throughout observations and have been adjusted as I became more familiar with the field. I have attended trials in four different county courts in a specific area of Denmark between January to May 2023. Due to ethical considerations, I will not disclose the names or places of the county courts.

4.2.1. Type of Data

The abovementioned opportunistic and pragmatic sampling of cases has had the impact that the observed trials featured a mixture of contexts surrounding the incidents of sexual violence. All plaintiffs have been females, primarily adults and some children, but all defendants were adult males. The nature of the relationship between the plaintiff and the defendant has varied, but the parties have known each other before the incident in all cases. Throughout my observations, I have visited layperson trials, consisting of one legal judge and two lay judges, set up when defendants plead not guilty to crimes with an upper sentencing limit of four years (Johansen, 2019). Additionally, I have visited one jury trial consisting of three judges and a

⁵ DA: voldtægt eller seksuelt forhold uden samtykke

jury set up in the most serious of criminal trials, with a sentencing of a minimum of four years (Danmarks Domstole, n.d.). I will introduce the trials further in the analysis.

In total, I have observed four different trials. Despite the relatively small number, each trial offers profound insights to rape narratives in the legal system, and I argue that it is the “thick descriptions” (Geertz, 1973) of the trials and not the quantity that is fruitful in developing my understanding of the issue (Törnquist, 2022: 270). In addition to the abovementioned trials, which provide the primary data in this study, I have gathered secondary data. This was done when the trial participants I observed referred to relevant information outside the courtroom, such as podcasts, articles, self-biographies, documentaries, or tv-shows. I have used this data to cross-check the information gathered through the observations. Still, I do not cite this data directly in the analysis to avoid disclosing the participants' identities.

4.2.2. Time in the Field

The length of the trials I observed varied from the shortest lasting one court day to the longest lasting around 10+ court days, which was the jury trial. In three trials, I observed all court days from beginning to end. As I didn't have the opportunity to visit all court days of the jury trial, I observed the preliminary court day, different court proceedings containing witnesses' testimonies, and the court day with presentations of the closing arguments. In total, I have spent 30 hours observing courtrooms on 11 separate court days.

4.2.3. Type of Observer

Concerning the participant-observation continuum (Davies, 2007: 82), I have been a complete observer during court proceedings and only had some informal interactions with lawyers, courtroom administrators, defendants, and spectators before the court hearings started or during shorter breaks. Due to my acknowledgment of the sensitive nature of rape trials and inspired by other scholars, I have tried to be discreet and maintain a low profile in court. I tried to minimize my presence by sitting in the back of the gallery, prepared to leave if there was any discomfort due to my presence or if the victim's lawyers pleaded closed doors (Smith, 2018, Smith & Skinner, 2017).

Tutenges argues that establishing trust and showing respect for the people you observe can be done by conforming to conventions in the field (Tutenges, 2019: 36). In a similar vein, Bergman Blix and Wettergren argue that a significant aspect of doing fieldwork in courtrooms is to blend in (Bergman Blix & Wettergren, 2015: 696). In line with these logics, I have tried to conform to some of the expectations that are clearly stated on court webpages aimed at lay-people and jury members, which says that one is expected to dress neutral and perform neutrality in one's body language and expressions throughout court proceedings (Danmarks Domstole, 2023).

4.2.4. Fieldnotes

Fleetwood and Sandberg argue that audio recording and transcriptions of the recordings are important when doing narrative research (Fleetwood & Sandberg, 2021: 259), but in most countries, audio and video recording is not permitted in courtrooms (Travers, 2021: 522), which is also the case in Denmark (Danmarks Domstole, n.d.). For the abovementioned reasons, and because I felt it would be ethically wrong to draw more attention to myself than necessary, I wrote my field notes by hand. I was aware of the potential effect my notetaking had on witnesses, why I wrote them as subtly as possible (Smith & Skinner, 2017: 449: Smith, 2018: 14).

It has been argued elsewhere that data for narrative analysis needs to be as close to verbatim as possible (Loseke, 2015: 6). For this reason, I tried to write as detailed notes as possible, using a form of shorthand. I have written as verbatim transcripts as possible to provide a complete account of the trials. At the end of each court day, I typed up the handwritten notes on a PC. Besides the official narratives presented by court participants during the legal proceedings, I have noted informal chats between the participants during breaks. I have also noted some of my informal conversations with lawyers or other spectators.

According to Tutenges, the thorough ethnographer also notes nonverbal signals to capture storytelling's embodied, emotional, and sensory nature (Tutenges, 2019: 29). For this reason, my notes contain intonation of voice, facial expression, body posture, pauses, complete silence, pace of speech, laughter, crying, and gaze direction. Additionally, I have drawn the setting of each courtroom I entered in the field notes (see figures pp. 23-24).

My field notes are divided into a section containing all verbatim notes from the court that I didn't edit over time, and a section with my reflections, thoughts, and emotions, which were more analytical notes written the same day as the observations and added to over time. In total, my primary data consists of 75 pages of field notes.

4.3. Self-reflexivity and Positionality

Bitsch stresses that the idealization of the objective, neutral researcher, who claims to hold no prejudices towards research participants, is a fictional position. Instead, she argues that a researcher's positionality and emotions will inevitably influence her research, which is why it is more fruitful to be transparent and engage in emotional reflexivity (Bitsch, 2018: 1517, 1528). In a similar vein, Thurnell-Read argues that the sensory, embodied, and emotive features of doing fieldwork are essential to reflect on, as it impacts knowledge generation and even can help understand the subject of interest (Thurnell-Read, 2011: 39). In line with these arguments, I find it necessary to note that I am a white, middle-class woman in my late 20's, who consider myself a feminist. Throughout my studies, I have worked with different aspects of gendered violence and volunteered in a women's shelter for victims of domestic violence.

Throughout this study, I have felt a range of emotions. Besides the expected strain of researching a sensitive topic (Bitsch, 2018: 1521; Bergman Blix & Wettergren, 2015: 690), I have mostly felt sympathy for all parties involved in the trials, along with unease about observing people who are facing difficulties. In line with Thurnell-Read, who describes how the researcher's feelings of conflict, shock, and revulsion are of analytical significance (Thurnell-Read, 2011: 41), I have experienced how my own emotions towards especially defendants shifted from sympathy to aversion and back to sympathy when I was exposed to different narratives from the defense and prosecution. This observation has given me insight into how sympathy is negotiated in the courtroom through narratives similar to how judges and laypeople might experience it.

As a white middle-class student, I was similar to the legal professionals I observed. Still, as a young woman studying social science, I have been concerned about how the legal professionals would perceive me and if the lawyers would position me as a possible political opponent (red-stock). This reflection was sparked by the Danish public debate that followed the adoption of the consent-based rape law in which many defense lawyers raised concerns that the burden of

proof would be skewed and men's legal security compromised. In this way, I have thought a lot about my position as a feminist woman and thought carefully about how I presented myself. I have experienced how legal actors that I hadn't introduced myself to were on guard about who I was and what I studied, which can be interpreted as a sign that courtrooms and trials about rape might be a place for battle over power, knowledge, and gender (Bitsch, 2018).

In line with Davies, who argues that researchers can produce valid knowledge without being complete participants in a field if they are transparent about the basis of their understandings through reflexive thoughts (Davies, 2007: 104), I have tried to stay open and curious to multiple interpretations. I have gone back and forth between my observations and reflected on my position, emotions, and interpretations. Additionally, I have constantly tried to check if my findings and observations matched other observations and cross-checked information and interpretations to ensure I got the right impression (Davies, 2007). For instance, I sometimes asked prosecutors clarifying questions after the court proceeding and checked if my information matched secondary data.

4.4. Ethical Considerations

4.4.1. Risk of Doing Harm

One of the critical concerns of this thesis was ensuring that it caused as little harm as possible, which is why I constantly have tried to foresee how my study could impact the participants. Despite some ethical issues of doing courtroom observations, I still find this type of study ethically justifiable, as multiple scholars have argued that it is crucial to study criminal courts since court decisions are highly consequential for the lives of both defendants and plaintiffs. In addition, having eyes from the outside can disrupt the routine ways of the system and thereby be a way to keep the system in check (Travers, 2021; Faria et al.: 2019: 1107; Smith & Skinner, 2017). I will elaborate on the ethical considerations in the following section.

4.4.2. Consent

The ethical considerations about doing courtroom observations are complex as courtrooms are public places, where consent isn't always necessary, but additionally is a setting where private and sensitive issues are discussed and where informed consent often is impossible to obtain (Smith, 2018: 14). In this aspect, I have followed previous scholars who have done courtroom

observation and merely informed court administrators, lawyers, and defendants about my presence, but otherwise haven't asked participants about formal consent (Johansen, 2019; Bitsch, 2018; Smith, 2018; Smith & Skinner, 2017).

Since criminal trials in Denmark are open to the public, it can be argued that observation in courtrooms doesn't require formal consent. Still, before the trial officially began, I briefly talked to the defense lawyer, the defendant, and the prosecutor about my presence as a thesis student and promised them anonymity. I tried to declare my presence shortly and thoughtfully to avoid intrusion.⁶ Most courtrooms I visited were small, and the gallery for the audience was placed very close to the defendant's and the defense lawyer's seating, which is why they inevitably would notice my presence and note-taking. During my first attendance in court and throughout other observations, where I didn't have the opportunity to introduce myself before the trial started, I had multiple experiences of defense lawyers, prosecutors, and police officers approaching me in between breaks and asking me who I was, and if I was a journalist. It felt as if some of them were on guard at first, but most of them expressed curiosity instead when I disclosed that I was a student of Cultural Criminology. From these experiences, I found the short introduction a good way to ease the participants about my presence. Additionally, the opening allowed them to express concerns without disturbing their focus on the trial. From a "do no harm" principle, I decided to leave the courtroom if any participant expressed concern or unease about my presence. In reality, I haven't experienced negative reactions, and some of the defendants and lawyers even shook my hand after my introduction. Additionally, there were almost always journalists or other researchers taking notes during the trials, so my presence was not unusual.

Despite my efforts to be open about my presence, it wasn't all spectators in court who knew that I was observing, as some of the spectators (relatives or witnesses) entered and left the setting quickly, which is a common issue when observing public places (Haggerty, 2021: 45). Most notably, the plaintiffs were not always informed directly about my study, because they were kept separate and could not be accessed before their testimony and usually left right after, why I told the plaintiff's lawyer about my presence instead.

