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Performance of the Defendant Role

An Ethnographic Study of Interaction at Criminal Trials in Sweden

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Abstract

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Given the fact that experimental studies have found an influence on legal decision making by the court's impression of the defendant, while at the same time the defendant has been foreseen in research on courtroom interaction and emotion, it is highly significant to study the way the defendant interact during criminal trials. This thesis is based on an ethnographic-inspired study conducted in Swedish lower court during the spring of 2021. Observations of the interaction taking place was conducted in different lower courts in southern Sweden in the waiting rooms as well as during the trials. With a symbolic interactionist cultural theoretical perspective, the way the defendant role is performed is analysed from two angles, how the defendant constructs a strategy of action when not having situation-appropriate cultural experience, and what impressions the defendant gives when preforming the defendant role. The analysis shows that the defendant's performance is constantly managed by the professional participants of the court, and that a successful performance in general depends upon such management. Findings also shows that defendant whole bodies are involved in giving off expressions regarding their credibility, personality, and their effort of teamwork with the defence lawyer. The findings of this study both support and deviate from those of previous research. By expanding knowledge of courtroom interaction and connecting previous experimental studies to observations during real criminal trials, this study adds to the expanding knowledge of the interactional aspects of justice.

Key words: Court, trial, emotion, impression management, interaction, culture

Popular science summary

In this study, I looked at the Swedish criminal trial as an interaction between the different parties in which the defendant plays an important role. However, the defendant usually has none or limited experience from interacting during criminal trials, which my lead to the defendant having trouble understanding what is going on and what the more experienced participants means. The defendant might also behave in a way that is perceived as inappropriate by the other participants if the defendant cannot foresee how his own actions will be interpreted by the other participants.

In this context I examined in what ways the defendant takes advantage of guidance from the more experienced participants. I found such guidance to take place both before and during the criminal trial and to different extent by the different professional participants of the court. Most guidance was provided by the defence lawyer. In this regard, my findings support those of previous research, but deviate with regards to the extent prosecutors engage in management before the trials start. In many cases, I found that the defendant uses such guidance to behave according to the court's expectations. However, in some cases I found the defendant to ignore such guidance which can possible be due to difficulties in interpreting the meaning of what is being communicated.

In the above-mentioned context, I also examined what impressions the defendant gives off while appearing in front of the court. I focused specifically on in what ways the defendant gave of impressions regarding his credibility, personality, and teamwork with his defence lawyer, and found that the defendant's whole body sends signals to court regarding these matters. The way the defendant interacts (both verbally and non-verbally), display emotions and display the self (for example choices of clothes) all add up to the impression of the defendant.

The findings presented in my thesis are of importance because it expands the knowledge we have on the interactional aspects of justice, meaning that the criminal justice served in the court must be understood in relation to the interaction that takes place during the trial itself. Especially, it contributes to the knowledge of courtroom interaction by specifically focusing on the way defendants interact. The findings presented in my thesis are also of importance on a general level they build on the understanding of how people interact and are perceived by others in for them unusual social situations or cultural contexts.

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Chapter one

Introduction

1.1. Defendant's role performances

This thesis explores the interaction that is taking place in Swedish courtrooms during criminal trials, specifically focusing on the defendant. More specifically, it is concerned with the ways in which defendant role is performed and the impressions that is given off by the defendant. While so doing, it also explores two wider social phenomena. First, it explores how people interact in social situations to which their cultural experience is limited. As will be shown, the criminal trial interaction follows a strict order to which the defendant's knowledge and experience often is limited. This challenges the defendant to interpret the interaction and construct strategies of action using their cultural repertoires. This way, the criminal trial offers a perfect place to study the way that ordinary people interpret situations and interact in ways to make up for a lack of context-specific cultural experience. Second, it also explores how people interact in social situations where their performance is closely examined and evaluated. The nature of criminal trial, in which the defendant's guilt is to be judged, offers a perfect place for such studies.

In this thesis, I show that lay participants, for example the defendant, has been largely overlooked in research on courtroom interaction in Sweden (see for example Bergman Blix and Wettergren, 2016; 2019; Bergman Blix and Wettergren, 2016; Flower, 2018; 2020). However, I argue that the lay participant's performances cannot be neglected if a complete understanding of the criminal trial interaction is to be achieved. Further, I identify two aspects of managements of the defendant's performance, namely pre-trial preparation, and mid-trial management, and three aspects of defendant's role performances, namely credibility, personality, and teamwork, which I examine closer in this thesis. This is done by closely observe the way that defendant's use their whole bodies in interaction during criminal trials inside the courtroom and analyse what impressions this gives to the audience. By doing so, this thesis adds to the body of research on the interactional aspects of Swedish criminal trials that has been carried forwards primarily by Stina Bergman Blix, Åsa Wettergren and Lisa Flower.

1.2 The research problem

In this thesis, I depart from the assumption that people (inter)act based on their interpretation of the social situation in which they find themselves as well as their interpretation of how their

own actions will be interpreted by the other interactants (see for example Blumer, 1986: 1-6). I also depart from the assumption that people's cultural experience is what makes interpretation possible (see for example Small, Harding and Lamont, 2010: 14-15), as well as providing people with a repertoire of actions (see for example Small, Harding and Lamont, 2010: 14-15). Theoretically, this would mean that interacting in unfamiliar cultural contexts would be difficult.

In line with Lisa Flower (2020: 150-183; see also Searcy, Duck and Blanck: 2005: 42-45) I perceive the criminal trial to be an interaction between the court and the parties on trial in which each person's social role is to be performed if the interaction is to flow without disruptions. However, in the criminal trial interaction, cultural experience is unequally dispersed between the professional participants and the lay participants. This would theoretically mean a disadvantage for the lay participants, making it difficult for them to perform their roles when having difficulties interpreting the interaction, choosing how to (inter)act and understand how one's own action will be interpreted by the professional participants. For the defendant, this situation can be even more stressful as he is the one whose guilt is to be assessed.

For this reason, the study on which this thesis is based examined the way the defendant role is performed during criminal trials in Sweden by specifically focusing on two aspects of role performance: how defendant's make up for cultural inexperience, and how what impressions the defendant gives while interacting.

The research question this thesis will answer is:

How is the defendant role performed during criminal trials?

The above research question will be answered by answering more specific research questions:

If and in what ways are defendants assisted in their role performances?

What impressions do defendants convey while interacting during criminal trials?

1.5. Aim of the research

In its widest formulation, the aim of this research is to gain a better knowledge of the interaction that takes place during criminal trials. More specifically, how defendants interact during criminal trials. The interesting part of the interaction is the meeting point between the legally educated and experienced participants of the court, and the lay defendant. In this context, it is interesting to examine how the defendant make up for cultural inexperience, and what expressions the defendant gives off while interacting, to analyse how this might be interpreted

by the court. The findings of this analysis will contribute to the understanding of the interactional aspects of criminal justice.

The broader aim is also to understand how situation-specific cultural inexperience (or experience) affects our ability to interact and how people make up for cultural inexperience by using the criminal court as an example. In this regard, the findings of my research will contribute to the understanding of how people interact in environments and situations to which they have not been socialised.

1.4. Delimitations

Empirically, this research project has been delimited to focus only on the interaction between the professional participants and the defendant. It has not focused on the interaction between the professional participants and the other lay participants. The reason for this is a matter of interest in the defendant as the they find themselves in a presumably stressful situation where their guilt is to be assessed. Another empirical delimitation of the study is that it focuses only on the interaction that takes place directly before, during and directly after the trial. Even if interesting interactions takes place between for example the defence lawyer and the defendant long before the trial, there are several reasons for this delimitation. To mention some, it would be extremely time-consuming and ethically questionable to identify and contact the defendants prior to or after the criminal trial.

Methodologically wise, the study has delimited itself to the use of observations only. The choice of not conducting interviews with defendants have been taken on ethical basis, and with regards to the Covid-19 pandemic. Analytically, it has delimited itself to the analysis of two aspects of management of the defendant from the professional participants (pre-trial preparation and mid-trial management), and three different impressions given by the defendant (credibility, personality, and teamwork). The reason for these choices will be argued for in chapter two. Further, the study does not closely analyse power-relations between on the one hand the professional participants and on the other hand the lay participants (for example disposition of symbolic capital), or the power-relations between on the one hand the lay participant's and on the other the institution as such (institutional power). The reason for this is that such an analysis would demand a different theoretical framework and have also not been possible due to time constraints.

1.5. Outline of this thesis

In chapter two of this thesis, I will address some of the previous research conducted on the interaction during criminal trials. By doing so, I argue for the need of taking the professional participant's attempts to manage the defendant's performance into account when examining how the defendant role is performed. In the second part of second chapter, I also address research conducted on the effect of the court's impression of the defendant and the given off expressions by the defendant on legal decision making. I argue that three impressions should be considered key aspects of the defendant's role performance.

In chapter three I address the methodological approach and specific methods used while conducting the study on which this thesis rest. I argue for the many different choices made and discuss issues and considerations of for example ethical character. Chapter three also features one part about my own positionality to the field as well as a description of the courthouse and the courtrooms as a site of fieldwork to set the setting for the analytical work.

In chapter four I describe and discuss the theoretical framework of symbolic interactionism on which this study rests. I also discuss the role culture has in interaction, by allowing for the construction of frames of interpretation and repertoires of action. Further, I present the theoretical concepts (impression management and emotion management) that I use to analyse and describe the interaction that takes place during the criminal trial.

In chapter five and six I present my results and analysis. Chapter five is called *Managed performance* and is dedicated to the analysis of the way the defendant uses pre-trial preparation and mid-trial management to construct a strategy of action. In this chapter, I make connections between my own fieldwork, the findings of previous research regarding management of the defendant, and cultural theory. Chapter six is called *The performance* and is dedicated to the analysis of the ways that the defendant's way of interacting gives off expressions of credibility, personality, and teamwork. Here, I use the arguments made in chapter two regarding the key aspects of defendant's role performance to structure the analysis. I draw on theoretical assumptions by Goffman and Hochschild to interpret the way that the given off impressions influences the court's perception about the defendant.

Finally, chapter seven concludes the thesis by presenting my conclusions of the research questions. It also features some implications for future research

Chapter two

Previous research

In this chapter, I will address and discuss research that might provide important insights on this research's questions. I have identified two topics of previous research that are of interest: research that has examined the interaction during criminal trials, and research that have examined the connection between impressions of the defendant and legal decision making. These topics will be introduced and discussed in two separate parts of this chapter based on their implications for my study.

2.1. Interaction during criminal trials

From conducting a review of existing literature, I find that in both Sweden and elsewhere, this area of research has mostly been concerned with the professional participants of the trial, that is the judge (and jury members), the prosecutor and the defence lawyer. The lay participants, for example the plaintiff and the defendant, have to a lesser extent been studied. This means that to find out what previously been uncovered about defendant's role performances, I have had to study research conducted on the professional participants. While these studies provide us with important insights on how the defendant interact during criminal trials, they do so from the perspective of the professional participants, for example on how the defendant affects other participants' performances. This alone, I argue, invites to further examination of the way that lay participants interact during criminal trials.

In Sweden, research on the interactional aspects of criminal trials has mostly been driven forward by Stina Bergman Blix and Åsa Wettergren, whose research on judges and prosecutors provides us with important insights into how impartiality and objectivity is performed (see Bergman Blix and Wettergren, 2016; 2019; Wettergren and Bergman Blix, 2016), and Lisa Flower, whose research on defence lawyers shows how partiality is performed by always showing loyalty towards the defendant (see Flower, 2020; 2018). This chapter will mostly be concerned with studies conducted on Swedish criminal trials because of the importance of context when studying interactions. Studies conducted abroad might for that same reason have limited relevance.

A common feature for the above-mentioned studies is that they all focus on the professional participants of the trial. The extent to which they take account for the defendant is limited. The defendant is instead treated as the unstable element that requires different kinds of management

to avoid or minimise the risks of disruptions or unwanted behaviour. In this thesis, I have chosen to call such management pre-trial preparation and mid-trial management depending on when it appears. Besides that, previous research has also identified that the professional participants must engage in management of their own performances as a consequence of defendant's behaviour.

From the studies, one understands that the professional participants take joint responsibility in preparing the defendant for the trial by explaining what will happen during the trial and what is expected of the defendant (Bergman Blix and Wettergren, 2019: 10; Flower, 2018: 202-212), to minimize the risks of defendants acting inappropriate later during the trial. According to Flower, defence lawyers also often inform their clients about courtroom etiquette, such as when to talk, what emotions to display etcetera (Flower, 2018: 207-210). She even notes that some defence lawyers advise their clients about their personal front, such as how to look and what to wear (ibid: 126-128). The above-mentioned studies, I argue, shows that the professional participants to some extent share a common understanding of the order of interaction and the boundaries of acceptable behaviour, an understanding that is not shared to the same extent with the lay participants. This also highlights the importance of cultural experience when interacting. From their experience, the professional participants have a pre-understanding of general boundaries of acceptable and unacceptable behaviour during the criminal trial which is being communicated to the defendant before the trial starts. Lay participants, for example the defendant, lack this pre-understanding due to their lack of experience. Therefore, I argue that pre-trial preparation must be taken into consideration when examining defendant's interaction.

