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Immigrant mafia or local lads on the binge? The construction of (un)trustworthiness in Swedish district courts

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Abstract: In this article we address the construction of familiarity and distance in Swedish district court cases, involving young men with both immigrant and Swedish backgrounds. Through ethnographic observations of 40 trials related to street crimes, we have found different qualities of social interaction that distinguish immigrant background and Swedish background cases from each other. These distinctions, disfavouring young men with immigrant background, are built up through a series of practices and events that follow taken-for-granted behaviour and details in interaction, such as speech, laughter, choice of words to describe the accused and trust in Swedish witnesses. In conclusion, we argue for the necessity of detailed, close-up studies of courtroom action and interaction to understand statistical findings of discrimination and disfavouring of certain groups of immigrants in court and elsewhere in the judicial process.

Keywords:
Ethnography
Symbolic interactionism
Court observations
Social atmosphere
Interaction ritual chains
Biases
Trustworthiness

Introduction

I go to fetch coffee from the machine and sit down on a sofa outside the courtroom. After a little while, the prosecutor arrives, as does the interpreter. They start to talk about the two accused young men. The prosecutor tells the interpreter what they have done. He thinks that they are part of a “gang” and then switches to tell her that “Balts and Riverlanders’” are the “worst” when it comes to this type of crime. They beat everything, he says. (Observation notes)

This observation note from a criminal court case in a Swedish district court suggests that there is a lot more going on during court cases than just the objective evaluation of the cases being tried. The prosecutor in this trial appeared to have rather strong biases when it came to associating people of particular geographical or cultural backgrounds with specific offences. It was early in the day – and in the court case – when the prosecutor not only told the interpreter about the “nature” of “Balts”, but continued to tell her that “Balts are worst on theft, but Iraqis and So-

1. In using a fake nationality, we strive to avoid identification of this court case, as the prosecutor was referring to the national identity of the defendants in the case. Following ethical demands, we have omitted the former nationality of all the participants with non-Swedish backgrounds.
malis are the worst when it comes to drugs".

He appeared comfortable with ascribing ethnic or national labels to specific crimes and during the day, he continued to address the defendants by stating their national or ethnic background. This observation is one of many carried out during our ethnographic research project *Negotiations in court and equality before the law* where we have been studying court cases related to "street crime" with a focus on negotiations of gender, age, culture, and ethnicity in court interaction and documents. A majority of the 40 cases we have studied have involved young men with a background outside Northern and Western Europe. One of our primary goals has been to investigate if and how immigrant background creates problems for the accused when it comes to receiving a fair trial. We have also studied cases that deviate from our research focus on (male) "immigrant" cases, providing us with empirical material related to different genders, ages, and ethnicity to be used for qualitative comparisons.

The trials have involved theft, robbery, assault, drugs related crimes, drunk driving, arson and other offences taking place in a public setting.

We have studied the “everyday” life of the court, a life that generally starts around nine o’clock in the morning and ends at four or five in the afternoon. Like other ethnographers (cf. Latour 2010), we have set out to explore what takes place in the everyday routines of a court that includes people being interrogated and convicted, set free or sent to prison. When observing, we have followed a traditional symbolic interactionist perspective asking questions such as: How can this situation be described? How do they act towards each other? What happens when nothing appears to happen (cf. Becker 1998)? Denzin (1992:1), referring to Blumer (1969: 47), calls this way of studying everyday interaction a “down-to-earth approach to the scientific study of human group life and human conduct”.

Our ethnographic and interactionist approach – studying small-talk, conversation, interaction and rituals in the courtroom – corresponds to a call for in-depth qualitative studies of the social life of the law from researchers who claim there is a statistical bias against immigrants in the Swedish judicial system (cf. Diesen et al. 2005; Latour 2010). Diesen et al. (2005) present findings that point to a praxis within the Swedish judicial system that can have discriminatory consequences and suggest that this praxis often emanates from subconscious and assumed understandings. Such praxis involves, among other things, routines and interaction during court proceedings. Even if a trial is characterised by a high degree of formalised interaction with claims to both objectivity and clarity beyond a reasonable doubt, trials contain moments that are not based on facts. Like other societal arenas, they are permeated by social and cultural understandings and by the positioned knowledge of the legal representatives and participants (see Diesen et al 2005; Garfinkel 1956; Hannken-Illjes 2006; Kupchik and Harvey 2007; Lindholm and Yourstone Cederwall 2013; Sarnecki 2006; Schömer 2011; Wagner and Cheng 2011; Zatz 2000). Our observations discussed in this article indicate that a bias against people with immigrant background indeed often occurs in court as a result of taken-for-granted and normalised interaction in everyday court life.

We use the term immigrant (“invandrare” in Swedish) with reluctance since it feeds into an old and stubborn Swedish discourse that continues to differentiate between notions of Swedes and non-Swedes, making it difficult for many Swedish people with a background elsewhere to become accepted as “real Swedes”. The ascribed category “immigrant” sets them apart and is often followed by a persistent tendency not only to differentiate people with non-Swedish background from other Swedes but also their children who have been born as Swedes. These children as youngsters or adults are sometimes referred to as “second-generation” immigrants or “people with foreign backgrounds” as recommended by the authorities (Friberg and
Hermanson, 2000). While these discourses are expressions of collective imaginations, their consequences are real. The term immigrant needs to be handled with care and deserves a more extensive problematizing than can be offered in this text.

When we began our study, we focused solely on “immigrant background” court cases and thought that many of our observations were observations of court proceedings in general. It was not until we started observing cases where the parties had a Swedish background that we saw some patterns dissolving while other patterns evolved. More often than not, there was a noticeable difference in the quality of interaction, in what can be described as a social atmosphere, when we compared “Swedish background cases” to “immigrant background cases”. In earlier publications, we have addressed the importance of court interpreters and interpreted hearings for changes in atmosphere and the creation of interactional distance in court (cf. Elsrud 2014, 2017, Elsrud et al. 2017). In this text, we focus on other qualities within the trial contributing to such changes.