⁶ It sounded something like, "Hi, my name is Kristine. I thought it might be nice for you to know who is present in the room. I am from Lund University and writing a thesis about narratives in courtrooms, which is why I will be taking notes. I am not interested in any sensitive personal details, and all my notes will be anonymized. You are welcome to ask me questions. If something comes up, just let me know".

4.4.3. Anonymity

As I am aware of the risk of potentially exposing the participants of this study to harm by perpetuating reputational damage or loss of privacy, I have tried to secure anonymity so that participants will not be identified in the thesis. For this reason, I have avoided noting down which court the different trials have been tried at, the date of the trial, where the alleged incident of rape took place, and the names of any of the participants in my field notes. In my notes, the trials are given a number, and when I reference who is speaking, I use legal terminology. I have noted down some information from the indictment, and my perception of the different participants' demographic characteristics such as gender, nationality, and appearance, as it might play an important part in how they are characterized in the narratives, but not any identifying characteristics. Inspired by the approach of Erik Hannerz (2013), I have tried to meet issues of anonymity by changing minor insignificant personal or contextual details in the analysis that don't change the story's coherence, such as information about a specific education, job, or type of residence. Furthermore, I have added brackets [] in quotes in the analysis, which contain descriptions of the word or content from the accurate verbatim transcript to blur potentially revealing details. Some analytical points could have been unfolded with more nuance, and some quotes could have been more captivating to read without this choice. Nevertheless, I find my ethical obligations more important in this respect.

4.5. Narrative Analysis

This thesis applies a structural narrative analysis, as laid out by Riessman (2008; 2005), focusing on how a story is told. This means that my analytical focus primarily is on the narrative's form and language rather than solely on the content and themes of the narratives about rape (Riessman, 2005: 3). A narrative is perceived as an "*analytical unit*" (Riessman, 2008: 12) in this thesis. As I interpret trials as competitions of opposing narratives, each observed trial consists of two analytical units; the "defense narrative" and the "prosecution narrative." The "stories" about rape are told throughout a whole trial and through probing and questioning from the legal actors, which is a way for them to control and construct the narratives. For this reason, a defense narrative in this thesis consists of all verbal expression transcribed into verbatim text from observations of the defense's presentation of the case, the closing argument, but also the defense's interrogation of the defendant, including the defendant's statements during this interrogation in a trial. Similarly, a prosecution narrative is perceived as an analytical unit consisting

of all text from the prosecutors' presentation of the case, closing argument, and the prosecution's interrogation of the plaintiff, including the plaintiff's statements.

I started by analyzing how the defense and prosecution each structured their narrative by “sequencing events” to convey their point and narrowed down the overall plot of their stories. Then I examined all character descriptions by closely reading and categorizing explicit descriptions of each narrative's characters. I then unpacked the symbolic codes to investigate how the story characters were tied to emotion codes (Loseke, 2015: 12). From the abovementioned interpretations, I explored what genre features each narrative exhibited and how they were related to emotions. Lastly, I examined the similarities and differences between prosecution and defense narratives. I have translated all quotes and words from my field notes presented in the analysis in English and tried to preserve the wording of the statements.

4.6. Setting

As Tutenges writes, narratives “[...] vary depending on where they are told, when, how, among whom and for what purposes” (Tutenges, 2019: 28). Accordingly, I will describe the storytelling context of the court narratives, i.e., the courthouses and the courtrooms to give the reader a feeling of the setting in which the narratives are presented. In the following section, I paint a general picture of Danish county courts and describe how a typical court proceeding is carried out, drawing on multiple observations.

The courtrooms I visited through my observations varied in size, architecture, interior, and technology. Some courthouses were majestic old buildings with classic pillars and had multiple smaller entrances with big, heavy wooden doors. Others were more modern minimalistic buildings, with fewer entrances, electronic sliding doors, and big entrance halls. A common feature of the courthouses was the security check that visitors were met by when they entered a court building. During a security check, one's bag and jacket were sent through an X-ray scanner, and all visitors needed to pass through a metal scanner. This thorough process set a serious tone right from the start. All courthouses I visited had multiple plans, courtrooms, and corridors. The old courthouses had narrower corridors and didn't have formal waiting rooms, except for a few wooden benches or chairs placed outside the doors of each courtroom. As the doors to the courtrooms were locked to all parties and audience until 10 minutes before the trial began, this

created situations where people who arrived early didn't always know where to place themselves. Due to bad acoustics, the sound was amplified, and people in the courthouses usually sat on the benches in silence or talked in very mellow voices. In my experience, this silence created a more serious atmosphere.

Courts do, in many aspects, look the same apart from details and choices of material. The courtrooms I visited were usually white and bright, with few abstract paintings on the walls, which created a neutral and sterile feel to the setting. The size of the courtrooms varied, as the bigger courtrooms were used for jury trials and smaller courtrooms for layperson trials. (See pictures below). In all the courtrooms I entered, all desks were always placed in the same reversed U shape formation. The judge's desk formed the back part of the U shape and was slightly elevated on a podium above the other desks. In this way, the judge symbolically could oversee the courtroom and all the court participants. The desks of the defense and prosecution formed the sides of the U shape and were thus symbolically placed on opposite sides facing each other. The witness stand faced the judge's desk, with the back to the gallery. The gallery, usually consisting of a couple of rows with chairs, was placed at the back of the courtroom. Even though the gallery was placed outside the U formation, I wasn't more than 5 meters from the witness stand, which created a sense of closeness to the actions unfolding.

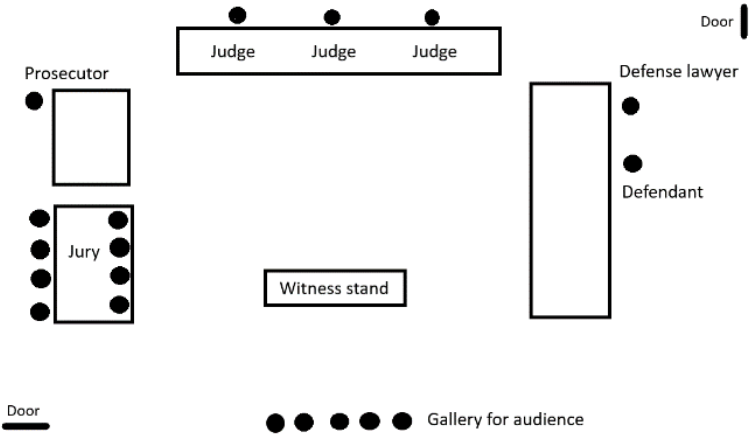


Figure 1: Sketch of courtroom used in the jury trial.

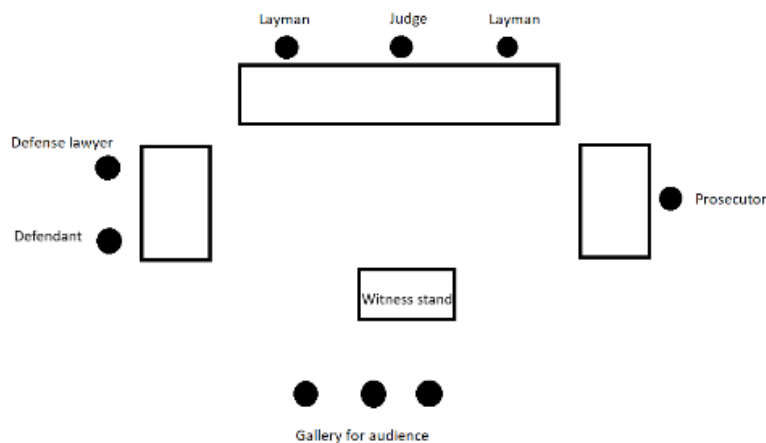


Figure 2: Sketch of courtroom used in layperson trial.

When a defendant was held in custody, the defendant was escorted to the courtroom in handcuffs by two police officers. Some courtrooms had a separate entrance for defendants in custody, but not all. This meant that the defendants were sometimes escorted through the waiting area in handcuffs in front of the trial audience, which I imagine being a shameful or stigmatizing experience. Most legal actors were usually formally dressed and moved and entered the courtroom with confidence. The judges distinguished themselves by carrying a judge’s cape. It seemed like a way to signal neutrality and authority. This symbol of authority was further emphasized by the fact that all people in court are to rise from their seats when the judges and laypeople/jury enter and leave the courtroom.

When the judge summoned the court, the prosecutor presented the case and its investigation. Afterward, the prosecutor interrogated the defendants, who, throughout this process, sat on the witness stand, followed by interrogation by the defense lawyer. The plaintiffs were not allowed to be in the courtroom before their witnessing to ensure they couldn’t adjust their explanation to the defendant’s statement. In Danish courts, plaintiffs have the right to testify behind “closed doors” during their witness interrogation in trials about sexual violence, which entails that all spectators must leave the room to minimize the exposure of retelling the incident. This right was used in most cases I observed (Civil Procedure Code: §29a). Still, in one trial, the plaintiff granted me extraordinary permission to stay during her witness interrogation as she felt comfortable with researchers’ and students’ presence in court. After the interrogation of the defendant and plaintiff, other witnesses usually testified, followed by documentation of the evidence that hadn’t been introduced during the witness interrogations (forensic investigations, photos,

police reports, emails, messages, etc.), ending with the closing arguments from the prosecutor and lastly the defense lawyer. When all witnesses and evidence had been exhibited, the defendant was permitted to express a free statement before the deliberation. The end of the trial was marked when the judges, laypeople/jury deliberated over the defendant's guilt and sanction, and the judge read the verdict out loud in court.

6. Analysis

This analysis starts by briefly introducing the trials regarding the indictments, the type of trial, the evidence presented, etc. It is followed by a summary of how the defense and the prosecutor each narrate the stories of "what happened" to create their plot of the story in the trials. The analysis uses many empirical details about the cases for two reasons. Firstly, it forms the base for understanding the character construction and genres of the trial narratives in the later analysis. Secondly, I follow Tutenges' argument that detailed descriptions and empirical sensitivity are helpful when seeking to understand the complexity, ambivalence, and nuances of the real world (Tutenges, 2023: 14). To illustrate each story's plot, I apply quotes from the closing arguments, as the closing argument is a space where legal professionals have more control over the narrative and can freely narrate the events and the people involved in these events (Törnquist, 2022: 274).