While the above-described pre-trial preparation could suggest that defendants are well prepared for trial, previous research also shows that situations that requires mid-trial management of the defendant constantly appear (Bergman Blix and Wettergren, 2016: 34-35; Flower: 2018: 212-214). According to Bergman Blix and Wettergren (2019: 11-16), the professional participants engage in both tactic management of the interaction and emotion management. Typical examples of tactic management of the interaction are efforts from the professional participants to make the defendant answer the questions during cross-examination or to interrupt the defendant when he talked for too long or not giving relevant answers (Bergman Blix and Wettergren, 2016: 35; 2019: 11-16). Flower also argues that defence lawyers sometimes help their clients with what answer they should give (2018: 212-214). Emotion management consists of efforts to curb and direct defendant's emotional experiences and expressions, for example to make defendant's feel safe and comfortable to get the defendant to talk during cross-

examinations, to not express strong emotions that would interrupt the flow of interaction, or to evoke a certain emotional reaction (Bergman Blix and Wettergren, 2019: 14-16; Wettergren and Bergman Blix, 2016: 28-29). Prosecutors can according to Bergman Blix and Wettergren (2019: 14-16; 2016: 28-29) try to evoke a feeling preferable for the prosecution, such as anger. However, emotion management could also include efforts by the defence lawyer to evoke a feeling that would be preferable to the defence, such as regret (Flower, 2018: 212-214). The fact that previous research finds mid-trial management to constantly appear, I argue, shows that pre-trial preparation might not be enough to prepare the defendant for trial. Further I argue, based on previous research, that also mid-trial management of the defendant must be considered when examining the way defendants interact.

The above-mentioned studies highlight the importance of pre-understanding of acceptable/unacceptable behaviour that the professional participants have gained from experience. The criminal trial interaction follows a strict order which also includes expectations about how the defendant is supposed to interact, what the defendant is supposed to talk about, what emotions the defendant is to experience and display. When the defendant breaches this order, it is expected that the professional participants react and engage in mid-trial management. I also argue that the above-mentioned studies show the importance of taking power-relations into account when studying interaction. From a power perspective, the professional participants can be seen as having a higher cultural capital than the lay participants. This is not only the result of cultural experience, but also university education and a formal nomination as judge, prosecutor etcetera, which often lay participants lack. This cultural capital gives the professional participants the power to take control of the interaction and issue sanctions on the defendant's behaviour.

Existing literature also shows that mid-trail management becomes limited by the boundaries of each professional participant's own performance. For example, judges sometimes had difficulties engaging in mid-trial management as it jeopardises judge's impartiality (Bergman Blix and Wettergren, 2019: 14), or give off the impression that the court does not listen to the defendant (Bergman Blix and Wettergren, 2016: 35). Defence lawyers similarly cannot manage their clients in a way that would be perceived as disloyalty, since that would potentially harm the defence (Flower 2020: 52-58). This suggests that while mid-trial management is required by the order of interaction, it is also at the same time difficult as each participant's role determines in what ways and to what extent mid-trial management is allowed from them. Each role performance includes a specific line of action, for example, judge – impartiality (Bergman

Blix and Wettergren, 2016; 2019), defence lawyer – loyalty (Flower, 2018; 2020), and each participant must act and interact withing the boundaries of their specific line to not themselves breach the order of interaction.

At the same time, Adelswärd (1989) shows that defendant (especially first-time defendants) often interprets positive encouragements from the professional participants as negative comments or sarcastic. This adds yet another difficult aspect of mid-trial management and highlights the necessity of (correct) interpretation. Defendant's interpreting the interaction, be it positive encouragement, sanctions, or efforts to manage behaviour, in an unwanted way risk acting in ways that further disrupt the interaction or harm the defence.

Previous research also identifies that the defendant, being an unstable element during the trial, forces the professional participants to engage in management of their own performances. Judges call for impartiality and objectivity for example require managing of feelings of impatience that sometimes arise when defendant's talk about irrelevant things (Bergman Blix and Wettergren, 2016: 35) as displaying impatience would be inconsistent with the judge's role. Judges also recalls managing feelings of empathy and sympathy to the defendant which on the one hand can be the result of the nature of the trial itself (see also Jacobsson, 2008: 55-57 about prosecutor's objectivity work) and making life-changing decisions that affect other people's lives, but also to the narratives given off by the participants (including the defendant) and their emotional expressions (Bergman Blix and Wettergren, 2016: 33). Flower (2018: 178-194, 225) identifies how defence lawyers constantly must adapt to what the defendant does and says for their performance to continue give off the impression of loyalty, but also managing their own emotions to not be personally affected by their job. This, I argue, shows that defendant's (and other lay participants) interaction and impressions given-off cannot be dismissed. On the same time, it connects to the studies that will be presented in the next part of this chapter. There, I will show, among other, the relevance of empathy and sympathy along with impression of personality in criminal trials.

2.2. The effects of given impressions on legal decision making

In this part of the chapter, I will introduce and discuss previous research that have examined the impact on legal decision making by variables related to the defendant. This body of research are of relevance to this study in two ways. First, as will be shown by the studies included in this chapter, impressions given by the defendant has been shown to influence legal decision making in experimental trials and staged performance, thereby highlighting the necessity of further examination of the ways that defendant interact during criminal trials. Second, their findings

highlight key performances found to have a legal effect and for that reason should be further examined, thereby becoming guiding principles for this study.

In this chapter, I argue that three different impressions (variables) that have been found to influence legal decision making have clear performative aspects. These impressions are: the court's impression of defendant's credibility, the court's impression of defendant's personality and the way the defendant engages in teamwork with the defence lawyer. The reasons for this will be shown in each part of this chapter. What I mean with performative aspects is that the defendant is in control of the way that these impressions are given off. These, I therefore perceive to be important aspects of defendant's role performances. Because this body of research is very scarce in Sweden, I have chosen to include studies conducted in other countries here as well while remaining sensitive to differences over jurisdictions to what count as legal relevance. I have also decided to include studies on other lay participants than the defendant, such as the plaintiff and the witness, when I have found these to be relevant for further discussion about the defendant's performances.

2.2.1. Credibility

From having examined the existing body of literature on variables that influence on legal decision making, evaluation of credibility was among the most common things discussed. A large body of research within the topic of credibility have studied the impact of fixed variables (such as religion, race, gender). At first sight, such studies explore theses variables that are out of the defendant's control. However, some studies fail to draw a causal relationship between fixed variable and legal decision making. Torun Lindholm and Sylvia Bergwall (2006), for example, examines if there is systematic discrimination that influence on evaluation of witness's credibility. They depart from stereotypes about immigrants in Sweden that, according to the authors, claim that immigrants are less trustworthy than native swedes. From presenting to a mock jury witness statements provided by different persons, they find that immigrant witnesses in general is evaluated less credible than native swedes even when their memory of the crime situation is equally good. While their findings could support the claim that stereotypes about immigrants influences legal reasoning in Sweden, they fail to draw a causal relationship between such stereotypes and evaluation of credibility. Instead, they discuss that the variations found could be the result of immigrant witness's difficulties to give off a consistent statement due to not being fluid in Swedish (ibid: 57-63). Thus, their study could also support the claim that witness performances or ability to perform has an impact on the evaluation of their credibility. Such an effect would be of importance to this study.

In a similar way to that discussed above, one can imagine that there can be delicate distinctions between other fixed variables (such as religious belonging) and the performative aspect (wearing religious symbols). du Rées (2006) for example finds that prosecutors and defence lawyers think that defendants should avoid wearing or otherwise display symbols that symbolises belonging to certain groups of people or religious groups as that might impact on the court's impression of the defendant (for example credibility) because of stereotypes of certain groups being unreliable. Findings like these invites to a critical assessment of literature discussing discrimination and racism to evaluate the connection between fixed variables, performative aspects and legal decision making. However, such an evaluation has not been possible within the realm of this study. Instead, what follows is a discussion about studies that have focused on the connection between assessment of credibility and performances.

Tsoudis and Smith-Lovin (1998) have examined the impact on evaluation and display of emotions. They find that defendants should display an appropriate level of emotional responses to the alleged crime and context to be evaluated as credible. Studies have also been conducted on plaintiffs, revealing a similar pattern between displayed emotions and evaluation of credibility (see; Rose, Nadler, and Clark, 2006; Kaufmann et. al., 2003). This I ague, suggest that assessment of lay participant's credibility during criminal trials are strongly influenced by emotion display and that the court holds expectations on what emotion is expected to be displayed, in what way that emotion is expected to be displayed.

Karl Ask (2010) has also studied police officer's and prosecutor's evaluation of credibility. Although focusing on crime victims rather than defendants, his study can give important insight into the latter as well. Ask finds that Police officers and prosecutors hold expectations about how particular crime victims interact, and that they are also looking for clues in non-verbal interactions. Crime victims deviating from these expectations was more likely to be suspected of giving false statements. Given this, it is also highly likely that interactional styles and non-verbal interaction, in combination with held expectations, plays an important part in credibility assessments of defendants.

Given the studies introduced above, assessment of credibility is influenced by many different parts. To be perceived as credible, the defendant needs to take into consideration how he interacts, what impressions that is given off while not being verbally active, what emotion that is being displayed and how (for example strength) that emotion is being displayed. Above that, some studies also suggest that signs and symbols of fixed variables that are connected to stereotypes about religious groups and groups of people also impact on the court's perception

of the defendant's credibility. This means that to give off a credible impression, the defendant needs to take control of the signals sent by the whole body.

2.2.2. Personality

Besides evaluations of credibility, previous research has also found evidence for evaluations of the defendant's character and personality having influence on legal decision making. Defendants has been found able to incite feelings of empathy and compassion from the court if they gave-off the impression that they typically were engaging in positive behaviour (and that the accused crime, the negative behaviour, was an exception) (Tsoudis, 2002). This also influenced the by the court proposed penalty for the crime. The opposite was also true, since when defendants was evaluated as typically engaging in negative (criminal) behaviour, the court was handing out more harsh penalties. Tsoudis (ibid) concludes that court's feelings of empathy and compassion is connected to the way the defendant interact and display emotions during the trial. Defendant's that give-off the impression that they typically are law-abiding citizens might therefore have an advantage.

In research on plaintiffs, victim impact statements by victims or family members evoked similar feelings of compassion and empathy for the victim by emphasising the consequences of the defendant's negative behaviour, which led to impact on the court's decision in favour of the prosecution (Bandes, 1996). While victim impact statements are out of the defendant's control, this further emphasise the importance of empathy and compassion and evaluations of the defendant's personality in criminal trials. As was noted above, feelings of empathy were also among the emotions that judges recalled having to manage during criminal trials (Bergman Blix and Wettergren, 2016: 33).

Ahola et. al. (2009; 2010) also finds that the defendant is being evaluated based on appearance. More specifically, she finds that court's perception of the attractiveness of the defendant impact on legal decision making. When defendant's that were perceived as being attractive were found guilty off crimes to which their attractiveness could be considered to have been an advantage (by using their attractiveness to lure the victim), they were sentenced to harsher penalties. While Ahola and her colleagues only discuss attractiveness, it is possible that similar arguments could be extended to other aspects of appearance, and personal front, such as respectability and social class. To my knowledge, no study has explored such a connection. However, as noted above Helena du Rées (2006) show that Swedish prosecutors and lawyers holds expectations that many different variables will impact on how the defendant is being treated by the court, among those social background. According to her informants, the defendant should avoid objects that

symbolises social background that deviates from the court's expectations. This, I think, suggest that the court hold expectations also to what social background the defendant has. While du Rées do not explore this further, it might be that case that such expectation is connected to what type of crime the defendant is being accused of. In certain types of economic crimes, the court would perhaps expect a defendant from the upper class, while in for example cases of theft the court might expect a defendant from lower or middle class. Objects that symbolise a specific cultural capital, such as a uniform, could also be used by the defendant as an advantage according to du Rées (ibid) informants, as it might symbolise a specific professionalism. It should be noted that du Rées simply gathers expectations and experiences by professional participants rather than testing such relationships empirically. Her findings are however similar to some of the expectations about the importance of personal front held by Flower's (2018: 126-128) informants. This at least suggests that professional participants think that defendant's personality is being evaluated based on personal front and appearance.

The findings from the studies exploring the courts evaluation of personality research suggests that defendants should take close consideration regarding the way their personality is being perceived by the court. This not only includes what information about him or herself that the defendant discloses, but also the defendant's appearance and props, and what this symbolises. This suggest that the court hold expectations regarding who the defendant is and how he or she will look, and the extent to which the defendant meets such expectations might influence on the outcome of the trial.