Our use of the social atmosphere concept has been inspired by symbolic interactionist theory on rituals and encounters in everyday life (cf. Collins 2004; Goffman 1959) when we describe interactive situations where people are gathered as familiar and warm while others can be described as distant and cold. In the former situation, we suggest, the interaction between actors evolves into feelings of shared social connection and familiarity. In the latter case, feelings of mutuality and similarity have been replaced by distance and division between actors. People act upon each other not through identification, but through following formal rules. Our interpretation of atmosphere is similar to that of Philippopoulos Mihalopoulos (2015:5) when he argues:

"An atmosphere is an enclosure of affects that spread through affective imitation between bodies. I define atmosphere as the affective ontology of excess between, through and against bodies. These bodies produce the atmosphere and its excess, and find themselves situated, trapped or liberated in it."

In this paper, attention is directed towards the small, sometimes almost unnoticeable and other times quite blunt, details that present themselves at various points during a trial that add up to more general displays of familiarity or distance based on the background of participants. The paper addresses how the court talks to, interacts with and describes defendants with non-Swedish background by showing how these ways differ from cases where the accused have a Swedish background in our study. Thus, the purpose of this article is to present qualities of interaction and communication in everyday court life that give rise to either familiarity or distance between the legal representatives (prosecutors, lawyers, judges) in court and the temporary participants (defendants, plaintiffs, witnesses and sometimes even audience). The paper will also show that the construction of familiarity or distance relates to values and ideas that commonly place participants with a non-Swedish background in an unfavourable position. When called for, we will also discuss issues of class and gender. By presenting a limited number of cases in detail, we want to create opportunities for comparisons between “Swedish background cases” and “immigrant background cases”.

In the following section, we describe the research context and the usefulness of an ethnographic approach in courtroom settings. We then present our findings and begin with a de-

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2. It should be noted, that while the change of patterns between Swedish background cases and immigrant background cases has been observed most of the time, there have been some court cases that have deviated from these findings. However, these have been exceptions to the prevailing patterns that we describe in this text and will be treated in other articles.
scription of five typical example cases. These are then used in subsequent sections to exemplify different types of interaction and communication processes, including sentencing arguments and justifications in documents that contribute to the development of either familiarity or distance. We conclude with a discussion about the consequences our findings might have for the right to a fair trial for all, and for issues of trust and wellbeing among court participants.

**Ethnography in court**

For confidentiality reasons and to avoid recognition, the district courts and cases in this project have been anonymized. In addition, we have not shared the national background of the court participants, nor have we exposed the location of the four district courts that have been observed during the study. Three of them have been located in medium-sized Swedish towns and one in a larger city. Most studied trials have lasted for a day with some longer trials and some a little shorter.

The primary focus has been on trials where participants have been relatively young (from 18 to 30) and with a background outside Northern and Western Europe. We have wanted to explore if and how notions of ethnicity, culture, gender and age are negotiated in courtroom interaction and court case documents. As mentioned, we have also selected cases that differ from our focus on youth and immigrants to provide possibilities for qualitative comparison. Thus, the project has encompassed a number of cases where parties have had a Swedish background and cases with parties having passed the age of 30 or above. We have also selected a few cases with female participants in reaction to the dominance of male presence. Nevertheless, it is important to stress that court cases are rarely simple ‘single category’ events (cf. Crenshaw 1989). Quite often participants in a single trial have been both men and women, of different ages and with backgrounds in both Sweden and outside of Sweden.

We have studied various empirical sources in search of complex and dynamic descriptions that provide information about detail and interrelations within single court cases instead of facts about all cases that can be generalised to cases outside of our study. Influenced by symbolic interactionism, we have carried out detailed observations from the audience section in 40 court cases, taking notes about interaction, emotional expressions, sign language and other rituals. We have not only observed and listened to what is said but also how it is said, in what context it is said, and what emotions that can be connected to the conversation. These emotions can be detectable through different voice pitches but also through shaking heads, raised eyebrows, tapping fingers or heads turned demonstratively another way.

The Swedish principle of public access to official records gives us, and the general public, access to most documents related to a crime. Only on rare occasions, usually due to the participants’ young age, may a Swedish trial take place behind closed doors and documents become listed as secret. Public access to official records includes the right to order audio files of trial hearings as the judgment has become final. Thus, for each case, we have ordered pre-trial and sentencing documents as well as audio files with hearings of defendants, plaintiffs, and witnesses.

3. The project has received permission from Lund Ethical Review board.
4. Following the division of work within the research group the five cases used in this article all come from courts in medium-sized towns. However, the patterns discussed in this article have also been found in the city court.

5. Four studied court cases have also been followed by interviews with defendants who have confirmed and furthered our understanding of these trials. However, these interviews are not in focus in this article (for more details on these see Elsrud et. al. 2017).
For this paper, we have picked five cases that are used as examples to describe more or less persistent patterns encountered during three years of court studies. By focusing on a limited number of cases involving two or more defendants with similar offences we want to visualise patterns and give detailed accounts of the distinct character of a few cases rather than an overview of many. In doing so, we can show how these cases not only differ quite profoundly depending on the background of the participants but also on the nature of the interaction during the trial. While most of the arguments are drawn from these five cases, we will also include some empirical examples from the other cases to clarify and add complexity.

**Case characteristics**

We begin with short presentations of the five cases. To avoid identification of cases, their participants, or legal representatives, we have carefully chosen what material we use and altered some details. We provide basic information about the cases, the charges and the scene of the crime. We also provide some information concerning offender characteristics, including criminal records and social conditions, in addition to final judgments. Furthermore, we present information about important central themes and the social atmosphere in the particular trial.

1. **Young rural men with a Swedish background and a motor interest**

This case involved four young men, aged 21 to 25, with a background in rural Sweden. They were accused of theft, assault, aggravated assault, threat to a police officer, violent resistance and a number of other offences. All but one had a criminal record, with one of them having been convicted of 16 offences. Three of them lacked “settled conditions” and the two main offenders, responsible for most of the illegal activity, had not appeared for the expected personal evaluation at the probation office prior the trial. All the offenders had spent their childhood as friends in the same village, Rivercreek.

The crime scenes were located in the Swedish countryside although some offences took place in Middletown, a town with less than 100 000 inhabitants. The offences had occurred on different occasions; aggravated assault during a joint activity for people with a motor interest, threats against a police officer and his family during a concert, and various thefts in different rural areas. The aggravated assault took place when a group of young people in cars met up at a pizza place to drink and “hang out” and was said to be brutal, with witnesses testifying to the offender kicking one victim on the upper body, stomping on his head and attempting to strangle him. A bystander, a friend of the victim, tried to interfere but was also beaten and subjected to a strangulation attempt, thus becoming the second victim. The main victim needed to seek medical attention several times after the incident, and at the date of the court proceeding, more than a year earlier, he still suffered physically and mentally from the assault. He appeared as the main plaintiff in the case and claimed that he was not particularly drunk and remembered what happened that night. There was no mention of him having any prior convictions.