Trial 1: The Serial Offender with a Modus Operandi vs. an Online Witch Hunt

In trial 1, the defendant (male) was indicted for multiple offenses regarding sexual assault and rape. Some crimes allegedly occurred ten years ago before the legal code was based on consent, and others after. Some plaintiffs were under 15 years of age when the rapes and sexual offenses allegedly happened, and the defendant was over the age of 18 years at the time. A vital issue in the case is that many allegations were reported to the police simultaneously under one official report. The report was filed by a woman who created a group/page on a social media platform where some plaintiffs had found each other and voiced their experiences. The trial was set as a jury trial and was mainly based on witness statements, as there was no forensic evidence due to the late reporting. The defendant claimed to be not guilty on all charges of rape and sexual assault. I will not go into detail with the specific criminal charges of the indictment, as there are too many to cover, and as some details could expose the identities of the plaintiffs and the defendant.

I have defined the overall plot of the prosecution narrative as “a serial offender with a *modus operandi*.” This plot is illustrated in the following passage of the prosecutor’s closing argument:

High Court and Honorable Jurors. You have met [number] women who have all told you about their experiences. [Number] identical explanations regarding [the name of defendant] and his behavior. There is something template-like about his encounter with the women and his behavior thereafter.

The quote illustrates the narrative that the defendant had a *modus operandi* in the way he assaulted women. Throughout the trial, I observed how the prosecutor sequenced the events told by the defendant, plaintiffs, and other witnesses in their interrogations so that they fit into this overall plot.

In opposition to this narrative, the defense narrated the same events to fit into an overall plot that I have defined as “an online witch hunt.” This can be illustrated in the following lines of the defense’s closing argument:

*In my understanding, there is a clear picture that if [woman’s name] hadn’t created the [group/page on a social media platform], there hadn’t been any case [...]. Almost all charges are reported together in 2021. A few charges have been reported independently, but for the most part, it applies. [Name of the same woman] explains that you were supposed to write your story to her, which had to be detailed and awful to be accepted into the [group/page on a social media platform]. You were supposed to write something **awful**, and she also explains that there were a lot of fake stories that weren’t accepted to the [group/page on a social media platform]. I will let the court be the judge of how she was able to distinguish between true stories.*

This quotation underlines how the defense sequenced events in cause-and-effect relations (Presser & Sandberg, 2017: 89) to convey that the plaintiffs’ explanations were so-called fake stories that solely seemed consistent because the plaintiffs had communicated online.

To sum up, the trial revolves around the narratives of “the serial offender with a *modus operandi*” vs. “the online witch hunt.”

Trial 2: The Guilty Plea

Trial 2 was set as a layperson trial and is an outlier case, as the defendant, who was accused of having sexually abused his daughter in one isolated incident, pleaded guilty to the charges. This

way, there was no competition between the defense and prosecution narratives, as the indictment became the winning story supported by forensic evidence. Thus, in this case, my primary focus is on the characterization of the characters through the entire trial narrative and its relation to emotions. The case will be referred to as “the guilty plea” in the analysis.

Trial 3: An Intended Sexual Assault vs. A Mutual Misunderstanding

Trial 3 regards an incident allegedly occurring in the morning hours after a party between two young, acquainted people (plaintiff female, defendant male, both in their 20s) who had been partying with mutual friends in the plaintiff's apartment. The defendant was charged with rape, to which he claimed not guilty. He admitted that he had touched the plaintiff in a sexual way, but the stories of how and why the situation occurred varied greatly. The trial was tried under the new Danish penal code about consent. The trial was set as a layperson trial and mostly revolved around witness statements from the plaintiff and the defendant and a few other types of evidence such as pictures of the plaintiff and pictures of the alleged crime scene, forensic examination of the plaintiff, and witness statements from people who attended the party.

As the closing arguments of the prosecutor and the defense attorney revolve around very particular details about the specific incident, I will briefly paraphrase how the prosecution narrative sequenced the events of “what happened” in the closing argument and how the defense narrative sequenced events. This is done to avoid disclosing unnecessary and potentially revealing details about the case.

The prosecution narrated what happened at the party and the morning hours after the party to fit into an overall plot that I have defined as “an intended sexual assault.” This story reasons that the defendant joined the party and got permission to sleep in the plaintiff's apartment. After going to sleep in separate rooms and beds, the defendant went to the plaintiff's room in the morning hours and touched the sleeping plaintiff “*cautiously*” in a sexual way so as not to wake her up. It was underlined that: “*she (plaintiff) was very clear that she hadn't consented to what she was woken up by.*” When the plaintiff woke up and realized what was happening, she got “*very upset*” and told the defendant to leave.

In contrast, the defense narrated the story's plot as a “mutual misunderstanding,” illustrated in the following last sentence of the defense's closing argument: “*This is a matter of a mutual misunderstanding with very unfortunate consequences.*” The defense narrated the events of “what happened” at the party and the morning hours after the party as follows. The defendant

got very drunk and woke up in the plaintiff's bed in the morning. Due to bad lighting and intoxication, he thought he was lying in bed with the plaintiff's friend, whom he had been flirting with earlier at the party. The defendant touched the plaintiff in a sexual way, after which she consented to his touch by touching him back because she, in a state of falling in and out of sleep, confused the defendant with her boyfriend. The defendant and plaintiff simultaneously discovered that they weren't lying in bed with the person they thought, as indicated in the following sentence: *"They were both equally surprised over the fact that it wasn't the boyfriend, and it wasn't [name of the plaintiff's female friend from the party]."*

To summarize, trial 3 revolved around the narratives of "an intended sexual assault" vs. "a mutual misunderstanding."

Trial 4: An Attempt to Get Into Her Pants vs. Vindictive False Allegations

Trial 4 is about an incident that allegedly occurred at a student house in the late evening between two young people (plaintiff female, defendant male, both in their 20s) who lived at the same student house and had attended the same party that evening. The defendant was charged with attempted rape and subsidiary sexual assault in the form of unwanted sexual contact, to which he claimed to be not guilty. The defendant agreed that he had been in the plaintiff's bedroom that night but claimed he had no recollection of what happened due to a blackout caused by intoxication. The trial was tried under the new consent-based penal code about rape and was set as a layperson trial. The trial was only based on witness statements from the defendant and plaintiff. No other evidence was exhibited except the defendant's text messages to the plaintiff and other residents in the morning after the party. In this case, it is crucial to note that the prosecutor canceled witnesses scheduled for the trial day after the interrogation of the plaintiff. As there were closed doors during the interrogation of the plaintiff during my observations, I didn't have access to her witness statement or any indications of why the prosecutor chose to cancel witnesses.

In trial 4, the prosecutor sequenced the events the defendant and plaintiff gave during the interrogations to fit into an overall plot I have defined as "an attempt to get into her pants." The evidence of this plot is expressed in the following quote from the prosecution's closing argument:

The prosecution service doesn't find grounds to judge the defendant of attempted rape. [...] The information from the plaintiff is that he has attempted to get into her pants, but

at some point, he gives up and says, 'Sorry.' That is why I cannot convincingly argue attempted rape. Before this situation, he [kissed her and groped her breasts]. In a case about sexual harassment, we must base the verdict on the grounds that it happened against her will, which is what a penalty can be measured for.

As the quote shows, the indictment was changed and reduced to a short and brief description of sexual harassment instead of a rape attempt. Throughout the trial, there wasn't a strong sense of "sequencing of events" in cause-and-effect relations to create a straightforward, meaningful story in the prosecution narrative.

In contrast, the defense narrative sequenced events to create a radically different narrative, with a completely different plot, that I have defined as "vindictive false allegations," which is demonstrated in the following quote from the closing argument:

I noticed that she explained how she felt very disappointed that [the defendant] exploited her situation that night [...]. I think the disappointment in [the plaintiff] has led to a revenge motive. I know it might be a bit speculative, but we know she is very attention-seeking. We need to remember their history. The plaintiff has made a move on the defendant before, and he has rejected her because she was in a relationship with her boyfriend. We don't know what happened in that room. I don't think the burden of proof has been met.

In this way, the defense narrative sequenced the events of what had happened between the defendant and the plaintiff before the accusations in cause-and-effect relations to convey that the allegations from the plaintiff were false due to a "revenge motive," which I will elaborate on later in the analysis. To summarize, trial 4 revolved around narratives about "an attempt to get into her pants" vs. "vindictive false allegations."

Having introduced the trials and the plots of the narratives between the opposing legal actors, the following two chapters of the analysis investigate how the court narratives are constructed in relation to its characters and how the characters relate to being a "villain" and "victim" with their belonging symbolic codes and emotion codes of sympathy, fear, and hate. Then I examine the genres of the stories and their attached structures of feelings. Chapter 6.1. covers similarities and differences between the narratives of the defending side concerning the characteristics mentioned above, followed by chapter 6.2 about similarities and differences between the narratives of the prosecution side.

6.1. Narratives of the Defending Side

A presentation of the main analytical points regarding character construction in the defense narratives is provided in the next section, starting with an investigation of the narrative about “vindictive false allegations” (trial 4), followed by the narrative about “an online witch hunt” (trial 1), and lastly the narrative about a “mutual misunderstanding” (trial 3).