2.2.3. Teamwork

Lisa Flower (2018: 16) argues in her dissertation thesis that one of the most important aspects of defence lawyer's loyalty work is the ability to teamwork with the defendant. According to her, teamwork builds the defence team which is vital for a successful defence during the criminal trial (Flower, 2020: 91-114). Teamwork is built in an interactional process between the members of the defence team, but also by interacting in specific ways towards non-members (Flower, 2018: 58, 71, 115). However, out of the two members of the defence team, the defendant is often the one that fails to perform teamwork (ibid: 57) or perform in a way that harm the court's impression of a coordinated teamwork (Flower, 2020: 95).

Unlike the studies discussed in the parts about credibility and personality, Flower has not examined the actual effect of defence teamwork on legal decision making, however, I still argue that her arguments on the importance of teamwork is convincing. She also shows the importance of defendant's performances on the accomplishment of teamwork, making the

defendant's performance an important aspect of teamwork. The overall perception of teamwork breaks down if the defendant's performance fails during the criminal trial (Flower, 2018: 58, 160-176). This might be the case if the defendant does not stay in character when the defendant's face is threatened by the prosecutor (Flower, 2020: 93-94), if the defendant suddenly changes his version of an event or his plea during the trial (ibid: 94-97), or if the defendant does not follow the line rehearsed before the trial (ibid: 110-115). Therefore, I argue that performance of teamwork, together with credibility and personality, must be perceived as important aspects of the defendant role.

Chapter three

Method

In this chapter, I will describe and argue for the methodological approach as well as the more concrete methods chosen for the study. The different choices described in this chapter has been made based taking several aspects into consideration, such as for example practicality, feasibility as well as ethics. All choices also had to be taken into consideration to the recent outbreak of COVID-19. Lastly, the choices need also to be understood in relation to the epistemological reflection in chapter 4.4. This chapter also includes a reflexion about my own position in relation to the field and an in-depth description of the setting of the courthouse and courtroom as a site for ethnographic fieldwork.

3.1. Methodology influenced by ethnography

I have chosen a methodological approach to conduct this study that is influenced by the ethnographic tradition. I acknowledge Kwame Harrison's (2018: 20) perceptions of ethnography as a methodology that refers to a set of norms and customs that influences the way of conducting research (see also; Pernecky: 2016: 14), from carrying out fieldwork to writing up the final ethnographic account (Harrison, 2020: 330-331; 2018: 5; Bryman, 2011: 377-379). This methodology is used in an *"attempt to understand another life world using the self – as much of it as possible – as the instrument of knowing"* (Ortner, 2006: 42). This is done by using fieldwork *"in which the whole self physically and in every other way enters the space of the world the researcher seeks to understand"* (ibid: 42). Consequently, ethnography therefore has influenced the way that observations has been conducted by allowing all my senses to be active while conducting fieldwork. Ethnography has also been described by Clifford (1988: 25) as a process of writing from the beginning to the end. Therefore, my choice to approach research using ethnographic methodology has influenced the entire process from planning and doing fieldwork to writing up this thesis.

3.1.1. Why ethnography?

Harrison (2018: 27-30) distinguishes ethnography from other participant and qualitative research-approaches on three points: a focus on describing and interpreting cultural behaviour, emphasis on contextualisation, and the placing of the researcher within knowledge production. These characteristics of ethnographic research makes it suitable as a methodological approach to my study as it provides me with the tools needed to tackle the epistemic issue of deriving

knowledge out of observing and interpreting the social world, which is exactly the task I was confronted with in this research (see chapter 4.4).

According to James Clifford (1988: 38), ethnographic authority is closely connected to textualization and interpretation. In my view, to achieve ethnographic authority, the researcher must also be able to show interpretive authority (Thorne, 2020: 158). This means showing the reader why and to what extent the interpretation is truthful and representative. To do that, I must show the reader how my position and frames have impacted on the interpretation. This is possible using ethnography since it allows for me as a researcher to be placed within the field and be part of knowledge production (Harrison, 2018: 27-30; see also Denscombe, 2016: 136-138; Trent and Cho, 2020: 966). Ethnography allows me to be part of the interpretation as well as the final product. For that reason, in part 3.6, I reflect upon my position within the field to give the reader an idea of from what position the ethnographic fieldwork and interpretation was conducted. When reading the analysis, the reader should also expect to feel my presence through the ethnographic writing.

Another reason for taking inspiration from the ethnographic methodology is the emphasis on using thick descriptions (Geertz, 1973: 7, 15) throughout the writing process. According to Geertz (ibid), thick descriptions is what distinguishes ethnography from camera-like descriptions of a social event. Describing thick influence the writing process from fieldnote-taking to writing up the ethnographic text. While I will not argue for the strong equal between ethnography and thick description in the sense of that one cannot exist without the other, the application of thick description in this research offers a way of conducting the analysis and interpretation as close to the field as possible, which contrasts with the field – home distinction that permeate much research (Harrison, 2018: 58-61). This minimises the loss of context in analysis when social situations are transferred to field notes. As will be shown in the part about method for analysis (see chapter 3.7), I have tried to keep the coded situations as close to the moment in which they occurred. That means that for example a paragraph describing an event cannot be understood on its own but must be understood as occurring within a wider social situation and context.

Thick description is also used to further show the reader the interpretive process which build interpretive authority (see Harrison, 2018: 28-29). Flower (2020: 11) makes a similar point, in that the ethnographer should make possible for the reader to draw the same conclusions as the researcher of the situation by showing the analytical thinking that permeates knowledge production. Using thick descriptions in my research and when writing up this thesis therefore

invites the reader to get as close as possible to the original occurred situation. The reader will then hopefully, even if disagreeing with my interpretation, at least be able to understand the reason for the interpretations that I draw. In the next two parts of this chapter, I will describe how fieldwork has been conducted using observation and field note writing as ethnographic methods.

3.2. Conducting observations and sampling

Trent and Cho (2020: 963-966) claim that sampling in ethnographic field work covers a wide range of decisions made by the researcher from planning the fieldwork to last minute decisions made while being in the field. Covering all such decisions made here would be impossible. Instead, I will focus on the most important sampling decisions made when describing how I conducted my observations. Because this study was conducted during the spring of 2021, when the Swedish government had issued multiple restrictions to prevent the spread of the Corona virus, I also have had to constantly make last minute decisions while in field that is due to government restrictions, my own safety and the safety of the people working in and vising the courthouse. Such decisions will be described in part 3.4 of this chapter but should also be seen in relation to sampling and the ability to plan my fieldwork.

Observations were conducted during criminal trials at several different lower courts throughout southern Sweden during the period of February to April 2021. The choice of only conduct observations in lower was made because lower courts is the first instance where prosecution takes place in a specific case. This might therefore be the first time the defendants visit a courthouse. Because higher courts only accept cases that have been appealed, the interaction might look a bit different. It would be interesting to also see if there is any difference between defendant's performances in the higher courts compared to the lower courts, however such a comparison has not been possible to make due to time constraints. Different lower courts were visited to make it more difficult to identify specific cases that I observed out of the field notes. It also minimises the risk that the same court personnel appear at multiple occasions in my data as that might affect the interactions that takes place in a specific direction. Which courthouse to visit was not planned in advance but had to be decided by each week when the courthouses released the schedules.

The time spent inside the courthouse on each occasion varied from just around an hour up to half a day. This depended on the length of the trials that were visited, and the number of trials visited on each occasion. The length of the trials also varied from the shortest being just around 30 minutes to the longest being around three hours. As trials often are rescheduled and cancelled

last minute it was hard to plan what trial to visit. While I tried to visit a wide range of different trials, I often had to make last-minute decisions when appearing in the courthouse and could view the updated schedule on the electronic screens. This also meant that I visited trials in a random way, not knowing anything about the accused crime or the defendant before the trial started. Sometimes, if all trials were cancelled, I had to leave the courthouse without having had the opportunity to visit any trial at all.

While being in the courthouse, observation was consistently conducted from the point of entering the courthouse to exiting the courthouse. This means that the field notes that were written during the observations (see chapter 3.3) not only covers the criminal trials but also for example the time spent in the waiting room of the courthouse. Consistently, I conducted observations by immersing myself in the field of study and by using all my senses in observation (see part 3.1.). This mean that I not only used my eyes and ears to look on and listen to the interaction that took place, but also for example being aware of what I felt and experienced while being in field, and also my thoughts on what was taking place around me. Observations inside the courtrooms were conducted from the gallery of the courtroom which is the place for the audience. In part 3.9 I provide a detailed description of the courthouse and courtroom as the setting in which my research was conducted and in which social interaction takes place.

3.3. Writing field notes

Field notes were constantly produced while in field using multiple stages to ensure that as much as possible were being noted down while not missing important things that happen. First notes were produced using a jotter pad that allowed quick notes on important things. This jotter pad was used from entering the courthouse, during the trials, and directly after the trial. After the trials, more thorough fieldnotes were produced on a second note pad as the jotter was transformed into consistent field notes that covered the important passages. If I was to observe several trials on the same day, I tried to finish up the second stage of fieldnotes in between the trials to not minimise the risk of me forgetting about things that happened during the trial. However, because the interaction taking place in the waiting room also was of interest, I did not write any second stage fieldnotes in the pauses of trials. Later the same day of fieldwork, final field notes were written over again on a computer. This time, fieldnotes were transformed into a consistent story that covered the time from entering the field to leaving the field. On this stage, I sometimes added my thought about the passages directly in the field notes to be able to make the noted-down situations as thick as possible and to later be able to go back to the situations as much as possible when reading the field notes.

Throughout this research, I have perceived field notetaking as production of data rather than a process of data collection. When observing and writing my field notes I am constantly engaged in an interpretive process rather than a process of objective collection of data. In line with Geertz (1973: 9, 15, 19), the field notes must thus be perceived as my interpretation of the interaction that takes place in the field. Therefore, I also perceive the production of field notes (data) as the first step of my analysis as data would not be possible without my interpretive process (Geertz, 1973: 9, 15, 19). This stance towards data is also visible when reading the excerpt from my fieldnotes that is featured in the analysis chapters and is a necessity to be able to show the reader how the interpretive process has taken place.

3.5. COVID-19

The outbreak of the Coronavirus during the winter of 2019 and spring of 2020 has had different effect on research, which has also affected this study. First, the outbreak has highlighted the need of research to be conducted as safe and secure as possible with regard to both the researcher, the research subjects, and other people. In my case, this has meant taking the risk of spreading the virus as well as being infected by the virus into consideration when planning and conducting research. For example, face to face interactions in crowed areas, especially inside, had to be avoided as much as possible. Therefore, I decided to try to keep as far a distance to other people as possible while in the field and not approach people if not absolutely needed. I also decided to avoid vising trials which included many participants or larger groups of people as audience.

Second, official government restrictions and advices impact the possibilities of conducting certain research, especially research that includes researcher's participation. Parts of the Swedish society has been closed down and regulations has been issued on maximum number of visitors in for example stores, restaurants, and public transport. This was very much notable in the courthouses, as many seats were taken away or closed off. Inside the courtrooms the maximum number of people in audience was restricted according to the size of the courtroom. I was informed that the available seats were provided to family and close friends at first, and that I was afforded a seat if any were left. This led to me having to make last-moment choices while in the field.

Third, the pandemic has influenced the field which was very much notable in my case. Trials were constantly cancelled and rescheduled the last minute. Participants were arriving late due to issues with public transport, or not showing up at all. Participants were calling in sick or for

any other reason could not participate in the trial. Also, several trials observed included participants on telephone or video, impacting the possibilities of conducting observations.

3.6. Positionality

Given my methodological approach, I also acknowledge that I am part of the construction of data and knowledge production (Harrison, 2018: 27-30). When reading the ethnography, the situations is viewed, interpreted, and analysed through the researcher's (my) senses (Trent and Cho, 2020: 964). Therefore, it is of importance that the reader understands the position I have in the field to be able to evaluate the research.

On a general level, I positioned myself as an outsider to the field by visiting the courthouses and trials as parts of the audience. This gave me access to only the places that are open for the public, while I remained forbidden to attend other places inside the courthouses where important interactions might have taken place. The outsider role however made it possible for me to interfere with the field as little as possible. It was for example an important ethical aspect that I do not negatively affect the field by my presence.

At the same time as my physical presence is that of an outsider, I argue that my interpretive position is at least that of a semi-insider. The reason for this is that I would argue that I have more experience of being present in the field and about criminal trials than the general public. I have never been a participant of a criminal trial, instead my experience comes from my educational and occupational background.

First, I have almost five years of university education within criminology and related subjects. This education also includes courses in criminal law and procedural law. This education gives me a foundation on which I can interpret and understand the criminal trial as it proceeds. During my studies at the University, I have also visited courthouses and criminal trials many times, which have made me familiar with how the system works.