Rural life, motor interest, alcohol consumption and “rural motorised masculinity” were themes that characterised the trial that continued for three days. The atmosphere was often friendly and humoristic. Legal representatives participated in jokes, both within the legal professional “group” and with participants in the trial. Girlfriends and a sister to one of the defendants joined the joking from the audience section and were also drawn into the conversation by the legal professionals – both judge, prosecutor and defence lawyers – who asked for their evaluation of the defendants and suggested that they could contribute to a future without criminal activities for the young men.
The defendants confessed to most of the accusations but denied the descriptions of the events and the severity of the actions. They were found guilty of most of the charges and sentenced to various degrees of community service, probation, and liability to pay for damages. None of them was sentenced to prison although some of the offences called for a term of imprisonment. The young man accused of aggravated assault avoided prison due to his “young age” at the time of the crime, as stated in the judgment document. So did the 24-year old defendant with 16 previous convictions whose charges would typically result in two months in prison.

2. Young men and women with a Swedish background on a party tour
The case involved two 22-year-old men and two 21-year-old women with a background in rural Sweden. All four were accused of theft and one of them also of aggravated drunk driving. The two women lacked prior convictions, but both men had criminal records. All of them had been evaluated at the probation office, and three of them were considered having ‘settled conditions’, including jobs and financial security.

The crime took place in a community centre in rural Sweden. During a party involving alcohol in a nearby house, the four defendants ended up in the empty centre where they spent some time drinking, exploring the building, and stealing some objects before the alarm went off and they were caught. In addition, one of the defendants was accused of having crashed his car during a night-time drive in the country.

The details of the stolen objects, alcohol consumption/drunkenness and “female precedence” appear as themes during the trial. As in many of our other observed trials with both male and female defendants of Swedish background, the women were heard first and treated in a more neutral or even friendly manner than their male co-defendants.

The atmosphere during the trial, which lasted for almost a full workday, was mainly friendly and humorous. Jokes were shared between court representatives, defendants and witnesses in a friendly manner. Nevertheless, one portion of the proceeding differed from the overall positive atmosphere, as there was a tendency among legal professionals to laugh at one of the defendants’ difficulties to pronounce some of the words correctly.

With the exception of one of the defendants denying drunk driving, the rest of the charges were confessed to, but the claim that is was premeditated was denied by everyone. One of the women was freed from charges of theft, while the other three were considered guilty. The man and woman found guilty of theft only received a suspended sentence and a fine, while the man found guilty of both theft and aggravated drunk driving received a suspended sentence with a prescription to community service in addition to liability to pay for damages.

3. Immigrant youth with suspected mafia aspirations
This case involved two 22-year-old young men with backgrounds in the Middle East and Africa who were accused of aggravated assault. Neither of them had a criminal record. They had both appeared for their personal evaluation at the probation office. They were both evaluated as living under “settled conditions”. They had jobs, and there were no “risk factors” involved that indicated recidivism. The crime occurred in Boxville, a Swedish town with less than 100,000 inhabitants. The incident took place while the two men were walking home from a nightclub and met a third person who was the case’s plaintiff. Witnesses claimed they saw two men with “foreign origin” [“utländskt påbrå”] beat the third man. They said one of the men was more active during the assault than the other and that he kicked the victim in the head and that they might have heard the warning from the main offender that the victim should not mess with the “Farawayland mafia”. The victim, who had some prior convictions, did not remember the

Torun Elsrud & Philip Lalander
incident as he was very drunk at the time, nor did he recognise the two defendants in court.

Both the prosecutor and the counsel for the injured party returned to the mafia concept repeatedly, making the “Farawayland mafia” connection one of the main themes during the trial. Karate skills following two years of practice during one of the defendants’ childhood was also a topic brought up several times, as was ‘who-did-what’ during the incident.

The trial alternated between a controlled, formalised atmosphere and aggressiveness. The prosecutor and the counsel for the injured party appeared as a team, and their confrontations of the two defendants during the hearings were remarkably tough. During one part of the trial, there were laughs and smiles following jokes presented by the witnesses who, all four, had Swedish backgrounds. A girlfriend listened in the audience section. She was not called upon by the court to evaluate her boyfriend’s trustworthiness, and when she broke the rules of the court by objecting to what she described as a lie uttered by the prosecutor, she was harshly reprimanded.

The defendants confessed to the incident having happened but denied the severity of it, and the alleged reason for it. They were found guilty, and both were sentenced to one year and six months in prison, in addition to liability to pay for damages. In contrast to case number one that also involved aggravated assault, there was no mentioning of the defendants’ young age in the judgment document or during the trial. Their “settled conditions” and “no prior convictions” were not used to argue against a prison sentence and for an alternative to prison.

4. Thieving-asylum seeking men

The case involved two men, aged 26 and 36, with a background in Eastern Europe. While seeking asylum in Sweden, they were caught with various merchandise in their possession. They were accused of theft, petty theft, receiving stolen goods (toothpaste, mouthwash, shaving products, vitamins, soap, fever thermometers, socks and flour among other objects), drug offence, unlawful driving, absconding from an accident and falsification of documents. They had been detained for two months before the trial, and both had a few known prior convictions outside Sweden and one of them had one earlier conviction in Sweden. The crimes were discovered as one of the defendants hit a fence with his car in Summertown, a township in rural Sweden, and took off but was caught by the police. The stolen goods and substances classified as illegal were thereby discovered and the second defendant identified. Witnesses in the trial all had Swedish backgrounds.

The details of the stolen goods and order of events were themes during the trial as was a tendency to speak about the defendants in an ethnifying manner by calling them “Riverlanders” instead of the common routine to call the accused by their names, thus creating a distinction between the Swedes and “others”.