6.1.1. Characters of the Stories: Who Are the Real Victims?

What characterizes the defense narrative about “vindictive false allegations” in trial 4 is that the defense seemingly constructed the plaintiff as the story’s antagonistic “villain” character. This point is illustrated in how she was constructed as having malicious intentions and causing harm for no good reason. Both features are related to the symbolic code of a “villain” (Loseke, 2009). This argument is further underlined in the closing argument, where the defense attorney emphasized how the plaintiff had tried to kiss the defendant before the incident but was rejected. Therefore, he suggested a “*revenge motive*” behind the allegations, as described in the introduction to the trial above. The construction of the plaintiff as the “villain” character who had been rejected shares characteristics with the master narrative that Smith has named “deceitful scorned women,” which typically is used to negate rape allegations as false (Smith, 2019). Her study found that defense attorneys constructed the narrative that women made allegations because the accused had rejected them. According to Smith, this relates to an underlying stereotype that emotions rule women’s behavior to the extent that they make severe allegations out of vindictiveness. This narrative is linked to a commonly found rape myth that asserts that false claims of rape are common because of revenge, regret, or for personal gain (Smith, 2019: 134). Similarly, the defense in trial 4 constructed the plaintiff as a “deceitful scorned woman” by creating associations with the rape myth asserting that delayed reporting of rape is suspicious (Smith, 2019: 55). This is exemplified in the defense attorney’s interrogation of the defendant where he emphasized how the plaintiff had reported the case to the police 2,5 months after the incident after she had joined a “*feminist forum*” as illustrated in the following:

Defense attorney: "Isn't it right that you mentioned this feminist forum and [the name of a woman]? (pause). You thought she (the plaintiff) might have been incited to report what happened so long after because of it?"

Defendant: "Well, I cannot be sure."

Defense attorney: "But the plaintiff did participate (in the forum)?"

Defendant: "Yes. It was something along these lines, [name of the woman mentioned above] had had a similar experience, and that might have been the reason why she reported it".

Thus, by constructing the plaintiff as the "villain" character and as a "deceitful scorned woman," the defense narrative actively challenged the plaintiff's credibility and her victim status concerning the symbolic code of a "victim" who is "moral" and has been "greatly harmed," by "no fault" of her own (Loseke; 2003, 2009). In addition, the defense narrative represented her as an immoral character. This was illustrated in the defense's interrogation of the defendant:

Defense attorney: "How would you describe the plaintiff as a person?"

Defendant: "She is a party girl. She likes to drink a lot and talk about her problems in the [common area of the student housing], for instance, about her boyfriend problems".

Defense attorney: "The times that we have been talking about it, you have said attention-seeking?"

Defendant: "She wanted everyone to know about her problems, so yes, attention-seeking."

Thus, she was constructed as immoral by implying she was lying about the allegations and that she was an attention-seeking party girl who liked to drink. The argument that the defense actively challenged the plaintiff's victim status is further evident in the way the plaintiff wasn't characterized as someone who had experienced "great harm" with "no fault of her own" in the defense narrative (Loseke, 2003; 2009). On the contrary, she was constructed as the "villain" character who hadn't experienced harm but exposed the defendant to harm by making false allegations for "no good reason" through a "*revenge motive*" (Loseke, 2009). Overall, this character construction might have been an attempt by the defense to impact if the plaintiff was evaluated as a "real victim" who was "worthy of receiving sympathy" among the audience in court (Loseke, 2003; 2009).

The defense narrative of trial 4 created a clear polarization and moral boundary between the characters, which I will elaborate on in the following. In contrast to the abovementioned description of the plaintiff, the defendant was constructed as the protagonist of the story and the "nice guy" who had been harmed, which the following quote from the defendant illustrates

clearly: “*Defendant: (hesitates for some time and looks at the defense attorney) “I am a nice guy.⁷ I would never do such a thing”*. Furthermore, the good nature of the defendant and how he was a “moral” character was underlined in the defense narrative. This is exemplified in the way the defense emphasized how he had “*finished a higher education,*” that he liked to drink but didn’t drink as much as the other people in the student housing, and that it was the first time he had been accused of “*such a thing.*” This point is further illustrated by the emphasis on how the defendant comforted the plaintiff when she was sad and, in general, helped her out, which is shown in the following quote from the defendant: “*She mostly texted me when she struggled with an assignment, and then I helped her.*” In addition, the defense narrative seemingly constructed the protagonist as a good, moral character who wasn’t able to harm anyone by drawing association to rape myths asserting that a “nice man” cannot be a rapist as rapists are monsters (Smith, 2018: 55), which is shown in the following quote from the defense attorney’s interrogation of the defendant:

Defense attorney: “By the plaintiff, you have been described as a big, buff, and aggressive guy, can you recognize that description?”

Defendant: (chuckles) “No, I cannot.”

As the abovementioned quote shows, the defendant was constructed as harmless and the opposite of a monster because he wasn’t “*big, buff, and aggressive.*”

The defendant was also established as a “nice guy” character who had been “greatly harmed” in the form of his lost “*freedom*” due to the “*vindictive false allegations.*” This was evident in the way the defense focused on how the defendant was submitted to rules regarding when and at what times he was allowed to enter the public areas of the student housing after the other residents had been informed about the allegations by the plaintiff. The defendant, for instance, described how; “*[..] I stayed in my room for two weeks. I was scared to meet [name of the plaintiff], whom I wanted to respect, but I wasn’t able to have my freedom*”. In this way, he was constructed as a “nice guy” who respected the plaintiff but was the suffering character due to a “*vindictive false allegation.*”

Overall, the defendant was constructed as a character who projected the image of a good citizen, who was almost cast as a “moral hero figure” (Smith, 2005), or the “victim” of the story, as he was characterized as “moral,” “greatly suffering,” and “innocent” (Loseke, 2003; 2009). In line

⁷ DA: god gut.

with this thought, the construction of the defendant as the “real victim” character in the defense narrative might have been a way for the defense to evoke sympathy for the defendant among the audience in court.

The following section tunes in on the defense narrative of trial 1 with the plot of “*an online witch hunt*” and investigate the narrative construction of its characters. Similar to trial 4, this defense narrative also hinted to rape myths in constructing the plaintiffs as the “villain” characters, as I will explain below. Furthermore, the master narrative about “deceitful scorned women” (Smith, 2019) was employed by both defense attorneys. This is exemplified in how the defense of trial 1 constructed the plaintiffs as “deceitful” because they timed their report of rape to the police suspiciously, delayed, and through an online platform, as explained in the introduction to the trial. The defense narrative constructed the plaintiffs as “villains” by indicating that they were lying on purpose, thus narrating them as “creating harm,” the false allegations, for “no good reason,” which are features of the symbolic code related to the “villain” character (Loseke, 2009). This is exemplified in the way the defense focused on pointing to inconsistencies in the plaintiff’s explanations and questioning their credibility, and throughout the case, described the plaintiffs’ testimonies with the following wording: “*fanciful*”, “[...] *something she has pieced together*”, “*She didn’t declare that something was wrong. It was only after speaking to a therapist that it became a question of rape*”.

The defense narrative additionally constructed the characters as non-credible by pointing to inconsistency between “normal reactions” and the plaintiffs’ behavior, founded in rape myths about how “real rape victims” act, which is exemplified in the following. The myth indicating that it isn’t rape if a victim has ongoing contact with the perpetrator (Smith, 2018: 55) was, for instance, extensively and routinely hinted at in this defense narrative, which according to Smith, is a myth that is mainly used to question the rationality of the plaintiff’s behavior and cast doubt on allegations. A notable example is illustrated in the following quote from the defense attorney’s closing argument:

I think it is unlikely that she would go for a walk in a deserted place in the woods after he should have [committed a sexual assault on her]. As the prosecutor notes, it isn’t illegal, but it says something about whether she is telling the truth.

Another rape myth stating that for it to be considered rape, a victim must scream, physically resist, or get injured (Smith, 2018: 55) was additionally hinted at multiple times, as shown in the following quote from the defense's closing argument: "*She didn't say no. She didn't try to escape. She explained that she didn't know her boundaries. If she didn't know her boundaries, how are we supposed to know that the defendant knew her boundaries?*"

As in trial 4 about "vindictive false allegations," the defense narrative also challenged the plaintiffs' victim status by describing them in ways that might impact some audiences to perceive the plaintiffs as lower in a "social hierarchy of morality" (Loseke, 2003; 2009). This is illustrated in the way the defense described the plaintiffs as women who had participated in regular sexual activities and purely made up the allegations or women who had participated in experimental sexual activities of their own free will. Furthermore, this argument is illustrated in how the defense attorney emphasized that the plaintiffs were "*sugar daters*" or simply "*liked rough sex.*"

The defense didn't only challenge the plaintiffs' victim status by constructing them as sexually outgoing and promiscuous women, thus in some audience's mind "immoral," but also constructed them as "blameworthy" by hinting to the plaintiffs' social class, which is explained below. The patterns of social categories where some people are understood as higher in a hierarchy of social morality (Loseke, 2009), is according to Smith (2018), related to social class. She argues that women perceived as of lower socioeconomic status typically have been considered more "promiscuous" and "blameworthy" in the criminal justice system (Smith, 2018: 149-150). In trial 1, the defendant hinted at the plaintiffs' social class during interrogations. This was done by mentioning how one of the plaintiffs had participated in a (podcast, self-biography, tv-show or documentary) about young women who live in more deprived areas of Denmark and pursue a particular aesthetic that include plastic surgeries, long nails, piercings, tattoos, fake eyelashes, and solarium. Furthermore, it was done by using the following descriptions to describe the plaintiffs' appearances and behavior: "*She is the type who wears a lot of makeup on her face,*" "*She was wearing a very low-cut shirt, and her boobies⁸ were totally pushed up,*"

⁸ DA: babser.

she was “*sloppy drunk*”⁹, “*fashion wise she was heavily dolled up*,”¹⁰ and she wore a very expensive handbag.” The abovementioned hints to social class and appearance in the court narrative thus might indicate that the defense not only challenged the plaintiffs’ victim status by constructing them as “immoral” in some people’s eyes but also tried to construct them as “blameworthy.”

In addition, the plaintiffs were constructed as characters who didn’t fit the symbolic code of being a “victim” in relation to the feature of having “no fault” in the situation, as they were described as aggressive and as someone who weren’t passive (Loseke, 2003: 2009). This is evident in how the defense constructed the women as the “true aggressors” and instigators harming the defendant in the narrative. This was done by underlining how more than one of them had physically attacked the defendant, before or after the alleged incidents.

In contrast to the other defense narratives, the defense in this case about “an online witch hunt” didn’t create a moral boundary between the characters in the story. The protagonist of this narrative was partly narrated as a “victim” who was harmed by “false allegations,” but he wasn’t constructed as a completely “moral” or “nice guy” character. In contrast to the other trials, the defendant was characterized as someone of lower social class, as it was underlined how he had been to “*foster care*,” how he didn’t have a job, and that he had gotten his apartment through social services, but also that he had been in trouble before where “*someone threatened to stab*” him. In this way, the defense didn’t repeatedly emphasize his “good nature” to project the image of a “good citizen” as in the other cases.