Second, I have a background of working with the Swedish victim support in a Swedish lower court, offering support and guidance to victims of crime and witnesses before, during and after criminal trials. When beginning my work at the victim support, I had to finish and educational introduction where the different stages of the police investigation and the criminal trial was discussed in relation to how the different stages can be experienced by victims and witnesses. Even if this study has not focused on witnesses or victims, defendants are still lay people to the criminal trial in a similar way and might therefore have similar experiences if not being familiar with criminal trials.

Third, during the last three years, I have been working part time in the Swedish prison and probation service. This has provided me with the opportunity of talking with many people that have experience from being defendant at criminal trials and people that are waiting for an upcoming trial. I also bring this experience with me when interpreting the social interaction that takes place during the criminal trial.

All these experiences influence my interpretative ability of the interaction during criminal trials in a positive way. By understanding the trial process, I know what usually happens during each part of the trial. I can also understand what the defendant is supposed to say or do at certain parts of the trial, such as during the plea. I understand the legal terminology and sometimes the importance of a certain evidence or that the prosecutor can prove certain aspects about the accused crime.

3.7. Method for analysis

In this study, two separate analyses have been done on the same set of data which represents the two different analysis-chapters in this thesis. This demarcation is derived out of the arguments presented in chapter two about previous research. When doing the analysis, the separate field notes were all brought together to form a coherent data set. The data set was then coded based on the different themes highlighted in chapter and was carried out by reading and re-reading until no further passages was found that could be coded (see for example Bryman, 2011: 523-525 about coding qualitative data). However, instead of taking the coded passages out of the data set they were kept where they appeared. This was a deliberate choice to not lose track of the context in which the situation occurred.

The first analysis focused on the ways the defendant is prepared before the trial and managed during the trial. The coding followed the distinction between pre-trial preparation and mid-trail management which was the different managements of the defendant that was identified in chapter two. The result of this analysis is presented in chapter five of this thesis.

The second analysis focused on the different impressions which I argued to have found to influence legal decision making. The passages were coded based on my interpretation about in what ways the defendant gave off expressions relevant for the impression about credibility, personality, and teamwork. The result of this analysis is presented in chapter six of this thesis.

3.8. Ethical considerations

Considerations of ethical character in research can be divided into two categories: research ethics and researcher ethics. (Eldén, 2020). While these two categories intersect at times, the

distinction is analytically useful when discussing ethics. Research ethics includes issues related to how the research has been planned, conducted, and presented with regards to people, groups of people, companies, interests' etcetera who might be affected by the research. The latter includes the researcher's obligations towards the research community, in for example showing respect to other researcher's work and to take good care of academia's reputation. Both are of course equally important. However, the discussion from here on will mainly be concerned with the first of the two.

One thing that is often discussed in research ethics is the demand that research being carried out transparently and openly, which means that the researcher's role should be openly displayed to everyone that might be subject to the research (Eldén, 2020: 84-97, 108-116). Related to this, the researcher should also ask for informed consent, meaning that the research subjects should be informed about the research and consent to be included in the study, preferably by signing an agreement form (Eldén. 2020: 84-97, 108-116). With these demands, it becomes almost impossible to ethically justify methods like hidden observation. Conducting research on public places becomes equally difficult where countless people might enter and leave the field all the time.

As was described in the methods chapter, this study was conducted using an observation method somewhere in between hidden and open, as my presence or my notetaking was not hidden from any of the participants. However, I did not tell the participants what I was doing in the field, nor did I gather informed consent from any of the participants as it would be almost impossible due to the high flow of people in and out of the field and also highly inappropriate due to my outside status as part of the audience. This method, of semi-hidden observation, must however be ethically justifiable because as Wästerfors (2019: 183-187) argues, it is not the individual as such who is the subject of interest, but instead the social phenomena in which they happen to be present. Consequently, I was not researching the people being defendants, but the interaction during criminal trials. The dis-interest in the people as such also influences the fieldnote-taking which excludes personal data of such kind that can be used to identify the defendant.

Even though the persons present during the trials was not the subject of interest, but instead the interaction as such, I still felt a great emphasis on disclosing the specific trials that were being observed. The exclusion of personal data in the fieldnotes played a big part in this achievement. However, dates, times and places has also been excluded from the fieldnotes. It should not be possible to determine what trials were being visited based on the fieldnotes. These measurements have been taken in order to as far as possible ensure that none of the persons that

still figures in the background of the fieldnotes not will be negatively affected by the research (see Traianou, 2020: 87).

The issue of causing harm also had to be considered during fieldwork in the sense of not affecting the field in a negative way. Some of these measurements have already been addressed in the chapter 3.5. about how the spread of Covid-19 affected research decisions. This is also the reason for not being able to provide information and gather consent forms from the trial participants as this would interrupt the normal flow of the court. I also avoided to conduct observations during trials that might be of high emotional character with respect to everyone involved, such as sexual crimes and crimes involving children. I also planned beforehand to stop taking notes during criminal trials if I experienced that my presence stressed the participants.

3.9. Setting

The setting in which the interaction takes place, in this case the courthouses and the courtrooms, is important when understanding defendant's role performances in a similar way to that acknowledge by narrative theory. Tutenges writes that *"*[meanings] *vary depending on where they are told, when how, among whom and for what purposes"* (Tutenges, 2019: 28). Similarly, the meaning of social behaviour must be understood in its context. Dahlberg writes that we must *"describe, explain and interpret social behaviour in the courtroom in its cultural context so that the behaviour becomes meaningful to an outsider"* (Dahlberg, 2009: 178). The importance of context is also visible in Geertz (1973: 7, 15) idea of thick description. Goffman even makes the claim that people can make use of the physical environment (the front) in performances (Goffman, 1956: 32-34), perhaps best exemplified by display of certificates, diplomas, or awards in the office. This means that setting is important not only because it makes social behaviour meaningful, but also because it makes some social behaviour possible. I will therefore in this part offer a detailed description of the setting in which the observed interaction takes place to situate my observations and interpretation of the social interaction to the reader and to show their contextual meaning. This description is based on my own experience from visiting courthouses and courtrooms. The description intends to give a general picture of Swedish lower courts, not a specific court or every court I visited.

The buildings which housed the courthouses I visited for my fieldwork looked different from each other in many respects. They varied in size, shape, façade, and modernity. It rather seems like the buildings have been built to fit into its physical environment and surrounding buildings, rather than standing out as a courthouse. From a distance this makes it difficult to identify the

courthouse building. Once getting closer to the building, some signs that was common for all courthouse buildings appeared. Outside each building there was a sign saying “Sveriges domstolar” (Swedish court) which always looked the same on every courthouse. The Swedish court-sign also hung on the wall beside the entrance which consist of two heavy doors in either metal or wood. The entrance with the surrounding signs and symbols gives the visitor a sense of seriousness that is felt as soon as one approaches the doors. The symbol also features the famous justice-symbol with the weight-scales that shows that justice is to be served within this building.

Once inside, one is met by the reception which is manned by security guards and also works as the security control point. The level of security control varies. At some courthouses I had to go through a metal detector while my bag and jacked was going through an X-ray machine. At another courthouse, the guards looked though my bag manually and only asked me if I was carrying any weapons or liquids. To me this security check gave rise to mixed feelings. On the one hand, it gives a sense of security knowing that the people I meet inside the courthouse does not carry any weapons. On the other, it further enhances the feeling of seriousness, and it can be unpleasant to see your personal belongings being searched by strangers.

The courthouses layout varied a lot. The newer courthouses often had a more open layout with a big hall that also served as waiting room. This allowed the visitor to see most parts of the lower court from the entrance. Older courthouses often had more narrow corridors and several separate and smaller waiting rooms. In these courthouses, the courtrooms were often divided in pairs or three at a time and connected to one waiting room. The design of the interior of the waiting rooms also varied depending on when the courthouse was built. It was often visible inside older courthouses that they had been adopted to modern standard and that they in general was not as well planned. TV-screens for example hung on brackets on the walls instead of having been integrated into the wall as was the case in modern courthouses. It was often crowded in smaller waiting rooms which was filled with benches and sofas to make place for all people. To me it felt better in courthouses with more open layout as I knew that security guards had a better view of what happens in the waiting room. I can imagine the same feeling must have been felt by especially the victims and witnesses.

The number of courtrooms at each courthouse also varied depending on the scale of the courthouse. In bigger cities, courthouses were often biggen and featured up to about twenty rooms, while smaller courthouses I visited only had about ten courtrooms. Doors to the courtrooms is locked before the trial starts for both participants and audience. This means that

everyone must wait in the waiting rooms. In Sweden, defendants, victims, and witnesses are generally not held separate before the trial and often wait for the trial to start in the same waiting room together with the audience, prosecutors, and defence lawyers. This must be an unpleasant experience for all parties. Victims and witnesses must feel uncomfortable and perhaps unsafe meeting the defendant in the waiting room and for the defendant the same meeting might be for example shameful. The only time defendants are held separate is if they are held in custody prior to the trial. Even then, it happens that defendants and victims meet in the waiting room if the courthouse does not feature a separate entrance to the courtroom from the custody cells. Many older courthouses did not have such a separate entrance, or only featured such a separate entrance to some of the courtrooms. If so, the defendant often walks with handcuffs in the corridors of the courthouse to enter the courtroom, which must make feelings of unpleasantness, unsafety, and shame even more present for all parties.

Courtrooms do in many aspects look the same in every courthouse apart from details and choices of material. At front there is a long table featuring the court The location is symbolical as the court oversees the whole courtroom. The judge sits in the middle, also that symbolically as the judge also serves as president of the court. The judge is often dressed in formal clothes, such as dark or grey suit, but otherwise does not distinguish him or herself that much. At some courtrooms, the chair of the judge is a little bit elevated or bigger than the surrounding chairs. To the judge's left sits the secretary, also dressed formally. At each side of the table sits the three lay judges. Lay judges are democratically chosen to represent their political party at court. Lay judges are often pensioneers and sometimes young students that have time over for working at the court. They do not interact during the trials but listen and sometimes take notes for themselves. After the trial, the lay judges meet with the judge and together they form the court's verdict. The lay judges are often dressed in a similar way to the other members of the court's table, in a suit or sometimes in a shirt.

Forming a "U" or "V" from the court's table is the table of the defence and the prosecution. The two parties thus sit symbolically in front of each other and have the court's table either to the left or right. This symbolises that it is the parties that meet in trial and that the judge oversees the trial from the side. The prosecutor and the defence lawyer usually sit closest to the judge's table, thus also position themselves in front of each other. The prosecutor is often dressed formally just like the participants of the court, while the defence lawyer clothes vary between formal and more casual. To each's side sits the defendant and the plaintiff (if featured) with further materialises the different parties in the room, especially the defence team. The plaintiff

and the defendant thus also sit in front of each other which also might be an unpleasant experience.

In front of the court's table is the witness bench. When witnesses testify at court they thus sit right in front of the judge and to the side of the parties. This is also a symbolic position as the witness thus testify to the court and that each party can ask question to the witness on equal terms. Behind the witness bench is the gallery where the audience may sit. This shows that the audience is not part of the trial but still overseen by the president of the court. Usually, the entrance to the courtroom is behind the gallery, which means that the parties must go through the gallery when entering but that the audience may enter and leave without disturbing the trial. Depending on the angle between on one hand the prosecutor's and defence's tables and the court's table, the parties may or may see the gallery from their position, but the audience my view the parties either from behind or from the side.

Chapter four

Theory

In this chapter I will describe and discuss the theoretical framework on which the study is built. I will begin with the symbolic interactionist and cultural theoretical framework which forms the foundations for the study before showing how whole bodies give off symbols in interaction. It closes with a critical epistemological evaluation in which I reflect upon my ability to interpret the interaction though observation.

4.1. Symbolic interactionism

In this study, symbolic interactionism is used as my theoretical framework. More specifically, I acknowledge Herbert Blumer's (1986) three premises for symbolic interactionism as an accurate description of symbolic interactionism's basic features. First, human beings interpret objects which they come across and act upon the objects based on the meaning the object has to them, which is derived out of interpretation (ibid: 1-6). Second, meanings of such symbolic objects are derived out of social (symbolic) interaction (ibid) and thus becomes socially constructed (see also Scott, 2015: 1). Third, human beings can act towards the interpreted object because they can turn themselves into a symbolic object in the interaction. The self can step out of the object and look at and interpret how to wield the symbolic object (the self) to communicate the intended meaning (Blumer, 1986: 12-15, 65-68). This includes estimating how their own actions will be interpreted by the other receiver (ibid: 15-60, 64-65), which means that the actor not only has to look at themselves from the position of the self, but also from the position of the other (ibid). As will be shown in the next part of this chapter, culture is providing the frame through which the defendant can interpret the interaction during criminal trials, as well as plan his own strategy of action and estimate how his action will be interpreted by the court. This means that the defendant's cultural experience is crucial for his possibilities of taking part in the interaction during the trial. I will further in part 4.3. build on the symbolic interactionist framework by showing how defendant's whole bodies are part of the interaction that takes place during criminal trials.