The atmosphere was “strict”, formal, and controlled, with some exceptions such as the prosecutor’s attempts to visualise his disbelief in the defendants’ claims. This disbelief was signalled through for instance facial expressions and the shaking of the prosecutor’s head in connection with defendants’ statements. There was also some noticeable irritation among the custody guards when they heard that the two defendants had called them “idiots” in notes they had exchanged while in custody. There was a mocking tone surrounding the trial, in the hallway, where the prosecutor, interpreter, and defence lawyers laughed and joked about the intelligence of the defendants. The prosecutor initiated these conversations during pauses, and at one point he also ranked different nationalities according to the type of crimes they preferred to commit as noted in the opening of this paper. The trial also became increasingly emotional when the defendants begged the court not to be deported.
Both defendants confessed to most of the accusations and were found guilty and sentenced to six months and four months in prison respectively and deportation with no right to return for five years. One of the defendants was sentenced to liability to pay for damage.

5. Young immigrant men denying assault
Two young men, 19 and 20 years old, with backgrounds in central Africa, were accused of assault. One of them had recently received permanent residency, and the other had been denied and had appealed. Neither had a criminal record. The crime took place late at night in Centreville, a town of fewer than 100,000 inhabitants. The two men had been identified by witnesses as having beaten a third person who was resting on a sofa. The alleged beating took place shortly after the two young men had faced a verbal attack from the plaintiff and his friend at a disco. They had eventually been protected by the police who removed the plaintiff from the scene. In pre-trial documents, this event was described in detail by police but attracted little attention in court. Two witnesses, who had a Swedish background, claimed that both young men had been beating the plaintiff who was described as very drunk at the time. The plaintiff who had also come to Sweden seeking asylum had been involved in another assault case a few months earlier.

Much focus during the trial was on the details of the beating, on who did what and how severe the beating was. While the events before the beating were mentioned, they were later dismissed as not relevant to the event.

The atmosphere was slightly stressed and "disorderly". Court routines and rituals were suddenly changed as some parts of the personal evaluation of the defendants supplied by the probation office were "squeezed in" between witness hearings since the planned schedule could not be kept. The prosecutor distinguished herself compared to prosecutors in many observed cases as she treated the defendants with what appeared to be obvious respect. She walked up to the defendants in the hallway before the trial presenting herself and exchanging a few friendly phrases. The judge appeared irritated when interacting with both the plaintiff and the defendants, but humoristic and prone to jokes when communicating with the witnesses. The trial became emotional when the judgment was passed in court. Offered a chance to ask questions the two young men objected to the guilty verdict and as they questioned the motive of court, they were quickly cut off by the judge.

Both defendants denied the accusation. No physical or technical evidence was found on the accused that proved the described event. It was stated in the judgment, that the witnesses were more trustworthy than the plaintiff who could not remember the assault, and therefore the event had happened the way the prosecutor described it. One of them received a suspended sentence with community service and the youngest, who was 19 at the time of trial, was sentenced to one month in prison. His young age, 18, at the time of the incident was mentioned in the judgment as a reason for only giving him a month in prison, motivated by the fact that he had not been found suitable for community service. There was no mentioning of being restrictive with a prison sentence when the defendant is below 21.

The making of familiarity and distance
As the five case descriptions above suggest, there has been a rather persistent pattern of difference between "immigrant" court cases and court cases where most parties have had Swedish background, throughout our project. This pattern has mostly presented itself as a "difference in atmosphere" where the "immigrant cases" have appeared strict, formal and sometimes aggressive, while the "Swedish cases" have often allowed for informality, jokes between professionals and participants and even communication with the audience. "Immigrant cases" have often appeared to be maintained...
through distance and formalities, while the other cases have been managed through a certain familiarity. Although the participants have often been strangers to the court when they have entered the room (except for a few “regulars”), it appeared as if offenders with a Swedish background became less so, while offenders with immigrant background — and even plaintiffs with such history — seemed to remain strangers throughout the trial. This pattern prevailed as we read the judgment documents related to the cases. Here, we describe different aspects of the trials that we have found to contribute to the development of distance and familiarity in court.

**Gangs, mafia, and other distancing concepts**

One phenomenon that contributes to the production of familiarity or unfamiliarity is the usage of concepts that either unite or distance defendants (or witnesses and plaintiffs) from the life world of the legal representatives, such as “gangs” or “mafia” to describe a group of young men. Since the mid-1990s there have been discussions in Swedish mass media about “gangs” as a menace to society and as expressions of a type of hyper-masculinity (Frosh, Phoenix and Pattman, 2002). In addition, the concept “ethnic gangs” has been used by the media and representatives for the authorities. In speech and written texts, the concepts “gangs”, “criminal gangs” and “mafia” have become connected to young men with an immigrant background, growing up in residential areas with a bad public reputation. In our study, we have found that concepts such as “gangs” and “mafia” are sometimes used by legal representatives too, even though there seems to be no real proof that the defendants are members of such organisations and networks.

These concepts are loaded with symbolic power and can be used continuously throughout a trial. Early on in case number three, during the prosecutor’s opening statement the word mafia was mentioned the first time. The prosecutor said that the two defendants had said “something about the Farawayland mafia” as they were beating the plaintiff. The term then re-appeared time and time again during the trial, used by both the prosecutor and the counsel for the aggrieved party. Although the witnesses testified to having been drunk and presented partly contradictory descriptions of the event also concerning to the existence of the mafia concept, the term was well imprinted in the storyline by the end of the day. The concept appeared five times in the judgment document indicating the importance ascribed to it by the court.

A similar repetition of a concept occurred in one of our studied trials not described above, where four boys with immigrant background, two as young as fifteen, were accused and sentenced for incitement to aggravated assault in a trial that lacked technical evidence and thus came to be decided on the grounds of who provided the most trustworthy version to the court. The term “gang” was established before the trial, in both media and police interrogations, and was used as a motive in the sentencing document as well. The immigrant boys were described as a “gang” having lured a group of boys with Swedish background into illegal action to receive protection. The existence of a gang was not proved, and it was consistently denied by the boys who insisted they were just all individuals who lived in the same area and sometimes played or hung around together after school. Despite their denial and the lack of evidence the concept was repeated through different stages of the judicial process and appeared more than 60 times in the sentencing document.

Interestingly, the same thing did not happen during our observations of groups of young men with a Swedish background. Even when there was a clear connection made to gang behaviour the court did not pick up this theme. At a point early in case number one, one of the defendants presented another defendant as some sort of leader. The following comes from the hearing when the prosecutor asked the defend-
Kent: No, but Benny is on the driver’s side and he was yelling at me, and I have a lot of respect for him. If he says so, you’d better quit.