Turning now to trial 3 with the plot about a “mutual misunderstanding,” the defense narrative, in contrast to the other cases, didn’t construct the plaintiff as a “villain” character of the story, and the defense attorney didn’t actively challenge the plaintiff’s status as a victim concerning the symbolic code of a “victim.” Instead, the defense narrative of trial 3 underlined the plain-

⁹ Translated from “stangbacardi”, which is a Danish slang word indicating that someone is heavily intoxicated. <https://ordnet.dk/ddo/ordbog?query=stangbacardi>

¹⁰ DA: dullet op. From the Danish noun ”dulle”, which means a provocative and sexy woman with heavy makeup. The word is typically used in a derogatory way. <https://ordnet.dk/ddo/ordbog?query=dulle>

tiff's experience of harm by describing how the "mutual understanding" had "*unfortunate consequences*." The defense emphasized that the plaintiff was "*startled*" and "*surprised*" by the situation. Furthermore, the defense attorney didn't question the plaintiff's "morality," and it seemed as if the defense attorney tried to recognize the plaintiff's vulnerability and credibility. This point is shown in his questioning of the plaintiff: "*Please don't misinterpret me, it isn't to delve in it, but I have to ask you, and it is essential that you give us details if you can.*"

Despite this, the defense narrative still constructed the plaintiff as a character who played an active part in the "mutual misunderstanding" and was "partly to blame," which is illustrated in the following quote from the closing argument:

Concerning the fact that the plaintiff states that she hasn't [touched the defendant], it is essential to notice that the plaintiff thought it was her boyfriend who was lying behind her. She was in a state between being awake and sleeping but states that she doesn't have any memory of it. Maybe she has chosen to forget it. It is not unlikely.

Thus, the defense narrative constructed the plaintiff as a character who was active in the situation and, thereby, not an entirely "innocent" victim of the story who had "no fault" in the case (Loseke, 2003: 2009) by indicating that she touched the defendant but had "*chosen to forget it.*"

In this defense narrative, none of the characters was constructed as antagonists or "villains" who were solely responsible for the "mutual misunderstanding" or had evil intentions. Instead, the defendant was constructed as a "moral" character who had been "greatly harmed" by the "mutual misunderstanding" and characterized as a "victim" character at equal terms with the plaintiff, thus conveying that the defendant and plaintiff were equally deserving of receiving sympathy according to the emotion code of sympathy (Loseke, 2003: 2009). This is evident in how the defense, in his closing argument, described how the defendant was equally surprised by and suffering from the "mutual misunderstanding." The defense narrative emphasized how the defendant drove away from the apartment after the incident, "*crying and with no shirt on.*" Furthermore, it was underlined that the defendant "*didn't have intentions of engaging in a sexual relation with the plaintiff*" and had been "*devasted and distressed by the situation*" afterward.

In general, the defense narrative conveyed that the defendant was a "nice guy" who was almost constructed as a "moral hero figure" (Smith, 2005) of the story, similar to trial 4. This is shown

in how the defendant was constructed as a good and “moral” guy who projected the image of a good citizen as it was underlined how he had an education and multiple jobs, including working with children. Additionally, the defendant highlighted how he: “[...] went to [type of creative school], where I dived into the Arts”, “I have never had an addiction,” and “I have a girlfriend in [Oslo]” during the defense attorney’s interrogation. This emphasis on the good nature of the character in the defense narrative of trial 3 might have been a strategy by the defense to create associations to rape myths asserting that “nice men” cannot be rapists, as only monsters’ rape (Smith, 2018: 55) to convey the defendant’s innocence. This point aligns with the study of Temkin et al., who also found that attorneys applied such a myth about the “real rapist,” suggesting that rapists are identifiable as they are different from “the man next door.” (Temkin et al., 2018). Additionally, the abovementioned finding aligns with the study of Wallin et al., who found that attorneys in Swedish courts strategically emphasized similar qualities of a similar “nice guy” character, which ultimately impacted the judges’ evaluation of the defendants’ credibility (Wallin et al., 2021).

Having discussed how the defense constructs the defendant and plaintiffs as story characters in their narratives, the final section of this chapter investigates what genres are applied in these narratives.

6.1.2. Genre: Tragedy With a Melodramatic Twist

Moving on to consider the genres of the defense narrative, the three abovementioned defense narratives shared some features with the tragedy genre, which I will elaborate on in the following.

Especially the plot of a tragedy where a “moral hero figure” “falls from grace” and goes from “social integration” to “social isolation” due to “an error” or the “evil doings of others” (Smith, 2005: 25-26) were present in trial 3 and trial 4. This argument is illustrated in the way both defense narratives underlined how the protagonists of the story, “the nice guys,” were young, moral, and were living normal and social lives with great futures ahead of them. They were described as “searching for a job,” “saving money for traveling,” and going to “volunteer at a [center for homeless people],” which was interrupted by a “mutual misunderstanding,” i.e., an error (Smith, 2005), or by “vindictive false allegations,” i.e., the evil doings of others.

Both narratives further zoomed in on how the lives of the “nice guys” had been impacted by

the allegations and how they had been emotionally affected, which is demonstrated in the following quote from the defense attorney in his interrogation of the defendant in trial 4: "*[Name of the defendant] you have been very affected by this, and you have visited a psychiatrist. Your family sits here today, and they have also been very affected by this*". A similar focus on the defendant's loss and suffering was exhibited in the defense attorney's interrogation of the defendant in trial 3, as explained in the following:

Defense attorney: "Now, this case happened some years ago. Can you tell me a bit about how it has affected you?":

Defendant: "(Defendant is choked up) I can feel how I get very emotional right now. I apologize. Well, I have lost a friend and a whole group of friends that I don't see anymore. It has also given rise to reflections that we... We didn't escape, but we hid behind alcohol. I think it has been a difficult time".

In this way, by underlining how happy past scenarios for the nice guys were destroyed, and how they "*had lost a whole group of friends,*" "*had quit a job*" because of how the case affected them or had been excluded from the student housing they were living in, the defense narratives created a story about a downward spiral towards social exclusion for the defendants. This illustrates the defense narratives' use of the tragedy genre, marked by a strong sense of character movement involving themes of descent (Smith, 2005).

The abovementioned defense narratives also exhibited another feature of the tragedy genre by focusing on the "*horror of suffering*" (Smith, 2005). In trial 3, the focus on suffering was created by the defense narratives elaboration of how the "nice guy" didn't "*have that big of a family,*" how it was "*tough to sit here (in court)*" for him, that there was "*illness in immediate family*" and how it was "*a difficult time*" for him. Additionally, the suffering was underlined in the way the defendant clearly expressed emotions of suffering in court. I, for instance, observed how his voice was shivering, he was looking down, and he had a sad stare, which the defense attorney actively hinted at in his closing argument: "*As you probably have been able to see and feel during this trial, the defendant is very devastated and distressed by the situation.*" In trial 4, the "nice guy" character's suffering was underlined similarly in the defense narrative and through the defendant's emotional expression. I, for instance, observed how he cried multiple times in the courtroom. The expression of suffering was also exemplified in the following quote and observation from the defense attorney's interrogation:

Defense attorney: "You write (reads out loud from a text message) 'I feel so awful.'"

Defendant: "Yes, because I didn't know what had happened (the defendant chokes up, and his voice cracks). Yes, sorry (a small break where he tries to collect himself). It is uncomfortable not to know anything."

Overall, these expressions and the defense's application of the tragedy genre in trials 3 and 4 can be interpreted as attempts to mobilize emotions of sympathy towards the defendants among the audience of the narrative, as the tragedy genre's attached structure of feeling is sympathy, pathos, and pity (Smith, 2005). Furthermore, it might be a way to create identification with the "moral hero figure" of the story, as the tragic story creates a sense that things could have been different for the protagonist if it wasn't for an error or the evil-doing of others (Smith, 2005) in these cases "a mutual misunderstanding" or "the vindictive false allegations."

The idea that a narrative's internal organization can be structured in a way that becomes persuasive regarding the emotions it creates in its audience is methodologically challenging to capture. Still, some of my observations indicated that narratives and emotions played some role in court. In trial 4 about "the vindictive false allegations," where the defense constructed the narrative as a tragedy and the defendant as the "real victim" of the story, I observed how the prosecutor exchanged following words with the visibly distressed defendant and his family in a break before the verdict came in:

The prosecutor puts on her coat, walks over to the defense attorney and the defendant, and says: "I can understand that this has been an extreme situation for you" (faced at the defendant). The prosecutor walks towards the exit door of the courtroom, and on the way, she passes the defendant's relatives who sit in the gallery for the audience and says, "I have sons in that age myself, so I know how it is." She smiles compassionately, looks down at the floor, and leaves the courtroom.

In this way, it seemed like the defendant won the "sympathy contest" (Kusenbach & Loseke, 2013), as even the prosecutor of the trial appeared to evaluate the defendant as the "victim" of "vindictive false allegations."

Turning now to the genre of the defense narrative in trial 1 with the plot of “an online witch hunt,” this case exhibited fewer features of the tragic genre than the two abovementioned cases. Similar to the other cases, it featured the theme of descent and the plot that the protagonist was let down by “the evil doings of others” (Smith, 2005); in this instance, the plaintiffs who were constructed as the villains, i.e., the “deceitful scorned women” who were responsible for creating “an online witch hunt.” In contrast to the two other cases, it didn’t exhibit the same “fall from grace” plot that focused on the suffering of a “moral hero figure,” whom the audience was encouraged to feel sympathy towards, as the defendant, in this case, wasn’t constructed as a “nice guy.” The defendant’s suffering wasn’t highlighted. Instead, the narrative displayed a genre mix of a tragedy with a melodramatic twist. This was evident in the way the story featured the typical characters of a melodrama, the “ruthless villain,” in this case, the “deceitful scorned women,” and the “victim,” in this case, the defendant (Loseke, 2009: 503), as well as the use of “rhetorical excess” throughout the narrative (Loseke, 2009). The same features were found in the defense narrative about “vindictive false allegations,” which is why both defense narratives of these trials can be characterized as tragedies with a melodramatic twist. The choice of applying the melodramatic polarization between the characters in the defense narratives can be read as an attempt to strengthen the emotional responses to the narrative, as narratives that draw polarizing boundaries between “good” versus “bad” characters are the most arousing stories (Presser, 2018).