4.2. The role of culture

Culture and cultural experience have a central role in the sense-making process. Culture is the provider of a frame through which the symbolic interaction is being interpreted (Geertz, 1973: 5, 14; Denzin, 1992: 71-75). *"A frame is often thought of as a lens through which we observe*

and interpret social life. Frames highlight certain aspects of social life and hide or block others" (Small, Harding and Lamont, 2010: 14). Culture also works as a repertoire through which strategies for interaction is being planned and carried out (Swidler, 1986: 276-277). *"People have a […] repertoire if strategies and actions in their minds [and] that people are unlikely to engage in an action unless the strategy to perpetrate it is part of their repertoire"* (Small, Harding and Lamont, 2010: 16). People that have acquired flexible cultural repertoires (Lindegaard, Miller and Reynald, 2013: 983-993), for example from having been socialised into different cultural environment, can have advantages when interacting in different environments (see for example Grundetjern, 2013).

My understanding of culture means that it has a central role in symbolic interactionism as "*people act* [based on] *how they cognitively perceive themselves, the world, or their surroundings"* (Small, Harding and Lamont, 2010: 14). This also means that I understand sense-making on the micro level of social interaction in relation to macro theories of cultural patterns, and that humans are agentic as far as to the limits of the interpretation and construction of strategies of action which is made possible by their cultural experience (see Agnew, 2011: 52-71). Cultural experience makes it possible for the defendant to better interact during the criminal trials and cultural inexperience might for that same reason hinder such interaction by limiting the defendant's interpretation and possibilities of action. Put it differently, the defendant's agency during criminal trials is constrained by his cultural experience, as it makes certain actions imaginable while other without the defendant's scope of imagination. This perspective makes it possible to analyse the defendant's role performance in relation to the defendant's experiences of criminal trials (his cultural experience) and understand pre-trial preparation and mid-trial management in relation to that.

4.3. Impression management

In this study, I will use impression management as a theoretical concept that builds on the framework of symbolic interactionism. By using impression management, I will be able to analyse how words, gestures (including display of emotions) and personal front are symbols which deliberately or unintentional manages other people's impression of the actor (the communicating person). I will first briefly describe the different theoretical assumptions on which my approach rest, namely Goffmanian impression management, Hochschild's emotion management, before I show how I will use this in a coherent set of concepts.

4.3.1. Goffman's impression management

The basic idea in Goffman's impression management, which also aligns with the theoretical framework of symbolic interactionism, is that the way a social situation is defined by any of the persons interacting is the result of the interaction itself (Goffman, 1959: 15-16). The interactants understanding of the situation's definition is thus how he interprets the other interactants while he subsequently manages other people's definition of the situation by the expressions he gives off. *"[C]ontrol is achieved largely by influencing the definition of the situation which the* [other interactants] *come to formulate, and* [the interactant] *can influence this definition by expressing himself..."* (ibid: 15). As discussed above in the chapters about symbolic interactionism and the role of culture, the interactant interpret the definition communicated by the other interactants using his cultural experience and construct a strategy of action based on his cultural repertoire on how to symbolically act to define the situation in line with his goals (see also Goffman, 2003: 8).

In the criminal trial, the way the trial is perceived by the defendant is the result of his interpretation of the other participant's interaction while they simultaneously interpret the expressions given off by the defendant to create their understanding of the situation. Every interactant thus must be perceived as both an actor and as audience at the same time (Goffman, 1959: 26-27). The defendant is the actor in front of the court while being audience for the court's interaction. According to Goffman, expressions can be given off in different ways, such as by verbal interaction or non-verbal gestures (ibid: 18-19) and though personal front (ibid: 32), but also both deliberately and unintentionally. This means that the whole of the defendant (the person) gives off expressions (symbols) to be interpreted by the court.

According to Goffman, the actor (the defendant) can manage the audience's impression either exactly the way they have understand the situation themselves (sincerely) or by deluding the audience to believe in something else (cynical) (Goffman, 1959: 18-31). The defendant might want to keep his or her own understanding of the situation for themselves and instead misguide the court's impression, for example if the defendant knows he/she is guilty of the accused crime but wants the court to think that he/she is innocent. Goffman called deliberate actions to manage the expressions given off facework (Goffman, 2003: 8). Facework not only includes face-gestures, but all deliberate actions taken towards an intended impression management. It is important to note that impression given not necessarily have to correspond with the expression given off (Goffman, 1959: 14, 16). The defendant might think that a certain expression given off will lead to a certain impression given, but in reality, the court might interpret the expression

in a different way. This distinction further highlights the necessity of cultural experience when interacting, in the sense of having the ability to interpret how ones' own actions will be interpreted to make sure intentional given-off expressions aligns with impressions given (see chapter 4.2).

In Goffman's theoretical apparatus, performance refers to all deliberate or indeliberate actions that result in management of other people's definition of the situation (Goffman, 1959: 26-27). This means that the defendant performs even if he is aware of it or not. Performances are often connected to different social roles that consist of rights and duties that each person inherit in the social situation (ibid: 26-27). Inside the courtroom, the defendant thus performs the defendant role. As will be later shown, tied to the defendant role is rights (for example the right to speak at certain times), as well as duties (for example the duty to speak at certain times). Such rights and duties constitute the court's expectations on the defendant (the actor). If the rights or duties are violated, interruptions in the interaction occurs. For that reason, performers often try to align their performances to the idealised picture of how each role should be performed (ibid: 44-51). For the defendant, this mean that he will try to align his performance with the court's expectations of how a defendant should perform.

4.3.2. Hochschild's emotion management

In many aspects, Hochschild's theoretical apparatus is reminiscent of Goffman's, but there are also some differences that makes them complimentary of each other. The basic idea of emotion management is that individuals make use of display of emotion in social exchange to manage other people's emotional experiences (Hochschild, 2012: 6-7). [Emotion labour] *requires one to induce or suppress feeling in order to sustain the outwards countenance that produces the proper state of in in others…"* (ibid: 7). In the criminal trial, the defendant thus can make use of performances to not only manage the court's impression of the situation, but also to manage the court's emotional experience. Put differently, Goffman's theoretical apparatus accounts for the effect of given off expression by the defendant by explaining how the audience's impression of the situation is managed. However, Hochschild's theoretical apparatus also accounts for management of the audience's emotional experiences by given off expressions by the defendant. Another important difference between Goffman and Hochschild's theoretical assumptions is that while Goffman focuses on social interaction, Hochschilds focuses on displays and experiences.

In Hochschild's view, emotion management can be done on two different levels. Surface acting refers to the act of managing emotion display, while deep acting refers to the act of managing

one's own emotional experience, either by type or strength, by using emotion work (Hochschild, 1979: 568). [*W]e may act in two ways. In the first way, we try to change how we outwardly appear. […] This is surface acting. The other way is deep acting. Here, display is the natural result of working on feeling. […]* [A] *real feeling that has been self-induced."* (Hochschild, 2012: 35).

Whether the result of surface or deep acting, display of emotion influenced. In this distinction we can see clear overlapping aspects between surface acting and Goffman's idea of facework in the sense of that both focus on given off expression. Just like Goffman's idea of facework take minimal account of who the performer really is beneath the mask, surface acting does not account for what emotion the performer is really experiencing. The point of interest is the display, what expressions are given off, the performance. Surface acting thus refers to performances undertaken by the defendant to manage what emotion is displayed to the court. It is important to note that just like the given impression does not have to match the performers intention (the given off expression), surface action does not have to be successful. The performer might fail to conceal his real emotional experiences or accidently display a not-intended emotion. Deep acting however take place on another level and refers to emotion work undertaken by the defendant to manage what emotion he experiences during the trial. In this thesis, I will mainly focus on display of emotion and the effect such display has on the audience. Whether display is the effect of surface acting or deep action is of lesser importance.

In Hochschild's view, display of emotion is closely connected to feeling rules which determine what emotion is appropriate in the social situation (Hochschild. 1979: 18, 56-62). Feeling rules affect persons in two different ways by determining what emotion is appropriate to experience and what emotion is appropriate to display. A deviant display of emotion can be resolved by performing surface acting to prevent the audience from sanctioning the deviant person. However, if the person also wishes to prevent internal feelings of deviance, he also has to engage in emotion work to align his own emotional experiences with the feeling rules. In this sense, feeling rules have aspects in common with Goffman's notion of ideals of social roles, but while Goffman only focuses on external performance, Hochschild also accounts for internal feelings. Taken to the court, feeling rules both determine the court's expectations on the defendant's performance, but also the defendant's expectations on his own emotional experiences.

4.3.4. Realising performances

According to Goffman (1959: 40-44), dramatic realisation refers to the moment when the actor has the opportunity to perform. *"[I]f the actor's activity is to become significant, he must mobilise his activity so that it will express during the interaction what he wishes to convey"* (ibid: 40). In this thesis, I use the concept of performance to refer to all such actions that give off expressions, whether being display of emotion, display of personal front or verbal or non-verbal interaction. This means that I account for of defendant's whole bodies when observing given off expressions, and that the whole body can be used to show symbols in symbolic interaction. I then analyse such given off expressions though the theoretical apparatuses of impression management and emotion management and use findings of previous research to interpret how the defendant's performances influence the court's perceptions of the defendant and feeling for the defendant. This way, I analyse the way the defendant's role is performed.

Dramatic realisation occurs in the frontstage (Goffman, 1959: 109-140), the part of the field that features the audience. This distinction is sometimes difficult, as a place's frontstage can at the same time be another place's backstage. However, for analytical purposes, I perceive the courtroom to be the frontstage and the waiting rooms outside the courtrooms to be the backstage. At the criminal trial, the hearing is most often perceived as the moment during the trial when the defendant is allowed to speak. However, as will be shown in the analysis chapter, the whole of the criminal trial must be perceived as a dramatic realisation for the defendant as opportunities to perform extends that of verbal interaction.

4.4. Ontological and epistemological reflexion

A clear distinction is often drawn between realist claims of the world as made up of physical entities independent on human minds, and subjective, idealist claims of the world as purely mind dependent (Agnew, 2011: 167-169). However, withholding such a sharp ontological distinction within the social sciences would be erroneous (Pernecky, 2016: 139-144; Thorne, 2020: 146). What needs to be done to make correct ontological statements within the social sciences is to distinguish between natural reality and social reality and allow for different ontological claims be made for the different realities. The theoretical framework of symbolic interactionism outlined above lends itself towards a social constructionist perspective on social reality. The interpretation of the situation by the different participants are mind-dependent. Culture as referred to above as socially constructed patterns of sense making and repertoires through which strategies of action is planned and carried out are also social constructs.

Having established that our interests is in social realities that are mind-dependent, we also need establish how knowledge of social realities are possible. According to Scott (2015: 4) studying the mind is made possible from the standpoint of symbolic interactionism simply because it presupposes that human actions are minded. Human action thus reveal things about how the actor has interpreted the situation. This leads us to the task of understanding the hows' and whys' of interaction through the use of interpretation (Scott, 2015: 13). How and why actors experience and interpret the meanings of symbolic objects, how and why such meanings are created though social interaction, and how and why actors act upon the situations in which they find themselves (see also Blumer, 1986: 1-6).

From the perspective of the researcher, interpretation is epistemologically challenging because the researcher can never know if his or her interpretation is correct. This challenge to symbolic interactionist studies is also identified by Blumer (1986: 73-74, 86). The researcher can never see the interaction, object, or the world truly from the perspective of the person who he or she is observing (ibid). The reason naturally lies in the same ontological claim as this study rest on, that the researcher can be present in the same physical environment (natural reality) as the defendant, but in a different world (social reality) (Blumer, 1986: 10-12, 68-70). It seems as through the study's epistemology falls short on its own ontological claim. How is it possible for the researcher to enter the social reality of those observed when the only thing we can know for certain is that the researcher is present in the same natural reality? And how can we know when the researcher gets there (in the social world of the observed)?

This problem has been solved epistemologically by challenging the realist claim that there can only be one single correct interpretation of an object (Pernecky, 2016: 102-105). Instead, interpretive researchers acknowledge the influence of their social and cultural experiences on interpretation (hermeneutics) as well as the possibility of making multiple interpretations (interpretive idea-ism) out of the same experience (Pernecky, 2016: 102-105; Trent and Cho, 2020: 959). The fact that interpretations are subjective and informed by interpretive frames. as well as the possibility of drawing multiple interpretations will be taken as a starting point for this study. However, this is problematic when it comes to the interpretation of symbolic interactions since it would be erroneous to accept the fact that another persons' subjective reality is open for multiple (correct) interpretations (see for example Blumer, 1986: 73-74, 86). It is on this point Trent and Cho (2020: 959) notes that some interpretations can be better informed than others. I acknowledge this stance towards interpretation. While multiple interpretations can be drawn, some interpretations can be better informed than others and must

thus be viewed as more authoritative (Clifford, 1988). This note means that evaluating epistemological integrity must be based also on the evaluation of interpretive authority (Thorne, 2020: 158). By using the methodological approach outlined in chapter 3, authoritative interpretations of the interaction during criminal trials are allowed for to be drawn using the symbolic interactionist framework.