Prosecutor: Okey, why do you have such respect for Benny?

Kent: Well, we have been in fights before, and he has had me up against the wall, and I do not have a chance against him.

Prosecutor: Is it Benny who is the boss of the gang?

Kent: Yes, you could say that.

Prosecutor: Okey, okey, so you have respect for him, so you stop. Then what happens?

Unlike in the cases with immigrant defendants, the concept “gang” was never mentioned again during the two-day trial. In her closing statement, the prosecutor, nevertheless, returned to the power of Benny, a young man with eighteen previous convictions, as “someone you listen to”, almost making it sound like his “control” over the group was a positive quality. It is likely that this group of friends were no more a gang than the alleged “gangs” and “mafia” above, but the selective usage of such concepts raises questions. The point is that while the gang or mafia concepts were introduced in all three examples mentioned here, these labelling concepts did not stick to the participants with an everyday life in the Swedish countryside, but more so to the actors with immigrant background, most of them residing in socially and economically marginalized residential areas on the outskirts of Swedish towns and cities.

Labelling people as “mafia” or “gang members” is also to define them as a menace to society. If repeated enough times, a concept can create a truth. The conceptual fixation and repetition contribute to a framing of the young men as “outsiders” and “dangerous strangers”, making them unable to find ways to defend and “un-gang” themselves within a persistent discourse. Such labelling can be seen as a production of “dangerous outsiders within”, people who have come from abroad and do not fit into the “Swedish normality” and who cannot be trusted in society. These labels also say that they are “not like us”, with “differences” that have their origins outside of Sweden. Avoiding the label, on the other hand, like in case one where opportunities to label were neglected, serves the opposite purpose. The non-labelled people become “familiar strangers”, remaining “like us”, “like Swedes”.

Other labels are not as potent and alienating as “gangs” or “mafia”, but may still serve derogative or othering purposes. For instance, in case four, the prosecutor called the defendants “our Riverlanders” and contrasted them to “other Riverlanders” in a mocking voice. Using possessive pronouns about other people and grouping them by national background and not calling them by their given names is not only a way to place them as different and distant to the majority in the Swedish courtroom but is also to “racialise” or subordinate on “ethnic” grounds. This ethnification is sometimes reinforced by Swedish witnesses describing the accused as “foreign” as in case number three, where both defendants had Swedish residency permits. Similar concepts, such as “our Swedes”, “other Swedes”, “Swedes” or “non-foreigners” have not been used to label participants with Swedish backgrounds.

Thus, concepts are powerful tools to create a friendly atmosphere of familiarity and recognition or a strict and cold setup built on unfamiliarity and difference.

**Trustworthy witnesses with Swedish background**

Another detail that has contributed to our experiences of differences in atmosphere between
“Swedish” and “immigrant” cases has been a pattern of positivity towards Swedish witnesses and trust in their stories. This positivity towards Swedish witnesses has been quite prominent in immigrant cases since it has deviated profoundly from the overall seriousness of the rest of the trial. In case number five, involving two men from a central African country and a plaintiff from a Middle Eastern country we wrote in observation notes:

The relationships between the witnesses [men with Swedish background] and the judge are friendly and positive. The relationship between the plaintiff [man with immigrant background] and the judge is less positive. Rather irritated (…) The judge is pedagogical and nice towards the witness. He blinks and nods while he tells the witness that “we will help each other”, after having described that there will be interpreters for both parties in the trial. (…) The judge smiles happily at the witness when the defence lawyer asks about the distance, and the witness estimates the distance by comparing his position to “he who sits there” while nodding his head towards the judge.

The judge and the witnesses understood each other to a point where they could smile, joke and express common ground such as the prospect of working together – “we will help each other” – indicating the potential for social ties. The small signs contribute to constructing a common ground, an “us”, and shared similarities. Such joking and common understanding has been uncommon when the witnesses have had an immigrant background. Positive relationships and feelings of similarity between people facilitate trust, as was also expressed in the judgment document that followed this trial. The two witnesses, in this case, were friends and testified to having consumed a fair amount of alcohol, but not being “blind-drunk”. Neither their friendship nor their alcohol consumption was addressed as a cause for concern in the judgment document. Instead, after having stated that the plaintiff’s testimony should be treated with care since he had been in a conflict with the defendants earlier, the court writes:

The prosecutor’s main evidence consists of Peter Petersson’s and Erik Svensson’s testimony. The two did not know Aazar or Okomo and Kafil. The District Court has understood the witnesses as being factual and restrained in their stories. Among other things, they have clearly said when they were uncertain about the details. There has been nothing that gives reason to distrust the information Peter Petersson and Erik Svensson have provided.

From an audience perspective, it could as well have been argued that the witnesses’ uncertainty was caused by alcohol consumption. However, their uncertainty is used as evidence of their trustworthiness. Similar situations were seen in case number three and in other trials where “Swedish background” witnesses testify in cases involving immigrant parties. Their alcohol consumption in relation to the incidents they witnessed has not been addressed as a reason for caution.

Also, other legal representatives in court contribute to the familiarity often felt in court when Swedish background witnesses perform. In case number three both prosecutor and counsel for the aggrieved party smiled and joked with the witnesses which made them seem equals, as part of the legal “in-group”.

Our interpretation that actors with Swedish backgrounds appear to meet a more generous and trusting court than many people with an immigrant background do is supported by research into other judicial fields. Schömer’s (2016) study of discrimination cases at the Swedish Labour court showed that the information supplied by immigrant background participants was regarded as less trustworthy than that
supplied by participants with a Swedish background.

**Laughing at or with makes all the difference – jokes in court**

Above we have addressed how different kinds of interactional alliances can develop in everyday court life. Subtle signs and signals, such as choice of concepts, smiles, gestures etcetera, load the courtroom context with elements of familiarity or strangeness. Another component in the production of familiarity and strangeness has been found in relation to the usage of humour. Jokes can be used to display both closeness and distance. There are various qualities of humour, jokes, and laughs, all with their specific and contextually bound meanings. Joking, or displaying sarcasm, at the expense of another person, that is “laughing at”, can be seen as a way to confront or degrade this person, thus creating distance and sometimes even a hostile environment (Ruch 2009). Meanwhile, laughing or smiling “with” someone can have binding and mending effects. In her work on humour as a tool to facilitate “social junction” in asymmetrical relationships in schools, Lund (2015:286) while citing Alexander (2006:201), argues that humour can “allay danger and create a sense of familiarity.”