So far, this analysis has elaborated on the character construction and genres of the defense narratives and their differences and similarities. The following chapter will explore the same characteristics of the prosecution narratives.

6.2. Narratives of the Prosecuting Side

A presentation of the main analytical points regarding the character construction in the prosecution narratives is provided in the next section. It begins with an investigation of the narrative about a “serial offender with a modus operandi” (trial 1), followed by the narrative about “a guilty plea” (trial 2). Then the story about an “intended sexual assault” is examined (trial 3), and lastly the narrative about “an attempt to get into her pants” (trial 4) is presented.

6.2.1. Characters of the Stories: The Villains Against the Innocent Victims

The prosecution narrative of trial 1, which centered around the plot of a “serial offender with a modus operandi,” exhibited visible polarization and moral boundary work between the characters. In this narrative, the plaintiffs were established as the “good” protagonists of the story who were “victim” characters, and the defendant as the antagonist “evil villain” character, which I will explain in the following.

First, the prosecution narrative emphasized how the plaintiffs were “*vulnerable*,” “*young*,” “*on the margins of society*,” “*suffering from anxiety*,” “*depressive*,” and on a “*tight budget*,” which illustrates how they were constructed as weak “victims.” The plaintiffs were further constructed as victims who had experienced “great harm” in the prosecution narrative, which is one of the features in the symbolic code related to the “victim” character (Loseke, 2003; 2009). This is evident in the way the prosecutor, for instance, emphasized how one of the plaintiffs needed to “*increase her intake of medicine and stopped showering*” after the alleged rape and, in that same vein, encouraged the audience to imagine the pain one of the women had gone through.

Furthermore, the prosecutor reinforced the rape myth, which implies that victims of rape will be visibly distressed after the incident and when giving evidence (Smith, 2018, 55), to emphasize the plaintiffs’ credibility and underline how the “victims” experienced “great harm,” which is one of the features in the symbolic code related to the “victim” character (Loseke, 2003; 2009). This is illustrated in the prosecutor’s focus on how the plaintiffs were emotionally affected while giving their witness testimonies, which is shown in the following quote from the closing argument: “*You have met the women who appeared **visibly** affected while they were witnessing. When they cry during their testimonies, you need to take that into account in relation to their credibility*”. In this way, the prosecution narrated the plaintiffs’ tears as a sign of honesty. This link between plaintiffs’ credibility and visible trauma is similar to the results of Wallin et al. (2021), who found that Swedish judges’ interpretations of plaintiffs’ emotional responses affected their conclusion regarding their credibility (Wallin et al., 2021: 13). Furthermore, it is similar to Bitsch’s findings, which suggests that Norwegian courts sympathize with and find plaintiffs who appear traumatized more credible (Bitsch, 2019). In this line of thought, the prosecutor’s narration of visible suffering as a sign of credibility in trial 1 might indicate an attempt to appeal to the judge’s sympathy for the plaintiffs by reinforcing a commonly used rape myth.

Interestingly, the prosecutor also repeatedly *challenged* several rape myths to construct the plaintiffs as “innocent victims” who had “no fault” (Loseke, 2003; 2009) in the alleged rapes. The prosecutor, for instance, challenged the myth that victims’ behavior can provoke rape (Smith, 2018: 55), as illustrated in the following quote:

The women have done nothing wrong. You are allowed to give your contact information and meet up with a person right after you have communicated for the first time. You are also allowed to engage in sex and then tell the person ‘No’ over time. The defendant’s impression is apparently that a meet-up is carte blanche to sex.

This quote is additionally a prominent example of how the prosecutor narrative exhibited polarization and moral boundary work between victims, who, on the one hand, were constructed as the “moral” characters who had no responsibility in the situation, and the defendant, who on the other hand was characterized as an “immoral” antagonist, who didn’t understand the concept of consent. The myth indicating how ongoing contact with a perpetrator is suspicious and raises questions if it “really was rape” (Smith, 2018: 55) was also challenged several times in the prosecution narrative to underline the “victim” characters’ innocence, as shown in the following statement from the closing argument:

One might wonder why someone agrees to meet up with the person who has raped them again, but you are allowed to. Does it mean that the thing you have been subjected to it isn’t awful? No.

This quote further shows how the prosecutor constructed the victims as “greatly harmed,” as they were described as having experienced something “*awful*.”

To further construct the plaintiffs as “victims” and as credible, the defense narrative also deflated the myth that delayed reporting is suspicious (Temkin et al., 2018; Smith, 2018: 55). The prosecutor did this by emphasizing how the plaintiffs; “*were scared, they had been threatened, they thought that no one would believe them, they were young, they were ashamed, and they preferably wanted to forget all about the experience,*” as reasons for why they hadn’t reported the offenses earlier. In this way, the prosecution resisted stereotypes by outlining possible reasons for the plaintiffs’ “suspicious” behavior, which is a strategy that Smith & Skinner (2017) also found among the British prosecutors in their study.

To summarize, the prosecution in trial 1 constructed the plaintiffs as the “victim” characters by actively challenging or reinforcing different rape myths and by emphasizing how the plaintiffs were “moral” and had been “greatly harmed” by “no fault” of their own, which all are features of the symbolic code of a “victim” character (Loseke, 2003; 2009). In this line of thought, it seems as if the prosecutor, by emphasizing and dramatizing the plaintiffs’ morality, innocence, and harm, might have attempted to convince the audience that the plaintiffs were “real victims” deserving of sympathy in the courtroom (Loseke, 2003; 2009; Kusenbach & Loseke, 2013: 26).

In contrast to the plaintiffs' characterization, the defendant was established as the story's antagonist. Throughout the prosecution narrative, he was constructed as “the villain” who “unjustly created harm” for “no good reason” (Loseke, 2003; 2009). This is underlined in the following quote, which explains the “villain’s” “modus operandi” of praying on young and vulnerable women:

You have heard the defendant say, ‘She wasn’t my type at all.’ Most of the women were much younger than the defendant. He may refuse to realize it, but his type is young and often vulnerable women. Those that he knows he will be able to manipulate and force into silence after he has caught them in his web.

In this manner, the defendant was constructed as a character who harmed the “victims” with complete intent and for “no good reason.”

The defendant was also constructed as someone who met all the features of the symbolic code of “evil,” which is defined by being “more monster than human,” “doing horrifying kinds of actions,” and “feeling no guilt” (Loseke, 2003: 2009). A prominent example of how the defendant was constructed as a character who was more “monstrous than human” is underlined in the following quote from the prosecutor’s closing argument:

The defendant’s actions during sex and his reaction to rejection is crucial. [...] Almost all the women could describe the change in the defendant’s actions. When in his own world, he is driven by his urges, and his eyes turn cold and black.

The almost animalistic description of the character illustrated in the quote above further connotes rape myths about perpetrators found in previous studies which, for instance, assert that rapists are monsters whose sexuality is uncontrollable once “ignited” (Smith, 2018: 55). In this

way, the prosecution narrative connoted rape myths to construct the defendant as an “evil villain,” who generally was described with a lot of negative adjectives such as “controlling,” “impulsive” and “hot-tempered.”

The feature of “feeling no remorse,” which is connected to the symbolic code of “evil,” was additionally showcased in the narrative, which the following quote from the closing argument illustrates clearly:

The defendant seeks to portray himself as a man who respects boundaries. He is the opposite. He is ruthless and completely ignorant about other people and anything other than his own needs.

In this manner, the prosecutor narrated the defendant as a character who only cared about himself and didn’t feel remorse.

Lastly, the prosecution narrative constructed the defendant as an “evil” character by emphasizing the grim nature of the offenses that the defendant allegedly committed, which involved him deriving pleasure from the pain of others¹¹. Thus, by constantly emphasizing such details, the prosecutor constructed the defendant as a character who was doing “horrible kind of actions,” which is the last feature in the symbolic code that constitutes “evil” (Loseke, 2003: 2009). In line with this thought, it is plausible that this characterization of the defendant as an “extremely evil villain” character might have been an attempt by the prosecutor to mobilize feelings of hate towards the defendant among the audience. This point is arrived at, as the emotion code of hate requires that a “villain” character of a narrative gets evaluated as “evil” and as posing a threat to someone who is narrated as valuable, in this case, the “victims” who are narrated as “weak,” “vulnerable” and “young” (Loseke, 2003: 2009). Furthermore, the clear polarization of the character in the prosecution narrative might have been an attempt to strengthen the emotional responses of sympathy towards the plaintiffs and outrage towards the defendant, as narratives that draw polarizing boundaries between “good” versus “bad” characters are the most arousing stories (Presser, 2018).

Turning to trial 2 about “the guilty plea,” all legal actors throughout the trial unanimously established and recognized the plaintiff as the “victim” character who had experienced “great

¹¹ The details of the allegations against the defendant are not elaborated due to ethical considerations.

harm” (Loseke, 2003; 2009). This is exemplified in the way they described how she had suffered “*trauma*,” that the case was “*very serious*,” and that it happened in her home where “*she is supposed to feel safe*.” Furthermore, the plaintiff was constructed as “moral” and “without fault” through her social status as a *child*, which was emphasized multiple times throughout the trial. The legal actors’ description of the plaintiff might potentially mobilize strong feelings of sympathy. This point is arrived at as children are usually perceived as innocent and placed high in the hierarchy of social morality (Loseke, 2009) and often elicit more sympathy than adults with the same problems (Clark, 1987: 298).

Even though the defendant in trial 2 was charged with a similar crime against an underage girl as the defendant of trial 1 about, a “serial offender with a modus operandi”, he was characterized very differently in the trial narrative. Although the defendant was responsible for creating harm against the plaintiff (Loseke, 2003; 2009) and the defendant’s actions can be categorized as “horrrifying,” he still wasn’t constructed as the “evil villain” of the story. The difference is that the defendant in this “guilty plea” trial was constructed as someone who showed remorse. This point is shown in the following quote from the prosecutor: “*He (the defendant) explains that he, after the incident felt the urge to bang his head into a wall or jump from a [tall building].*” As Loseke notes, to be considered a truly “evil” character, the person must feel no guilt (Loseke, 2003; 2009).