Chapter five

Managed performance

In chapter two I showed that the existing body of research have suggested that defendant's performance is being guided by the professional participants of the court. Such management was taking place both before the trial (Bergman Blix and Wettergren, 2019: 10; Flower, 2018: 202-212), as well as during the trial (Bergman Blix and Wettergren, 2016: 34-35; 2019: 11-16; Flower: 2018: 212-214). This suggests that the defendant's role is performed as a directed performance, in which the defendant's follows a manuscript directed by the professional participants. If so, management of the defendant's performance cannot be dismissed if the way the defendant role is performed is to be understood. In this first chapter of my analysis, I show how the defendant's performance is constantly managed by the professional participants of the court, and in what ways the defendant answer to such management, as part of an overall understanding of how the defendant role is performed during criminal trials. Drawing on the theoretical framework outlined in chapter 4, I argue that defendants rely on management to better interpret the interaction that is taking place and to construct a strategy of action that make it possible for them to align their performances with the court's expectations. By so doing, I also show in what ways my findings support or deviate from previously made claims about management of the defendant in the existing body of research and add to the existing literature with the defendant's perspective on pre-trial preparation and mid-trail management.

5.1. Being prepared before the trial

Throughout the time I spent in the field, I witnessed pre-trial preparation many times. Most times it occurred in the waiting room. An example from my fieldwork can be used as an example. This brief passage from my field notes describes an occurrence that took place an early morning when I had just arrived at the courthouse. It describes a specific event of pre-trial preparation though conversation between a defendant and the defence lawyer, but it exemplifies conversations that are constantly taking place in the waiting room between the defendants and their defence lawyers. The passage starts when I am sitting on a bench just a few meters away from another person who I have already suspected of being the defendant in the upcoming trial, a suspicion that was later confirmed.

> *A few minutes before it is time for the trial, a person shows up and walks up to the person sitting next to me. I understand that the person that just showed up is the defence lawyer*

> *and that the other person that sat next to me earlier is the defendant. I hear that they discuss what is going to happen during the trial and what is expected from the defendant. From the questions I understand that the defendant is not used to trials in court, and I can sense nervousness.* (Field note)

Defendants and defence lawyers talked to each other in the waiting room before almost every trial I observed. From the time I spent in the waiting room, it was clear to me that this was also the case for other trials. This also means that pre-trial preparation takes place in open view of everyone else being present in the waiting room, including other participants of the same trial. The fact that defendants often ask these kinds of questions shows that defendants often lack *"an image of the kind of world in which* [the defendant will] *act* (Swidler, 1986: 275) which is needed to *"adapt a line of conduct […]* [needed to] *read reasonably accurately […] how one is doing* (ibid: 275). Defendant's asking this kind of questions might experience what Swidler calls a *"culture shock"* (ibid: 275), which leads to insecurity regarding what they are to expect and what they should do during the trial. This is not surprising given the special setting in which the defendant finds themselves. The entrance of the courthouse and the security check might have made them nervous. They also find themselves in a situation in which might have a big impact on their future life. Added to that, interacting during criminal trials simply is not part of most people's cultural repertoires. Many people have watched movies or TV-series featuring criminal trials in which extraordinary things happen and defendants are being questioned hard on the witness stand. Because of this mix of insecurity and inexperience, defendants must ask for advice regarding the defendant role to be able to perform it only minutes later during the trial.

The above-mentioned attempts to ask for advice can also be explained as an attempt to expand their cultural repertoires and develop what Erickson called *"working knowledge of […] cultural genres, […]* [and] *a good understanding of which culture to use in which context."* (In, Lindegaard, Miller and Reynald, 2013: 971). This working knowledge helps the defendant to better idealise his own performance according to a typical defendant (Goffman, 1959: 44-59), even if the criminal trial is a cultural environment in which he usually not interacts. The pre-trial preparation also helps the defendant to better interpret the interaction that is taking place (see Geertz, 1973: 5, 14). To the defendant, the status of the defence lawyer as a professional participant symbolises that this person has the cultural experience needed for an idealised performance (Goffman, 1959: 44-59). This is in line with Searcy, Duck and Blanck's (2005: 46) findings that low status individuals often optimistically perceive high status individuals to

act appropriately. Compared to the defendant, the defence lawyers experience makes him[1] a high-status individual in the context of the courthouse. To put the specific occurrence of pre-trial preparation into a wider context, that same defendant later during the criminal trial showed signs of good teamwork (see chapter 6.3) with the defence lawyer and did not require many instances of mid-trial management (see chapter 5.2), which suggest that the defendant took the defence lawyers guidance into consideration. The brief pre-trial preparation between defendants and defence lawyers that is taking place before almost every trial might thus be enough to provide the defendant with at least some experience that the defendant can use to prevent unnecessary interruptions later during the trials.

During the time I spent in the waiting rooms, I noticed that prosecutors also sometimes talked to the defendant before the trials. When I had the opportunity to hear what the prosecutor and the defendant said, I noticed that the prosecutor most often greeted the defendant, presented themselves and described their role as prosecutor during the trial. Compared to the situation described and discussed above with the conversation between the defendant and the defence lawyer, I would not expect that the pre-trail information I observed provided by the prosecutors helped the defendant in any significant way. The only time I saw a prosecutor talking to a defendant for a longer time was before a trial to which the defendant did not have a defence lawyer. This suggest that prosecutors often not engage in pre-trail preparation to the extent suggested by previous research (see for example Bergman Blix and Wettergren, 2019: 10), at least not to the same extent that I find defence lawyers to do.

The other professional participants, such as the judge, never meet with defendant prior to the trial as they do not wait for the trial to start in the waiting room. However, parts of the interaction taking place directly when the participants enter the courtroom or when the trial just have started can be perceived as pre-trail preparation as they are of the same character as the preparation taking place outside the courtroom.

> *When the judge asks the defendant for his plea towards the accusations that the prosecutor just have read from the crime descriptions the defendant starts to explain why he is not guilty with a story. I understand that the judge wants to hear about whether the defendant admit being guilty or deny responsibility. It takes a while for the judge to ensure himself about that the defendant denies responsibility, and the judge almost must*

[1] Throughout both analysis chapters, I refer to the defendant as "him" for the better flow of reading. However, the gender of the defendant is not specified in my field notes. When taking field notes, I used the Swedish gender-neutral possessive "hen".

> *tell the defendant what words to speak […]. A similar situation occurs just after this when the judge asks for the defendant's plea towards the plaintiff's action for damages. The defendant questions why he should pay for damages he has not done. I understand that this answer is not enough for the judge because it only means that the defendant denies being responsible to pay for the damages which follows naturally if the defendant is found not guilty for the crime. The judge however also needs to know about the defendant plea towards the amount of money requested by the plaintiff. To find out, the judge asks if the defendant will agree to pay for the damages if the court finds him guilty, which is not exactly the same. The defendant agrees to it and the judge is happy with that answer. The trial may proceed.* (Field note)

The except above exemplifies situations that occurs regularly in the beginning of criminal trials and the communication between the judge and the defendant revolve around the same topic as that between the defence lawyer and the defendant in pre-trial preparation. Such situations occur in criminal trials to which the defendants have not been assisted by any defence lawyer. Therefore, pre-trial preparation in the waiting room like the one discussed above had not been taking place between the defendant and a defence lawyer, and no defence lawyer was present in the courtroom to help the defendant out. Therefore, I argue that these occurrences should be viewed as pre-trial preparation forced on the judge as a stand-in for the defence lawyer. The defendant in the situation described above thus probably experience the same insecurity and inexperience as that who asked for advice from his defence lawyer. Potentially even more so as this defendant have not had the opportunity to ask questions before the trial started.

In the excerpt above, the defendant is having trouble since he lacks the "[cultural] *capacities from which* [appropriate] *strategies of action are constructed."* (Swidler, 1986: 277). Using Swidler's analogy, the defendant's tool-kit (ibid) does not feature the appropriate tools for the job. Instead, the defendant is using the tools available by communicating not being guilty of the accused crimes and not being responsible to pay for the damages in a different way than is required. However, the judge requires him to speak out the words "guilty" or "not guilty" and to communicate plea towards the action of damage in a specific way by distinguishing between responsibility to pay for the damages and attitude to the requested amount of money. This type of legal interaction can be difficult to understand for the defendant. The defendant might not be familiar with the words because he might not have legal training and limited, or none experience of criminal trials. In Swidler's (ibid: 275) words, the defendant experiences a *"culture shock".*

The defendant in the excerpt does not understand the difference between the plea towards the action for damage and the attitude towards the requested amount of money. However, seen though the judge's frame, there is an important difference between these two questions. The defendant thus requires pre-trial preparation to be able to *"speak and interact according[ly]* Lindegaard, Miller and Reynald, 2013: 993). In this regard, there are similarities with the interactional differences between the criminal trial (as a cultural space) and everyday spaces, as those between the street and the township shown by Lindegaard, Miller and Reynald (ibid). In both cases, cultural heterogeneity is acquired by those with high degree of mobility between the two spaces (ibid: 971), in this case, the professional participants whose cultural heterogeneity can be used as a resource to appropriately interact in different environments, including the criminal trial (see also Grundetjern, 2015: 274). The defendants can thus be compared to Lindegaard, Miller and Reynald's (2013) youths with low degree of mobility whose cultural experience were only well suited for one of these spaces, while the professional participants can be compared with those youths that had developed cultural heterogeneity and thus were able to interact in different cultural spaces.

5.2. Being managed during the trial

During the criminal trials, defendants are not always interacting in a way that meets the court's expectations, which requires mid-trail management of the defendant's way of interacting.

> *I get the feeling that the defendant tries to give off the impression of being calm. At the same time, the defendant answers the prosecutor's questions very quickly. On several occasions, the prosecutor does not even have time to finish* [the question] *before the defendant starts to talk. The result is that they during a short while talk at the same time. The first times this happens I notice that the prosecutor stops talking to allow the defendant to talk. But at the third occasion, I notice that the prosecutor insists asking the full question, so as to remark on the defendant's behaviour. Except for it resulting in a temporary confusion when they both talk at the same time for a little longer than before, I cannot notice any other reaction from the other involved. The defendant does not seem to notice the prosecutors attempt to correct him.* (Field note)

The above excerpt is an example from one trial that I visited during my fieldwork. It begins as the hearing of the defendant just have been started. From reading the excerpt, one can understand that the defendant interrupted the flow of interaction several times. Similar situations, in which the defendant interrupted another participant speaking occurred several times during my fieldwork. In another trail the prosecutor did not have the same patience with

the defendant interrupting. That time, the prosecutor and the judge corrected the defendant verbally at the first time this behaviour occurred. Given these sanctions of the defendant's behaviour it becomes clear that interrupting the prosecutor is not considered acceptable behaviour in the cultural space. By interrupting the prosecutor, the defendant failed to speak and interact according to the interactional style of the criminal trial (see Lindegaard, Miller and Reynald, 2013: 993). Unlike the situations discussed in the first part of this chapter, the defendant here is not offered guidance to prevent him from making mistakes during the trial. The defendant here has already lost face (Goffman, 2003: 7) by acting out of character (Goffman, 1959: 166-168) in relation to the idealised view of defendant.

In both situations, the defendant stopped interrupting the prosecutor for the remainder of the trial. This suggest that the defendants reconsidered their way of interacting once they were corrected. They might not have understood the importance of not interrupting the prosecutor and made it part of their future strategy of action (Swidler, 1986: 276-277) to make sure the questioner finishes their question before starting to answer it. To the extent the cultural space of the criminal trial can be compared to the society, the defendant made sure to quickly mould and modify his performance "*to fit into the understanding and expectations of the society in which it is presented* (Goffman, 1959: 44). The defendants turn the sanctions on their behaviour from the professional participants into socialisation of what traits of their behaviour that the professional participants might interpret as symbols of idealised behaviour in the cultural context of the criminal trial and make that part of their future performances. However, it should also be noted that in both trials the prosecutor did only have a few questions left for each defendant and that the trials ended rather shortly after the occurrences. It is therefore possible that the alter of defendant's interaction might be a coincidence rather than the effect of management.

During another trial, the defendant was giving long and time-consuming answers to the prosecutor's questions and had to be managed by all the professional participants in just a short period of time. This excerpt also starts when the hearing of the defendant starts.