We have observed “laughing at” turning into degrading sarcasm as the prosecutor in case number four, together with the two defence lawyers, made fun of the defendants. The following comes from observation notes:

In the hallway, on the way to lunch, I am passed by the prosecutor and the two defence lawyers. The prosecutor walks a step ahead of the other two. He looks over his shoulder and says:

- They are not the sharpest knives in the drawer.

Both defence lawyers laugh. All three turn around the corner and continue together to the staff section of the court.

It was clear that the Riverland defendants were a laughing stock to some of the legal representatives. The custody guards smiled from time to time, for instance when the court described the deeds and the prosecutor found their narrating of these deeds amusing, as reflected upon in observation notes:

A while later:

- Why did you need Boris’ help to count the bags of flour then? asks the prosecutor.

- He held the bag, and I counted and threw it in the bag.

The prosecutor seems to struggle to keep from laughing. The smile is big, and he puts his hand in front of his mouth.

It is not just the wit or action of the participants that can be “laughed at”. Their looks may be used to produce laughter too. During one trial, which is not one of our primary examples in this paper, that involved two men with Central African background, there was a group of people, including three defence lawyers, waiting in the corridor before the hearing. A young man with dark skin entered the building and started walking down the corridor. One of the lawyers proclaimed: “That’s my guy, I can tell by the colour!” This led to giggles in the whole group of people standing around watching the young man approaching. As it were, the lawyer was wrong. It was not his client, but his colleague’s, who smiled mischievously as the young man approached him instead of his joking colleague. The young man was not let in on the joke.

If “laughing at”, when laughing at all, has been the main pattern in “immigrant background” trials, “laughing with” has been the pattern in
several “Swedish background” court cases. This was observed during trial number one with four young men from the countryside:

The trial is marked by a peaceful, friendly and humorous atmosphere. Questions and answers are reasoned forward jointly between the court and the plaintiffs, and the court and the accused. This has been a regular observation during the trial, which has lasted three days. It also includes a personal appeal. The defendants are mentioned by their first names. Jokes are made, lawyers tell us all about speeches they have held while we are awaiting a decision about something. Lawyers pull jokes with the judge. And jokes are made between defendants and their lawyers.

The friendly and humorous atmosphere was also noticed during questioning when the judge asked one of the accused about his alcohol consumption, having received information that he drank alcohol at weekends:

Judge: Do you usually drink a lot? Do you get drunk?

Defendant: Not very very drunk, but just enough.

Judge: Do you drink beer, wine, spirits.

Defendant: I drink everything. Everything except whiskey.

When the accused said “I drink everything”, several of the male representatives in court laughed. In terms of genre, there is a bit of slapstick humour present. The statement “I drink everything!” is far from sophisticated. An image of the young men built up more and more during the trial that contained class, masculinity, low-skilled and motor-interested young men from rural areas, and it created a picture of a kind of provincial Swedishness.

A similar type of interaction took place in case number two, where there was a “joking, cozy atmosphere between the accused and the court representatives” (observation notes). The humouristic atmosphere tended to reach its peak while one of the offenders, a young man, was being interrogated and the defence lawyer asked what he had drunk:

Accused: Nine beers.

Lawyer: What kind of beer?

Accused: Don’t remember.

Lawyer: Light beer?

Accused: No, strong beer [uttered with surprise]!

Here, several of the legal representatives in the court smiled, and some put their hands over their mouths in order not to burst out in laughter. We see this example and the former one as including dimensions of gender, class, age and ethnicity construction. The voice and narrative of the accused young man represent something familiar and well-established in a Swedish context.

Based on our observations alone, it is perhaps an over-interpretation to argue for certain that these examples are not also matters of “laughing at”, at least to some extent. However, the totality of these trials with their overall cheerful and friendly atmosphere suggests much more reciprocal jokes and more of laughing “with” than “at”. In addition, the jokes during these trials did not appear to create distance like the jokes mentioned earlier, but rather rapprochement. Our interpretation is that this relatively pleasant atmosphere in both cases was built through familiarity and recognition where the accused settled comfortably in established Swedish nostal-
gia. The rural motorised male, called “raggare”, is a well-known character in Sweden since the 1950’s, having been integrated as a positive, almost comical, male figure in Swedish popular culture (cf. Bjurström 1990). This figure has travelled from a rebellious position to one of national belonging in contemporary history. Likewise, the Swedish, ritualised binge drinking at weekends, signalling a transition from work and formality to informality and relaxation, is a familiar practice that also contributes to national identification between actors with Swedish backgrounds. Together with the idea of a rural, motorised young man, the symbolic presence of alcohol adds to the familiarity. Thus, while there is a class dimension here pertaining to differences between the participants and established court members, there is a similarity with regard to ethnic and cultural belonging.

From a middle-class gaze perspective (cf. Skeggs 1997), both examples involve a kind of unsophisticated, yet familiar, taste for alcohol where (mostly) young men engage in unsophisticated binge drinking. Drinking this way is seen as typically Swedish, and thus something familiar and recognisable which provokes smiles and laughter, creating a change of atmosphere.

**Stories of improvable young male Swedes**

Another observed pattern relates to the idea that the Swedish background defendants have often been addressed as young men being able to improve if they get the right treatment from the medical profession – or their girlfriends. It has been common in our example cases, and in the rest of our empirical material that male defendants are said to have a neuropsychiatric diagnosis. Immigrant background defendants lack such diagnoses, or they are not mentioned. Similarly, girlfriends have been used as promises of improvement in Swedish background cases, but not in the others.

In case number one, a particular type of improvable young man appeared; a man that will turn out satisfactorily if his girlfriend steps in. The girlfriend, sitting in the audience, was asked by the defence lawyer to hold on to her boyfriend’s “ear”, a Swedish expression for keeping someone at short reins. Earlier during the trial, she had been acting as an unofficial prosecutor’s aid by helping the court to locate and contact one of the defendants who had not turned up in court. She seemed to have been granted a certain position in the interaction and was seen as trustworthy and orderly, which also spilled over on the otherwise unorderly boyfriend. In company with his trustworthy girlfriend, the defendant could be assumed to handle things better which was further consolidated in the judgment document where it was stated that the “girlfriend who has listened to the trial has confirmed Benny’s statements.”