Additionally, the defendant wasn’t characterized as “more monstrous than human,” as his “*mental health evaluation*” underlined his difficult upbringing, low IQ, and mental health issues, which were explained as the reason for his actions. In the trial narrative, the defendant was constructed as a character who didn’t have agency over his actions and who didn’t have bad intentions. This is evident in how the legal professionals emphasized that he had “*pedophilic tendencies*” and that “*He constantly thinks about sex and believes that all people are entitled to sex, but he is very sorry about the thing he has done and is afraid of doing it again.*” In this way, he wasn’t constructed as an “evil villain” even though he was responsible for the harm because blame primarily is assigned when there are indications of obvious intent behind a harmful action (Loseke, 2003; 2009).

Following this line of thought, the narrative might not hold the same potential of mobilizing emotions of hate as the narrative about a “serial offender with a modus operandi,” as hate requires that the character who is posing a threat to something important is evaluated as “evil”

(Loseke, 2003; 2009). On the other hand, the narrative might hold the potential to encourage fear among the audience, as the emotion code of fear requires an element of “uncertainty and uncontrollability,” which was underlined in the trial narrative’s description of the defendant’s mental health evaluation and high risk of recidivism.

Moving on to consider trial 3 and the prosecution narrative about “the intended sexual assault,” the narrative exhibited polarization and moral boundary work between, on the one hand, the “victim” character and the “villain” character, which I will elaborate on in the following. The prosecution narrative constructed the defendant as the antagonistic “villain” character of the story, by emphasizing how he was “creating harm” with full intent “for no good reason” (Loseke, 2003; 2009). This argument is exemplified in the following quote from the closing argument:

The pressing question is how the defendant ended in the plaintiff’s bed, when he claims that he was having a blackout (the prosecutor raises her voice). [...] The only explanation left is that the defendant stood up, opened the door of the bedroom, went to the living room, opened the door to the living room, undressed, and laid down beside the plaintiff. The defendant attempts to justify it by claiming that he was drunk. We know that he was drunk. What I notice is that he, on one side, claims to have a blackout, and on the other side, claims to be fully capable of noticing that it is a girl he is lying next to. That it is [name of the plaintiff’s friend from the party].

As shown in the quote, the extent of the defendant’s bad intentions was underlined by the vivid explanation of how much the “villain” actively needed to do to get to the plaintiff’s room. Thus, he was constructed as a “villain” who, with full intent, committed a sexual assault. This was further underlined in the way the prosecutor interpreted one of the defendant’s text messages to the plaintiff after the incident in which he wrote that he had “*fucked up and that it is unforgivable*” as a sign of admission to the assault.

The defendant was also constructed as an “immoral” and bad character, described negatively throughout the prosecution narrative. This is exemplified in the way the plaintiff characterized him as an outsider during her interrogation as she underlined how he wasn’t a good friend and further indicated that he had invited himself to the party and to sleep in her home even though she didn’t really want him to. In the prosecution narrative, the defendant was further described with the adjective “*a bit annoying*,” and he was painted as a character who didn’t know the

social code of flirting. This is underlined in the following quote from the closing argument of the prosecutor:

You have heard that no one can confirm that [the friend of the plaintiff] and the defendant flirted, and even if they actually had been smoking cigarettes together, and she had laughed at his jokes as he claims, it is still miles away from being able to assume that she was interested in [getting touched in a sexual way by him].

In essence, the prosecution narrative attempted to construct the defendant as a flawed and immoral “villain” character. In contrast to the narrative about a “serial predator with a modus operandi,” the defendant, in this case, wasn’t constructed as an “evil villain” as the prosecution narrative didn’t directly point to any of the features connected to the symbolic code of “evil” (Loseke, 2003; 2009).

Turning to the character construction of the plaintiff in trial 3, in contrast to the “villain,” she was established as the good and moral protagonist and as the “victim” character who was “moral” and “greatly harmed” by “no fault” of her own (Loseke, 2003; 2009). I will show this point in the following. First, the prosecution narrative constructed the plaintiff as a “moral” character by underlining how the people at the party were *her* friends and that she had a “boy-friend” and a “job.” Additionally, she was constructed as hospitable and friendly towards the antagonist in that she allowed him to join her party and sleep in her apartment despite not considering him a good friend. Furthermore, the plaintiff was constructed as innocent concerning the feature of having “no fault” in the situation (Loseke, 2003; 2009), as illustrated in the following quote from the prosecutor’s closing argument:

*It is **never** on the table that the defendant is to sleep in the plaintiff’s room, and there has never been anything sexual between the two. She goes to bed wearing a sleeping shirt and underpants.*

This quote can be read as a way for the prosecutor to establish the plaintiff as a blameless “victim” by challenging the myth which asserts that a person’s dress and behavior can provoke rape why they are partially to blame for the situation (Smith, 2018: 55). This interpretation is further supported by the prosecutor’s specific choice of wording in the description of the plaintiff’s clothing, “*sleeping shirt and underpants*,” which have less sexual connotations than the wording “*thong and bra*” which was used by the defense attorney. In this way, the prosecution

narrative constructed the plaintiff as a character who didn't "provoke" any sexual encounter and thereby had "no fault" in the situation.

What characterizes this prosecution narrative mainly is how the plaintiff constantly was positioned as a "victim" character who had experienced a "real rape" in relation to several rape myths. This argument is exemplified in the way it was emphasized how the plaintiff immediately yelled, "*fuck off, you need to fuck off now*" after the incident, which is an action following the myth which states that a "real rape victim" screams, physically resists, or get injured (Smith, 2018: 55). Additionally, the prosecutor underlined how the plaintiff cried and was visibly upset and distressed immediately after the incident, and that she cut contact with the defendant, by not responding to his text messages after the incident. Once again, she was narrated as behaving in accordance with myths asserting that a "real victim of rape" will cut contact with the perpetrator (Temkin et al., 2018; Smith, 2018: 55). The prosecutor's emphasis on these actions can again be interpreted as a way to construct the plaintiff as the real "innocent victim" of the story.

To construct the plaintiff as a victim who had suffered "great harm," the prosecution narrative underlined how the incident had severe consequences for her. This is illustrated in the way the prosecution narrative highlighted how she lost her job, as exemplified in the following quote: "*I tried to go to work as a [desk clerk], but I stopped after a few times.*" It is further shown in how the prosecution narrative stressed that she had been "*very sad*" after the incident. This focus on "great harm" was further illustrated during the plaintiff's witness interrogation:

Prosecutor: "Can you describe how you have been feeling after all this?"

Plaintiff: "Awful..." (The plaintiff starts to cry silently. The prosecutor tilts her head, gives the plaintiff a compassionate look, and gives the plaintiff time to collect herself. The plaintiff grabs a tissue that the plaintiff's legal advocate has placed on the witness stand for her).

In this way, the "victim's" suffering was underlined, and her behavior in court was again following the rape myth stating that victims of rape will be visibly distressed when giving evidence (Smith, 2018: 55).

Overall, the prosecution narrative actively constructed the plaintiff as the "victim" character, who was "moral" and had been "greatly harmed" with "no fault" of her own (Loseke, 2003; 2009) by constantly emphasizing and dramatizing how the plaintiff was acting accordingly to

how rape myths state a “real rape victim” will act and react leading up to, during, and after an assault. As a dramatization of a “victim” character’s morality, innocence, and harm is effective in creating widespread sympathy (Kusenback & Loseke, 2013: 26), the abovementioned dramatization might reflect a strategy for the prosecutor to convince the audience in court to evaluate the plaintiff as the real “victim” who is worthy of receiving sympathy (Loseke, 200; 2009). Furthermore, the clear polarization and boundary work in the prosecution narrative might indicate an attempt to mobilize strong emotional responses, as narratives that draw polarizing boundaries between “good” versus “bad” characters are the most arousing stories (Presser, 2018). The finding that legal professionals dramatize victims’ morality, innocence, and harm aligns with results of previous studies that suggest that prosecutors in Swedish courts use ‘sympathy cues,’ such as exhibiting specific evidence or compelling narratives during testimonies, to strengthen a victim’s ‘idealness’ and underserved vulnerability to evoke the judges’ concern for the victim (Törnquist, 2022).

Turning to the prosecution narratives of trial 4 with the plot “an attempt to get into her pants,” it distinguishes itself from the other prosecution narratives by avoiding polarization of its characters of the story with a good and moral “victim” on one side against a bad and immoral “villain” on the other side. In this narrative, the defendant wasn’t constructed as a “villain,” as I will explain below (Loseke, 2003; 2009). An example that elaborates this point is the prosecutor’s response in court to the following text message: *“I am sorry about yesterday, I was way too drunk. Please don’t tell the others about it,”* which the defendant sent the plaintiff in the morning after the alleged rape attempt. In contrast to trial 3 about an “intended sexual assault” in which the similar sounding text message *“I have fucked up, and it is unforgivable”* got narrated as a sign of admission, the prosecutor in trial 4 didn’t narrate the abovementioned text message as incriminating. In this way, the prosecutor didn’t construct the defendant as a character with bad intentions.

Furthermore, the prosecutor narrative didn’t construct the plaintiff as a “victim” character by underlining the features connected to the symbolic code of a “victim” character (Loseke, 2003; 2009). Instead, the prosecution narrative constructed the incident as an *“unfortunate combination”* that the plaintiff was partly responsible for, which is illustrated in the closing argument:

It is an unfortunate combination of the defendant getting too much to drink and not being in the right state of mind and a plaintiff who had broken up with her boyfriend that evening. I believe she even mentioned that she had also failed an exam.

The quote further underlines how the prosecution narrative didn't indicate the defendant's intent to inflict harm. It further shows how he wasn't characterized as a "villain" character, as villains are those who "unjustly create harm for no good reason" (Loseke, 2003, 2009). By narrating the situation as an "*unfortunate combination*" of events and thereby almost as an accident, where the "reason" behind the harm is a combination of the defendant's intoxication and the plaintiff's emotional state of mind, the harm is almost narrated as "justified." In this way, it doesn't seem as if the prosecution narrative is constructed in a way to persuade the audience to assign guilt, or to evoke strong feelings, as the characters weren't constructed in polars of "good" and "bad" or in terms of their moral worth, but instead were narrated as equally responsible for the situation (Presser, 2018).