> *The defendant talks for a long time each time the prosecutor has asked a question, and part of the defendant's answer seem rather irrelevant for the case and the defendant also repeats his story several times. It seems to me as if the defendant tries to explain why he did what he did. I can sense that the prosecutor starts to get irritated since he interrupts the defendant to get him to give more concrete answers to the questions. […] The defendant continues with long answers and once again is interrupted by the*

> *prosecutor. When the hearing is over the judge wants to clarify a few things with the defendant. The judge asks a concrete question, and the defendant once again starts to fade away. The judge then interrupts the defendant and ask the questions once more, this time as a yes-no-question.* [After the defendant has given his answer] *the defence lawyer has to interrupt the defendant when he starts to talk about a situation. I understand that it is about something that the defence lawyer does not want the defendant to disclose.* (Field note)

The defendant in the excerpt above, just like the situation brought up earlier, also failed to speak and interact in the style appropriate for the cultural space (see Lindegaard, Miller and Reynald, 2013: 993). In just a few minutes time, the defendant in this excerpt has been interrupted by all three professional participants in their efforts to manage the defendant's way of interacting. One understands from the excerpt that the professional participants this time had trouble managing the defendant's way of interacting. The defendant did only correct temporarily but did not reconstruct his future strategy of action (Swidler, 1986: 276-277) like the defendant in the excerpt before did. This means that the defendant failed to *"mould and modify his performance"* (Goffman, 1959: 44) to that of an idealised performance. A more concrete answer was only offered to the specific question when the sanction appeared, but the defendant fell back to his old strategy once a new question was presented. It might be the case that the defendant had trouble interpreting and understanding what the court wanted to hear. which could be another example of the importance of cultural experience. In a study by Viveca Adelswärd (1989) it was found that defendants often have trouble interpreting positive encouragement in a correct way. *"In institutional contexts like a trial […] an utterance intended as a friendly encouragement or even as outright support for the defendant, is not always interpreted by the defendant as such, but instead as sarcasm"* (ibid: 748). My findings thus expand those of Adelswärd with that defendant also have trouble interpreting attempts of management from the court. As have been noted many times before, Defendant's cultural experience provide them with frames through which they *"interpret events and therefore how* [they] *react to them."* (Small, Harding and Lamont, 2010: 15). Frames not based on a proper experience risk leading to faulty interpretations. A faulty interpretation either in terms of as in Adelswärd's (1989) case, positive encouragements as sarcasm, or as in this case, attempts of management that is missed, lead to unwanted and unnecessary reactions by the defendant, potentially leading to a situation that is more challenging to manage than the original situation.

My findings also show, beside pre-trial preparation, that some defendants also seek for mid-trial management, especially from the defence lawyer. During one of the trials, a defendant had trouble understanding what he was supposed to answer when the court asked for consent to community service. The court asked if the defendant knew what community service means and the defendant tries to start answering the question. But right from the start the defendant realizes that he does not know what to say. The only answer the defendant give is "uhmm…". After that, the defendant is quiet until the defence lawyer jumps in and says, "it is like free labour". The court asks again if he knows what it is and this time he says "yes". The court then asks if he would consent, and the defendant replies "uhmm.. sure" at the same time he shrugs. Another defendant felt insecure giving an answer to one of the prosecutor's answers and turned to look at the defence lawyer for advice. The defence lawyer looked back at the defendant, but it was impossible for me to see whether the defence lawyer said or did anything to help the defendant out. Instances like this shows clearly that defendants seek guidance from culturally experienced participants whose frames they rely on to allow for appropriate interpretation of the interaction (see for example, Small, Harding and Lamont, 2010: 14-15). By describing community service as free labour the defence lawyer also describes it in words that suits his client's cultural frame (ibid), which makes it possible for the defendant to interpret the judge's question and make a decision.

Chapter six

The performance

In chapter two, I analysed previous research to identify which impressions about the defendant that have been found to influence legal decision making. I argued that credibility and personality along with teamwork should be considered central impressions that form the basic aspects of defendant role performance, due to the identified impact on legal decision making. Further, I found these impressions to be constructed using multiple aspects of performances such as management of personal front, emotional display, and interactive patterns. These aspects of whole-body impression also find support in my theoretical approach in which people's whole bodies are used in forming other people's impression about the actor. In this second analysis chapter, I depart from the three impressions that I highlighted in chapter two.

The different impressions should not be regarded as opposites, but rather complementary to each other. Defendants can perform to give off the impression of being credible, have a positive personality and teamworking, or give off positive impressions regarding one and negative regarding another, at the same time. Some actions also add up to two or more impressions at the same time. Therefore, passages from my field notes might appear and be discussed more than once. By relying on my fieldwork and the theoretical framework outlined in chapter four, I analyse how defendants perform to manage the court's impression of them regarding credibility, personality and teamworking, but also things that might impact negatively on these impressions. By doing so, I take the research that has previously been done in various experimental ways to the field to examine if and how defendants give off, or not give off, the different impressions found to influence legal decision making.

6.1. The credible defendant

As will be shown, opportunities for the defendant to give of the impression of being credible present themselves throughout the entire trial in different ways. From observing multiple criminal trials, I have seen that personal front and emotion display are performances that can be managed by the defendant during most part of the trial, while opportunities for verbal performances mostly appear during the hearing with the defendant. This means that in order to realise the drama (Goffman, 1959: 40), making the activity significant, the defendant must perform using different parts of his body during different parts of the trial.

Defendant's that give off the impression of being credible during the hearing often answer the professional participant's questions using a calm voice and without being provoked by the questions even if the questions asked by for example to prosecutor sometimes can appear to be provocations. One example from my fieldnotes can be used as an example. The excerpt below begins when the hearing has carried on for some time. The defendant and plaintiff both have described to the court that they have been fighting, but the defendant's story deviates a lot from that provided by the plaintiff regarding how the fighting started and to what extent the defendant has hit and kicked the plaintiff.

> *The version provided by the defendant deviated quite a lot from the one provided by the plaintiff. The defendant is asked about this* [why his story is not consistent with the plaintiff's story]. *Even if the content of the defendant's answer is that the plaintiff must be lying, he does not say so out loud. Instead the defendant says: "I don't know" and thus he does not blame the defendant for lying.* (Field notes)

In the except above, the prosecutor is trying to provoke the defendant to accuse the plaintiff of lying which I interpret as an attack by the prosecutor on the defence-team's version of the event. In the setting of the courtroom, one can imagine that it is tempting for the defendant to accuse the plaintiff of lying and claim one's own story to be true to try persuade the court of one's own innocence. However, the prosecutor has the legal burden of proof, meaning that the defence team does not have to bring forth evidence of the defendant's innocence or explain why the plaintiff's version is false. If the defendant would have fallen for the prosecutor's trick, he would certainly have been asked follow-up questions about whose version of the event represent the truth and about the parties reasons for lying. Instead, the defendant exercises what Goffman (1959: 207-213) calls defensive practices and dramaturgical discipline by remembering *"his part and does not commit unmeant gestures or 'faux pas' in performing it.* [And by not] *give the show away by involuntarily disclosing its secrets."* (ibid: 210). The fact that the defendant remained loyal to the defence-team's performance made him give-off a credible impression.

Further, to be perceived as being credible during the hearing, the defendant should also provide an answer the questions without having to think for too long. In the beginning of a hearing with one defendant, I seemed as though the defendant was not confident because he thought a long time before answering the prosecutor's questions. This made him perceive as less credible. In the trial that this occurred, the defendant is on trial for having been incautious when driving a heavy truck by not securing the load properly. The defence on the other hand argues that the

defendant has done everything in his power to secure the load properly, and that the fact that the load came loose must be the result of malfunction in the straps used to secure the load. The prosecutor asked the defendant questions about how the load was secured and checked.

> *Initially during the hearing, the defendant takes a long time to answer. He thinks for a long team after having been asked a question from the prosecutor. The prosecutor also questions whether the defendant is certain or not. The defendant tries to ensure that he is by saying "yes, I just had to though for a moment". This is followed by a loud humming "mm…" from the prosecutor who I interpret as though he is not convinced [about the defendant's certainty].* (Field notes)

From the excerpt above, we understand that the defendant should not have to take long moment thinking about the answer if he wants to give off the impression about being credible. Put into context, one can understand that the defendant might hesitate due to the serious tension of the trial. It might be the first time the defendant is on trial, and he might feel that his answer is important as the court's verdict can impact on his future life and professional career. However, from being a professional truck driver, the court expect the defendant to know how to secure load properly and routines regarding when the load is checked. The fact that the defendant must think about the questions signals uncertainty, making the defendant lose face (Goffman, 2003: 8) in front of the court and giving the impression of being less credible. The impression that is given off is that the defendant perhaps did not know how to secure the load in the first place. In opposition to the excerpt discussed earlier, the defendant fails to defend the defence-team's performance by not exercising dramaturgical discipline properly (Goffman, 1959: 210). Instead, attention is drawn towards information that *discredit, disrupt, or make useless the impression that the performance fosters"* (ibid: 141). In this sense, the defendant becomes a discrepant role (ibid: 141-165) in the defence team performance by giving the court the impression that he is not credible.

Previous research also suggested that defendants should display an accurate emotion (both in terms of type of emotion and strength of emotion) to the situation in order to be perceived as credible (see for example Tsoudis and Smith-Lovin, 1998). This is consistent with *offer[ing] a show of […] emotional involvement* (Goffman, 1956: 210), but also with Hochschild's (1979; 2012) notion of the effects of display of emotion in that it *"produces the proper state of mind in others"* (Hochschild, 2012: 7). I often noted that defendants that I had perceived as being nervous in the wating room gave off a much more calm and confident impression during the

trial, which I understand as a performative attempt to conceal nervousness and instead display an emotion preferable to the goal as being perceived as credible. I would not argue that being nervous during the trial always would be equal to giving off the impression of not being credible. People can be nervous for many different reasons inside the courthouse, without it meaning that they are being guilty of the crimes they are on trial for. Even for me, who only visited the court as audience, sometimes felt nervous by the tension that can be felt in the waiting room and inside the courtrooms. However, it is also possible that nervousness during trials can be interpreted by the court as if the defendant has something to hide. In opposition, displaying calmness might thus be interpreted as an accurate emotional involvement for a defendant who want to be perceived as telling the truth.

During another trial I observed, the importance of displaying an emotion consistent with the situations became evident. Throughout the trial, the defendant had been denying being responsible for the accused crime. However, when the plaintiff was being questioned by the prosecutor, I noticed that the defendant did not look the plaintiff's way but instead only looked down into the table in front of him. I wondered why the defendant was not looking at the plaintiff. After a while, the defendant reached out for the box with napkins on the table and grabbed a napkin and kept in his hand. Moments later when the prosecutor finished his hearing with the plaintiff, the defendant used the napkin to dry his cheeks and the table in front of hear. The defendant must have been crying during the hearing with the defendant, but I had been sitting too far away to notice. However, the use of the napkin disclosed the crying.

In this situation described above, one way to interpret the crying can be as display of shame or regret. The reason for why I interpret it this way is because during the hearing, the plaintiff was describing the defendant's behaviour and how this affected him (the plaintiff) when the crime took place. The feeling of shame or regret would be an inconsistent emotional involvement (Goffman, 1959: 210) with the defendant's communicated understanding of the situation since the defendant withholds that he I innocent to the accused crimes. In the initial part of the trial, the defendant denied that he had grabbed the plaintiff, thereby denying that he had assaulted the plaintiff. If the defendant is telling the truth with his innocence plea, the defendant would have nothing to feel ashamed of and nothing to regret. If the court noticed the crying and interpreted it the same way as I did, then the fact that the defendant was crying during the hearing might harm the defendant's impression as being credible. Just like the heavy truck driver who failed to exercise dramaturgical discipline, the defendant here discredits the performance (ibid: 210) by displaying shame or regret and thus performs in a discrepant way

to the overall communicated definition of the situation (ibid: 141-165). Crying might however also produce a to the defendant preferable state of mind (Hochschild, 2012: 7) in the people of the court. For that reason, I will come back to this situation when discussing impression about defendant's personality.

Management of personal front can also be used by the defendants as expressive equipment (Goffman, 1959: 34; see also Simmel, 1957) to signal credibility, or non-credibility. Especially when stereotypes are connected to particular groups of people (du Rées, 2006). *"Fashion is the imitation of a given example […]. At the same time it satisfies […] differentiation."* (Simmel, 1957: 543). Thus, management of personal front, is important as it allows for dramatic realization (Goffman, 1959: 40) throughout the entire trial, not just during specific moments.