Another matter that appeared in the same trial, as in other trials where defendants have had a Swedish background, was the mentioning of neuropsychiatric diagnoses as explanations for the assault, and for choosing a supportive rather than punitive approach.

John’s lawyer points at the investigation into ADHD (Attention deficit hyperactivity disorder) and that this diagnosis can make it difficult to become a proper and mature citizen. Such a person needs support. He suggests probation in combination with community service and that he gets another chance to improve. (Observation notes)

The court followed his recommendations when sentencing. Thus, these diagnoses may, to some extent, explain the crime and why it is difficult to be a person of good character, the opposite of a criminal. In that sense, the crime is both individualised and biologized. Also, the diagnosis can be used to the defendant’s advantage as exemplified in the judgment document that states:

He has no work and no training. He has been examined and then it has been settled that he has ADHD. Since he has ADHD, he
is guaranteed some sort of activity/occupation within two weeks. His girlfriend, who lives in Belgium, is returning to Sweden soon. When he is together with her, he becomes more structured.

Here the two mitigating discourses unite; the ADHD which is controllable and makes the person eligible to special treatment and the girlfriend who keeps him calm and manageable. While references to neuropsychiatric diagnoses have been plentiful in our Swedish background trials, it has not appeared in the other cases. These diagnoses have been fully established in Sweden since the 1990’s and are therefore familiar and a plausible explanation to why some people do not act according to norms. Similarly, references to trustworthy women who may be able to control the unorderly masculinity of their boyfriends are absent in the immigrant background material.

Individual “Swedes” and collective “others” – stories in documents

Similar patterns of familiarisation vs estrangement as we have thus far described are found in the grounds for decision in the sentencing documents related to the cases. In the example cases, defendants with Swedish backgrounds are described in individualised, detailed and personal ways, while immigrants are described as a more homogeneous category. Although this theme will be more thoroughly explored in future papers, it deserves a mentioning here as it contributes to the understanding of how familiarity and strangeness can be built up in the court system both during interaction and in court documents. Needless to say, it is in the court documents that the court narrates the case and decides what fits and does not fit into the story of the crime and subsequent punishment.

20-year-old Kent, in case one, with an earlier conviction for assault and unlawful threat, was sentenced to probation combined with community service following his aggravated assault, theft, attempted theft and vandalism. He had failed to appear at the probation office for a personal evaluation before the court case. The sentencing document reads:

When questioned about his personal situation, Kent has stated the following. He is now studying to improve his grades so that he can apply for further education. At the moment he is studying English, social studies and IT. At the moment, he does not know what he is studying to become. He lives with his parents and receives student financial aid. He will study for four semesters. (...) He has never tried narcotics. When he drinks alcohol, he usually drinks beer or spirits. He has never suffered from memory lapses after drinking. He knows what probation and community service is. If it becomes necessary, he is willing to participate in community service. The assault Kent inflicted on Bengt has a penal value of eight to ten months and the assault on James, prison for one month. Besides the assaults, Kent has been found guilty of vandalism, theft and attempted theft. These offences should result in imprisonment. Kent is 20 years of age which means that special reasons are called for in order to sentence him to prison, and at sentencing, his youth shall be put under special consideration. Kent appears to have matured and reached the conclusion that he cannot continue as before. A prison sentence should ruin Kent’s plans for an orderly life, and the risk of imprisonment leading to criminal habits and values would be great. Although Kent already has a contact person he is still in need of advice and support not to fall back into crime which means the sentence should be set to probation. Probation shall be combined with community service for 130 hours which means that the alternative punishment shall be set to 5 months. (Our italics)

The court carefully screened Kent’s history and highlighted the things that speak against a
prison sentence that would be harmful to Kent. It is not only his age that speaks for an alternative to prison but also the fact that he has matured. A prison sentence, the court claimed, would ruin his plans and there would be a risk that it leads to “criminal habits and values”. Similar detailed and reasoning arguments are written in relation to most of the other defendants with Swedish background in case number one, and also in case number two. For example, another defendant described at length is addressed as “living together with a woman who goes to school”. The passage includes reassurances about the defendant such as that he “appears to have changed his lifestyle since he moved in with his girlfriend”. Noteworthy, too, is the court’s trust in the defendant’s girlfriend which was seen both during courtroom interaction when both the judge and the defence turned to her for assurance that the defendant would behave.

Thus, common to these “Swedish background” cases were detailed, balanced and sympathetic accounts describing the backgrounds of the defendants and potential outcomes of penalties. The information provided for the “immigrant cases” differed. Tareq, in “immigrant background” case 3, was 21 years old at the time of the crime. He was tried for aggravated assault like Kent above and sentenced to one year and six months in prison. Unlike several of the “Swedish background” defendants above, he obediently went to see the probation office when they called for him. The motivation for the penalty in the sentencing document is strict and lacks the reasoning approach that can be found in most of the motivations related to the Swedish background defendants. The court wrote:

Tareq is 22 years old. He does not have a criminal record. Through information obtained from the probation office the following, among other things, appears under the heading “assessment for sentencing”. Tareq has accommodation and financial security. There have been no risk factors that could be seen to increase or maintain the risk of repeated offences. There is no need for monitoring and measures within the framework of a probation sanction are deemed not to exist.

The court’s judgment

Tareq is convicted of aggravated assault. The penalty for this offence is slightly higher than the minimum sentence for aggravated assault. The offence is such that it strongly suggests that sanction shall be determined to prison. The high penalty value combined with the offence’s high severity rules out a non-custodial penalty. The penalty will be determined to prison and the penal value should, on the grounds that the offence was a serious attack on Rafi’s life, health and personal security, be determined to one year and six months in prison.

The text on Tareq displays a lack of reasoning, and it does not account for different circumstances and actions taken by the defendant before the trial, nor for needs and extenuating circumstances when a prison sentence is considered. Instead, the text from the probation office is used and it states that up until the crime Tareq had not had any trouble with the law and that there were no reasons for concern about his social or economic situation. He was “clean”. Paradoxically, it seems that his “cleanliness” may be a reason to why there has been nothing for him to mature and develop positively from as there were in the Swedish background cases. Also, there was no mentioning of Tareq’s studies or job opportunities and nothing about a potentially supportive girlfriend who obviously existed as she was observed in court while being told off by the judge and prosecutor for speaking in Tareq’s defence without permission.