Having discussed how the prosecution constructs the defendant and plaintiffs as story characters in their trial narratives, the final section of this chapter investigates what genres are applied in these narratives.

6.2.2. Genres: Melodramas and Low Mimesis

The prosecution narratives of this study relied on two different genres. The narratives of trial 1, about a "serial offender with a modus operandi," and trial 3, about "an intended sexual assault," were characterized by melodrama features. One significant aspect that exemplifies this argument is that both narratives included the typical characters of the melodrama, such as the "morally faultless victim" against the "ruthless villain," as stated in the analysis above (Loseke, 2009: 503). In addition, both narratives' plots centered around an ethical struggle between "good" and "bad," which is a feature of the melodrama (Brooks 1976:279). The prosecution narrative in trial 1 especially showcased extreme dramatization of *good* and *evil*, as it was narrated how vulnerable and young "victim" characters systematically were preyed on by an "extremely evil villain," as previously argued. According to Presser, narratives that draw polarizing boundaries between "good" versus "bad" characters are the most arousing stories (Presser, 2018), which relates to features of the melodramatic story that centers around overwrought emotion and heightened states of emotional urgency and tension. In line with this thought, both

prosecution narratives emphasized the suffering of the “victim” characters and the bad intentions of the “villains” to underline the tension and tribulation of the story. In addition, both prosecution narratives ended their stories with a “promise that virtue will triumph over villainy” (Frye 1957:47), which is a feature of a melodramatic plot. This was done by sequencing the events of the stories in "cause and effect relations" (Presser & Sandberg, 2017: 89) to plea for the defendants' convictions. Another aspect of the two narratives, which indicated a feature of the melodrama genre, was the use of a “*vocabulary of clear, simple, moral and psychological absolutes*” (Brooks 1976:28). This point is exemplified in the following quote from the closing argument in trial 1:

I close my remarks with a quote from the defendant himself. 'I am very much against rape, and I feel that people who do such things should get their dicks cut off.' Seldom has anything sounded so hollow [...].

As the quote demonstrates, the prosecution narratives communicated clear and absolute messages that didn't leave anything up to the audiences' interpretations.

Overall, the two prosecutors' application of the melodramatic genre in trials 1 and 3, with their typical melodramatic plot, character descriptions imbued with explicit moral judgments, and use of “rhetorical excess” (Loseke, 2009), might indicate an attempt to appeal to strong emotions in the audience.

Unlike the two abovementioned prosecution narratives, trial 4, where the story's plot was narrated as “an attempt to get into her pants,” exhibited features of a low mimesis genre (Smith, 2005). This was evident in the way the narrative didn't establish a clear antagonist and protagonist, who were strongly polarized in terms of their moral worth. In contrast to the other cases, this prosecution narrative wasn't very plot-driven (Smith, 2005) and didn't include a strong “sequencing of events” in "cause and effect relations" (Presser & Sandberg, 2017: 89) to show why the defendant needed to get convicted. This story's plot was narrated as an “attempt to get into her pants” caused by the abovementioned “unfortunate combination” of events. Another characteristic of the narrative indicating the low mimesis genre was how the narrative created a sense that “nothing much was at stake” in the story (Smith, 2005). This feature is exemplified in the last lines of the prosecutor's closing argument:

It is an unfortunate combination, but it is something that you can get convicted for. Regarding the sentencing, I will introduce a verdict [name and details of the verdict] about a hairdresser who kissed and groped a client on her breasts against her will, but I will argue that the former case is worse than this case regarding two young people at a party.

The prosecutor's emphasis on a case that was described as "worse" in this way created the sense that the incident between "two young people at a party" was more mundane or less severe, which created a feeling that "nothing much was at stake" (Smith, 2005). As with the character descriptions, this application of the low mimesis genre indicates that the prosecutor possibly didn't attempt to arouse strong feelings among the audience in court, as the low mimesis genre is very emotionally flat (Smith, 2005).

Having presented the analytical points of this thesis, a summary of the main findings, together with a discussion about its relation to previous studies, is provided in the following conclusion.

7. Conclusion

This narrative inquiry into criminal rape trials in Denmark suggests that defense attorneys and defendants, on the one hand, and prosecutors and plaintiffs, on the other, construct their narratives strategically to evoke emotions and convince the judge and jury that their narrative is the "true" version of events.

The study found that defense narratives are characterized by an inversion of the claim to harm. This is evident in the way that some defense narratives position the plaintiffs as immoral and antagonistic "villain" characters of the stories, who subject the defendants to harm by falsely accusing them of rape. In some trials, the plaintiffs were narrated as "deceitful" and vengeful due to previous rejections or as women who timed their report of rape suspiciously and as a part of an "online witch hunt" against the defendant. Overall, this finding supports the study of Smith (2019) on how defense attorneys apply gendered master narratives in which women are narrated as "deceitful" to negate their allegations of rape as false.

This study further concludes that the narratives about rape in Danish courtrooms are characterized by the way they are constructed around myths about how a "real rape victim" behaves in the situation leading up to, during, and after a rape, but also myths about what characterizes a

“real rapist.” This was both present in defense and prosecution narratives but was applied with different aims. Thus, this thesis supports the findings of previous studies on rape myths by Smith & Skinner (2017), Temkin et al. (2018), and Wallin et al. (2021), who argue that rape myths are routinely discussed and reproduced in courtrooms in various ways by both the defense and prosecution attorneys to support their case.

The defense narratives are further characterized by the way defense attorneys and defendants position the plaintiffs, their characteristics, and behaviors in relation to various rape myths to impact how a plaintiff would or wouldn't get perceived as a moral person, who had been greatly harmed, with no fault of her, and thus as a “real victim” character worthy of receiving sympathy by the audience.

Additionally, some defense narratives are characterized by exhibiting clear polarization and moral boundary work between their characters, in which the defendants usually are constructed as the “victim” characters or as the “nice guys” who are moral people and project the image of a good citizen. These character constructions were typically intertwined with the application of a tragedy genre that all defense narratives were characterized by. Still, two narratives also exhibited a melodramatic twist by, for instance, using “rhetorical excess” and polarization of the “good” victim vs. the “bad” villain, which might have been an attempt to arouse strong emotions in the audience of the narrative. Through the tragedy genre, the defendants' suffering was emphasized, and the defense's story of the events revolved around a typical tragic plot in which the “victims” or the “nice guys” experienced a “fall from grace” due to either false accusations of rape or an unfortunate mutual misunderstanding. In this way, all defense narratives were characterized by how they seemed constructed to encourage the audience to feel sympathy and pity for the trials' defendants.

In contrast to the defense narratives, the prosecution narratives were characterized by the way all except one established the plaintiffs as the “victim” character. Some prosecution narratives were characterized by exhibiting dramatization of the plaintiff's morality, innocence, and suffering, which might have been an attempt to convince as many people in the audience as possible to evaluate the plaintiffs as the real “victim” characters of the story worthy of receiving sympathy. In the construction of the plaintiff as a “victim” character, the prosecutor either challenged or reinforced several rape myths by emphasizing different personal characteristics of the plaintiffs and narrating different actions or behaviors that either distanced the case from the

“real rape victim” stereotype or argued how it was consistent with ideas about how a “real rape victim” behave to support the plaintiffs’ evidence.

The thesis further found that prosecution narratives are characterized by exhibiting clear polarization and moral boundary work between its characters in which the defendants are constructed as the antagonistic bad and immoral “villain” characters who unjustly create harm, with full intent and are solely to blame for the harm the victims’ experience. One trial was even characterized by how the defendant was constructed as an “extremely evil villain” character, using rape myths about rape perpetrators, who in exaggerated ways were described as “more monstrous than human” and established as a threat to vulnerable young women. This characterization might indicate an attempt by the prosecutor to evoke feelings of hate or outrage towards the defendant in the audience. Another defense narrative was characterized by the way the defendant was constructed as a “villain” who wasn’t more monstrous than human, as he felt guilt but didn’t have agency over his actions due to “pedophilic tendencies” and thus was at risk of recidivism, which instead might have encouraged feelings of fear among the audience. In this way, the prosecution narratives’ character constructions were characterized by how they might have been constructed to appeal to different emotions. The abovementioned character constructions of the prosecution narratives are intertwined with features of the melodrama genre that most prosecution narratives were characterized by. Through the melodrama genre, some prosecutors created stories revolving around a plot about the ethical struggle between “good” and “bad” that focused on overwrought emotions and made use of “rhetorical excess” to argue their plot about an “intended sexual assault” or “a serial offender with a modus operandi” which ended in strong pleas for conviction. In this way, most of the prosecution narratives were characterized by the way they seemed to be constructed to encourage the audience to feel sympathy with the plaintiffs and appeal to strong emotions in the audience. One prosecution narrative was, in contrast, characterized by features of a low mimesis genre where nothing much seemed to be at stake, which might indicate that the prosecutor narrative didn’t attempt to arouse strong feelings among the audience in court, as the low mimesis genre is very emotionally flat.

This thesis represents the first step in mapping out the characteristics of trial narratives about rape in Denmark. Due to its small empirical basis, further investigation of these patterns is needed to get a fuller picture. Still, this study contributes to the existing literature by showing

how court narratives' internal organizations are intertwined with myths about rape and how narratives might be constructed to evoke specific emotions among its audience about who should get perceived as worthy of receiving sympathy and how strongly an audience should feel about a case. Furthermore, the findings of this thesis support previous findings of Törnquist (2022), who suggests that prosecutors use 'sympathy cues' to evoke judges' concern for the plaintiff during court proceedings, but adds to the literature by illustrating the manner in which it is done through genre use and character constructions that are built around rape myths. Additionally, it adds to the literature by suggesting that not only prosecutors but also defense attorneys seek to evoke the judge's and laypeople's concern and sympathy for the defendant by using the tragedy genre and constructing the defendants as the "victim" characters to evoke feelings of sympathy and pity towards them. In this way, this thesis demonstrates that, far from neutral, trial narratives are vehicles for conveying meaning, infusing emotion, and making a convincing impact in court.

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