Throughout my observations, I often noted that defendant was dressed in everyday clothes without any clear marks, emblems or similar things that might signal group belonging, social class or the like. This way of dressing "as everyone else" can be a deliberate attempt to give off the impression of being like everybody else. However, during one of the trials I observed, the defendant was dressed in workwear. That same defendant was also accused of having committed an offence while working by being incautious. In this context, the choice of appearing in court in workwear is interesting from a performative perspective as an attempt to give off the impression of being a professional worker. To the court, the workwear signals a form of work experience similar to that of a uniform, which was discussed by du Rées (2006) as an example of a way to signalling credibility. This suggest that also personal front is used by defendants to blend in or to deviate in a positive way as a professional worker. During my fieldwork, I did not observe any occasion of negative deviation in the sense of looking non-credible, however, I think it is highly likely that also that occurs.

6.2. The good defendant

As was noted in chapter two, defendants that was able to manage the court's impression of their personality in a positive way, meaning that the defendant was perceived as otherwise law-abiding, could affect legal decision making in a for them preferable way (Tsoudis, 2002). During the time I spent in the field observing criminal trials, I noticed many occasions of defendant's trying to give off the impression of having a positive personality. How this was done depended on the situation and the defendant's plea in the trial. One defendant who denied being responsible for the accused crime painted a positive picture of himself as part of the defence.

> [The defendant explains that him and his children] *have lived in Sweden for many years, that he is X years old* (approximately middle-aged, my interpretation) *and that his children have studied at the University and have well-paid wages. This is an attempt to legitimize himself and distance him from dishonest people. He says at several points that he is not like those who commit crimes and questions why anyone with his background would commit the accused crime.* (Field note)

In another trial, the defendant instead told the court stories about times in which he found himself in situations similar to that in which the alleged crime had taken place, but the situation had been solved without involving the law.

> *When the defendant answers the questions, he brings up examples of other occasions when he has made sure to do the right thing. For example, the defendant describes an earlier occasion when he happened to make a wrong decision but showed good will to solve the situation through a deal with the victim.* (Field note)

In opposition to the first excerpt, the defendant in the excerpt above does not deny that the situation has taken place but tries to give of the impression of a positive personality anyway. According to the defendant's own stories, the personality of the second defendant does not make crime unthinkable, but rather makes formal sanctions unnecessary. The first defendant however, tried to give off the impression of having such a positive personality that crime itself is an unthinkable behaviour. Both however, uses the hearing as the moment of dramatic realization (Goffman, 1959: 40) to try to manage the court's impression of their personality as part of their defence. Defendant's also put forward positive aspects of their personalities during trials when the have confessed to the accusations. Such performances are often realised towards the end of the trials when the court takes the defendant personal circumstances into account. Defendants and their defence lawyers attempt to put forwards positive facts about the defendant such as employment or other occupation, aspects regarding housing and family and so on, in an attempt to manage the court's impression about their personality. These attempts to give off the impression of a positive personality must be viewed in relation to the context in which they take place. The nature of criminal trial, in which the defendant stands accused of having committed a negative behaviour would, if the court sees the behaviour as exemplifying the defendant's general behaviour, possible give the court a negative impression of the defendants personality. It is in this context that the attempts of portraying oneself as an in general law-abiding citizen becomes part of the defence to even out the court's impression.

During my observations, I also noted aspects of failing to give off the impression of having a positive personality. In one trial, the defendant was accused of possession of firearms. The defendant however, maintained the attitude that he did not know that the firearm of question was forbidden to possess since it was only an air-pistol, thereby denying responsibility. The prosecutor questions why the defendant did not check the rules regarding firearms before he bought it. The defendant says that he did not think of checking the rules and also says sarcastically that it is not as obvious that the firearm (the airgun) is illegal as is possession of narcotic drugs. In this situation, the prosecutor has made the defendant look unresponsible which can be enough to prove that the defendant was negligent when possessing the firearm, which in turn is enough to be sentenced for possession of firearm according to Swedish law. However, the defendant also fails to give off the impression of being responsible in general. The fact that he admits to not think about the laws regarding firearms before buying a gun and also make a joke about narcotic drugs makes him *"convey information* [about himself that is] *incompatible with the impression officially maintained [the good defendant]"* (Goffman, 1956: 168). By acting out of character (ibid: 166-168), the defendant gives off the impression of not being a responsible citizen, thereby having a negative personality. The possession of firearm might not be viewed as an exception, but rather as an example of the defendant's general behaviour.

The above examples all show how defendant's give off impressions of positive or negative personality in verbal interaction during the trials. Tsoudis, (2002; see also Bandes, 1996) also shows that defendants can make use of display of emotion to give of the impression about their personality. Since display of emotions can produce feelings in other people (Hochschild, 1979, 2012), defendant can make use of display of emotions to produce feelings of empathy in the people of the court (Tsoudis, 2002). *Emotion displays serve as signals of behavioural disconfirmation or confirmation of identity for either positive or negative behaviours. Positive emotions (e.g., happiness) from the actor, after a positive behaviour (e.g., helping) indicate confirmation of a positive identity. […] Similarly, […]* [a] *positive emotion after a negative behaviour indicates a negative behaviour […]; a negative emotion indicates a more positive identity."* (ibid: 56). This means that the displayed emotion must be viewed in relation to the behaviour that infuses it and the situation in which it appears. In this case, the court *"assess the 'appropriateness' of a feeling by making a comparison between feeling a situation"* (Hochschild, 1979: 560), which serve as the foundation regarding whether the performance is discrepant or in line with the overall performance.

During one of the trials I observed, which has already been discussed in the section about credibility, the defendant was crying when the plaintiff was discussion how he was assaulted by the defendant. When it comes to the impression of personality, crying can have had both negative and positive implications. On the one hand, it might be perceived as evidence of that the defendant was lying, and in fact have assaulted the defendant, thereby negatively impacting on the court's perception of the defendant personality (as someone who is prepared to tell lies). However, on the other hand, display of crying can be perceived as negative emotional reaction to a negative behaviour, as display of shame or regret. This can also positively impact the court's perception of the defendant's personality.

As was exemplified by du Rées, (2006), Ahola et. al., (2009; 2010), but also Flower (2018, 126-128), defendant's personal front might symbolise many things about the defendant's personality which can impact on the court's impression of him. Depending on the situation, the court's perception of the defendant's social class can have a big impact on the treatment of the defendant (du Rées, 2006: 263-265). Matching the social class of the court can have a positive impact on how the defendant is treated by the court, while it sometimes also can make the accused crime look more clandestine for the defendant (ibid).

In the chapter about credibility, I discussed the impact of a defendant's choice of wearing workwear in court. Workwear might also symbolise aspects of the defendant's personality. It looks like the defendant has just arrived from having worked a shift, just on his way to work or that the defendant just took some hours off to be able to appear in court. Wearing workwear thus give off the impression that the defendant is an average worker. As also was noted previously, I observed that most defendants choose to wear everyday clothes. This might not have the same effect as that of workwear or uniform, but at least it gives off the impression of a respectable citizen. Its effect on evaluation of personality is hard to estimate, but it will probably not give off a negative impression.

6.3. The teamworking defendant

As was shown in chapter two, the ability to present the defence as a joint effort, as an effort of teamwork, is an important aspect of a successful defence (Flower, 2018; 2020). Therefore, part of the defendant role is to perform as a team together with the defence lawyer and the extent to which the defendant gives off the impression of being in team or not in team with the defence lawyer is interesting to examine. This is because as Goffman notes, *"the definition of the situation projected by a particular participant is an integral part of a projection that is fostered and sustained by the intimate cooperation of more than one participant"* (1959: 83). I have

already touched upon situations where the defendant's performance led to the projection of the defence team's joint performance, and situations where the defendant's performance gave off impressions discrepant to the defence teams definition of the situation. In this part, I will extend those findings by examine closer performances that directly influences the perception of the defendant and the defence lawyer as a team.

The following excerpt is from the beginning of a trial that I observed when the prosecutor is reading to the court the criminal charges that the defendant is accused of having committed. After each point, the defence is to present its plea which in this case is handled by the defence lawyer. During this whole part of the trial, the defendant sits quietly but still gives off the impression of being in team with the defence lawyer.

> *[I]n the beginning of the trial, I think that the defendant seems to be a little surprised by the information the prosecutor reads from the statements. He shakes his head at one point to show that he does not agree with the prosecutor. When it is the defence lawyer's turn to answer to the prosecutor's charges, the defendant nods his head to show that he agrees with what his lawyer just said.* (Field note)

Several important things happen in the above quoted passage of the trial. Most importantly, the defendant lets the defence lawyer do the talking. By remaining quiet, the defendant shows that dramaturgical circumspection (Goffman, 1959: 212) has already taken place which support the impression of a joint performance. The defendant shows the court that the defence team has already determined *in advance how to best stage* [the] *show* (ibid: 212), in this case the plea has already been determined. The defendant also uses non-verbal communication to show the bond between him and the lawyer by disagreeing to the prosecutor's charges and agreeing with the defence's plea. The result is that the defendant makes his performance an integral part of the defence team performance. The performance of two interactants thus becomes a joint performance that is already materialised by the defence team-member's positions in the courtroom next to each other.

During almost every trial I observed, defendants relied on their lawyers to handle all the talking during most parts of the trial. Most defendants only answer for themselves during the hearings. From the defendant's perspective, this removes many opportunities for verbal performance. However, at the same time, it also minimises the risk of defendant's acting out of character (Goffman, 1959: 166-168). On one occasion that has already been brought up in the chapter about mid-trial management, the defendant was asked a question from the prosecutor and immediately looked at the his lawyer for support regarding what to answer. On the one hand,

this shows that the defendant and the defence lawyer is a team. However, on the other hand it also signals that dramaturgical circumspection (ibid: 212-213) between the team members have failed to account for how team members should respond to this specific question. In just a split second of time the defendant has revealed insecurity and thus also a weakness in the team performance.

Defendants can also make use of the teamwork with their lawyers to become more active during the trials without interrupting the flow of interactions.

> *When it is time for the lawyer to ask questions to the plaintiff, the defendant whispers something to his lawyer at two separate occasions. The lawyer does not try to hide the fact that he has a conversation with the defendant at these moments. One can even hear the lawyer humming "yes" to the defendant.* (Field note)

The fact that the defence lawyer does not even try to hide these conversations with his client shows that this type of teamwork is an accepted behaviour during the trial. It might even be the case that the defence lawyer wants the court to note the teamwork he and his client has, thereby making internal conversation part of the team performance. The fact that the defendant is teamworking with the defence lawyer makes verbal interaction possible. If the defendant would not have been talking with the lawyer, it is most likely that any of the professional participant's would have managed the defendant in a way similar to that discussed in the chapter about mid-trail management as the defendant would otherwise not have been allowed to talk at this part of the trial. By teamworking with the defence lawyer, the defendant can for example ask the defence lawyer to ask a specific question to the plaintiff. In a similar situation during the hearing of a witness in another trial, the defendant was told to be quiet when he tried to ask the witness a question. This exemplifies the importance of teamwork to be part of the defendant's role, and the advantages this brings with it

Chapter seven

Conclusions

This thesis set out to answer the question of how the defendant role is performed during criminal trials by specifically focusing on if and in what ways the defendant is assisted in their performance and what impressions the defendant gives while interacting. From conducting fieldwork and analysing my findings I conclude that defendant's often have difficulties constructing a strategy of action regarding how they should perform the social role appointed to them (the defendant role) due to their limited experience in criminal trial interaction. The court hold expectations regarding how the defendant role should be performed (idealised view), but due to limited experience, the defendant have trouble idealising (aligning) his performance to the expectations. Because of this, defendant's performance is being managed both before and during the criminal trials by the experienced participants of the court. In this regard, my findings also support those of previous research with the exception that my findings suggest that prosecutors are not to the same extent previously suggested active in pre-trial preparation. While some defendant used this management to align their performances to that of an idealised picture of the defendant, some defendants failed to incorporate such management leading to continuous disruptions in the interaction. The reason for this failure of incorporating the court's attempt of management can be that defendants have trouble interpreting the meaning of what is being communicated during the trials, which would support and extend previous findings.

Further, I conclude that defendant's whole bodies give of signals that can be interpreted as expressions regarding their credibility, personality, and teamwork. Such impressions about the defendant can be formed regarding the way that defendant verbally and non-verbally interact, display emotions, and based on their personal front. This means that dramatic realisation of this impressions takes place throughout the whole trial, but that different parts of the defendant body is significant in different parts of the trial. For example, opportunities for verbal interaction present itself mainly during the hearing, but emotion display and personal front can be used in interaction at any time. This is important, as evaluation of credibility, personality, and teamwork has been found to have effect on legal decision making in previous research.

Future research should search for a deeper understanding of the meaning to the defendant of these performances by for example conducting interviews. By uncovering the intention behind given expressions and compare those to the impressions given to the outsider, the research can gain an even better understanding of the importance of culture in interaction. Future research

should also aim to take power relations into consideration when researching criminal trial interaction. Such research should not only focus on the differences in cultural capital between the different participants, but also view these in relation with the court as an institution. Finally, future research should take gender into consideration when researching courtroom interaction.

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