The difference in style between the descriptions of Swedish background defendants and immigrant background defendants became all the more obvious when looking at the descrip-
tion of Karim, Tareq’s 21-year-old friend who was also sentenced to one and a half years in prison. The description of Karim in the sentencing document was, actually, identical to that of Tareq. The only difference was the name of the defendant. Even the cited extract from the probation office was an exact copy. It seems that to both the court and the probation office Tareq and his friend did not have enough personal backgrounds, needs, and future plans to deserve individual stories in the document. Similarly, in case number 4, with two men from “Riverland”, both were lumped together in one penalty argument. The court needed only four sentences to motivate the penalty of four and six months in prison respectively, compared to some of the Swedish background defendants who were being granted a full page of detailed reasoning back and forth. There was no reflection over the situation of the accused or potential risks involved. The short paragraph was followed by a new section presenting the court’s decision to expel them from Sweden. Again, in case number five, there was little discussion about the defendants’ backgrounds, families, school- and job aspirations or dreams for the future.

All defendants discussed so far may indeed have been guilty, and as long as imprisonment is an available option in the Swedish justice system, there will be occasions where a prison sentence may appear to be the only choice even for young defendants. Thus, we are not disputing that there may be individual circumstances that make it hard to compare cases. Also, no two cases are exactly alike. If they are the same when it comes to the type of crime (such as assault), they may differ when it comes to the age of the defendants or in the rhetorical ability of the defendants. It is not possible to say that the handling or penalty arguments of one individual case is wrong and this is not our intention in this article. However, there is a pattern in these five cases that has been all too prevalent to ignore when reading the sentences. The defendants with Swedish background have been discussed with much more sensitivity and reservations than have defendants with an immigrant background. Defendants with a Swedish background have been treated individually even when they share the same case, which is not the case for the defendants with immigrant background and they seem to have been granted more benefit of doubt when it comes to justifying the proper penalty than the latter group. Accordingly or not, none of the eight defendants with Swedish backgrounds were sentenced to prison, regardless of age and the fact that many of them had quite extensive criminal records. Meanwhile, of six defendants with an immigrant background, five ended up in prison, and only two of them had any previous offences.

Conclusion:
We have presented several examples of court case interaction and extracts from sentencing documents suggesting that people with immigrant backgrounds risk being unfavourably treated and even to be punished harder in Swedish district courtrooms. We cannot generalise these findings to establish the exact likelihood that this will happen to any person with an immigrant background in any court. Our findings are context dependent and situated in their particular trials, framed by a number of circumstances, such as the location of the district court, the composition of the group of legal representatives or the mood of all actors that day. However, the findings are also connected to ideas – social and cultural understandings – that extend well beyond the courtroom and court documents that make these five cases interesting in a broader sense.

We have argued that the interaction in court where parties have immigrant backgrounds have been framed by ideas and notions that create distance, such as the repetitive use of estranging concepts, the urge to laugh “at” rather than “with”, or to ascribe more trustworthiness to witnesses with a Swedish background than to both plaintiffs and defendants with immigrant back-
ground. Court cases with Swedish background, on the other hand, have commonly been framed by ideas and notions that create familiarity, such as the regular Swedish weekend binge drinking or the nostalgia emanating from an old Swedish tradition among rural young men with interest in motor vehicles, driving and drinking. They have also been framed by joint laughter, trust in girlfriends of defendants with Swedish backgrounds and well known neuropsychiatric diagnoses. When added together these different framings have left us with two rather distinct trial characters; one where the atmosphere and arguments appear familiar, friendly and understanding and another where the atmosphere is formal, sometimes harsh and prone to distance making. In these formal and harsh trials, it becomes difficult to develop positive relationships and feelings of familiarity and acknowledgement. Very limited social interconnectedness can grow in such an environment, while a less formal trial that allows glimpses of informality, common jokes, and chats with the girlfriends in the audience, give rise to spaces for interconnectedness and mutual understanding.

An important aspect of the development of familiarity or distance in court is that these qualities evolve through a gradual process rather than exist as a predetermined state. In line with Collins (2004) work on “interaction ritual chains”, we suggest that the themes we have addressed in this article are interrelated, as one quality (in the trial) gives rise to another. Laughing or smiling in a friendly manner is contagious and may lead to more laughter, as well as to feelings of recognition and trustworthiness, which in turn is related to a positive relationship being built, for instance, between legal representatives and defendants, and even the defendants’ girlfriends. Correspondingly, legal representatives laughing “at” or viewing defendants as members of criminal gangs or mafia, may provoke laughing “at” and stereotyping which will lead to further differentiation and a view of defendants with immigrant backgrounds as untrustworthy. In turn, stereotyped defendants or defendants being laughed “at” may become agitated or resort to silence creating an inarticulated non-familiar atmosphere (cf. Elsrud et al. 2017; Philippopoulos-Mihalapoulos 2015).

We suggest that people with immigrant backgrounds run the risk of being seen as untrustworthy and being interpreted and judged less sympathetically than Swedish background participants because of their ascribed difference to Swedish norms. Such disfavouring does not express itself through obvious and startling events but rather builds up insidiously in a step-by-step process engineered by ideas about their strangeness and difference. While earlier quantitative research has claimed that certain immigrants are disfavoured at all different stages of the legal process (Diesen et al. 2005, see also Brå 2008), our findings show that, at least at the court stage of the judicial process, disfavouring emanates from a web of social interaction dynamics and social atmosphere in the courtroom.

Although, on a few occasions, we have observed legal representatives who openly racialize or belittle immigrant background participants, we have found that many of the processes constructing either familiarity or strangeness and distance, thus give rise to disfavouring, do not stem from a conscious plan on behalf of the court system or the legal representatives. Rather, our interpretation is that it is the social and cultural frames used to encode and decode everyday court life that decide what is familiar and what is not, what is "us" and what is "them", and what is Swedish and what is not. Those frames will automatically interpret well-known and familiar stories, acts, and experiences as liable and trustworthy, while those that seem new, unexpected and unfamiliar produce hesitation and distrust.

References

Immigrant mafia or local lads on the binge?


