

# Me and my custodial sentence

## A case study on categorization work of young defendants

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Trials are touchstones, which highlight rationalities of narrative identity construction. This study seeks to explore these rationalities from the perspective of young defendants. Predicated on narrative interviews before and after trials as well as on participant observations of the respective trials, we reconstruct identity-related categorizations of young defendants. Based on “Membership Categorization Analysis”, our focus is on the young defendants’ narrative depiction of their biographical criminal history and their self-presentation as subjects that have been (un)fairly treated and sentenced by penal professionals. Empirically, we use a case study to elaborate on the intricate challenge of identity construction when a severe punishment is imminent. Our results indicate a strategic form of narration, which mirrors the complexities and uncertainties of a trial.

**Keywords:** Membership Categorization Analysis, defendants, trials, youth crime

### Introduction

Which groups an individual belongs to is an important question for his or her identity (Antaki & Widdicombe, 1998). There are moments, however, in which membership of one group or another is of particular relevance, such as when someone is criminally charged and serious consequences for the person may result if he or she is found guilty. Given that legal and penal communication follows specific rules (Atkinson & Drew, 1979; Brooks & Gewirtz, 1996; Travers & Manzo, 1997), the defendant has to engage in very specific interactions with judges, prosecutors, defense lawyers and other professionals that will decide on his or her future. Based on present research findings, it is evident that, in trials, not only facts are pivotal but an “important part of the business in the courtroom consists of trying to

convince others of the truth or plausibility of one's version of the events" (Komter, 2013, p. 628). Through persuasive efforts, the credibility of narratives is determined, evidence is weighed up, conclusions are drawn, a decision is justified and, finally, a person is assigned to the group of "offenders" – or not. In this legal process, "competing narratives react to each other and they are, above all, influenced by the judge, who can ask questions and direct the argumentation of the parties of the case" (Arnauld & Martini, 2015, p. 357).

Numerous studies elucidate the interpersonal interaction that takes place in a trial (for an overview, see Atkinson & Drew, 1979; Burns, 2005; Ewick & Silbey, 1995, pp. 206–11; Komter, 2013; Polletta et al., 2011, pp. 114–18). Our study takes a different approach by focusing on trials "from below", i.e. from the perspective of defendants. We foreground the challenges they are facing when caught in the legal system, a system that has its own "complete set of features for one engaging in an interaction" (Sacks, 1997, p. 44). For people who are not professional and experienced operators of the features, the system is likely to be obscure and hardly comprehensible in its details.<sup>1</sup> Nevertheless, defendants have to play a part in the system. If they are striving to achieve a favorable sentence, they have to engage in strategic forms of narration. Against this background, the focus of this paper is to explore how young defendants narrate themselves and their (possible) offenses in the context of a trial and pending severe punishment.

## Narrative identities in legal contexts

Our research focus requires conceptual explanations. We deem three aspects crucial to clarifying our approach to our data.

Firstly, when we speak of *strategic* forms of narration, we do not mean an intentionalist or cognitive understanding of narratives. Instead, we draw on strategies rooted in performative, narrative constructions of identity (Heritage, 1990/1991; Sandberg, 2016, p. 155). Referring to institutionally contextualized narratives, Polletta et al. (2011, p. 115) state that "personnel need a certain kind of story but need it to be the client's story. The story must be at once conventional and authentic". This applies to legal communication; the "strategic use of narrative is nowhere more developed" (Ewick & Silbey, 1995, p. 209): a perpetrator who *truly* regrets his or her crimes can count on clemency, and so, on a regular basis, perpetrators tell the story of "moral redemption after a fall" (Presser, 2010, p. 433). An offender pleading

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1. Numerous studies support the finding that young defendants do not fully understand the implications and formal arrangements of a trial (e.g. Butler, 2011; Hazel et al., 2002; Rajack-Talley et al., 2005; Redding-Fuller, 2004).

guilty and showing remorse has become a “better” person. Consequently, a judge may deem it unnecessary to punish him or her. Therefore – and despite institutional mistrust of defendants’ accounts (Sandberg, 2010) – a hearing calls for authenticity. A defendant must employ strategies of self-presentation which are unlikely to be unmasked as mere arbitrary strategies of self-presentation during a trial: he or she is to deliver a plausible narrative that is coherent and appears tenable even when called into question by a judge or prosecutor. In this “narrative competition in law” (Weisberg, 1996, p. 71), a defendant is required to provide credible information on the incident in question *and* on a “complete” person, namely him- or herself. Therefore, we conceive of narrative strategies as prime elements of “performative constructions of identity”. We hereby follow Andersson (2008, p. 144), who “accents the constant need for negotiations and re-negotiations” and the fact that “identity must be seen as a process, and not a product.” From a narrative perspective, identity is not a given object or somebody’s reflexive possession, but an “active creation” (Sandberg & Ugelvik, 2016, p. 130). It represents “emergent processes” (Bamberg, 2004, p. 367) with a focus on “what the participants make currently relevant in the interactive setting” (Bamberg, 2004, p. 368).

Secondly, our focus on narrative identity relates to *specific tenets of a trial* (and the associated reason why we chose young defendants): in this very context, not only offenses but also individual personalities are highlighted and assessed (Muncie, 2015). On the one hand, *crimes* are the reason for and the central topic of criminal proceedings. The circumstances of a (presumable) offense must be explained, contested narratives must be evaluated and, possibly, punishments will be issued (e.g. Ashworth & Roberts, 2012; Newburn, 2013, pp. 651–74). On the other hand, for the response to the crime to be legally appropriate for young offenders, most jurisdictions have “individually tailored rehabilitation measures” that are intended to prevent future offenses. Such measures are developed by examining the history of the person in question and by ensuring the youth’s “general welfare” (Muncie, 2015, p. 266). Thus, *the crime* (i.e. a presumed offense) and *the offender* (i.e. the defendant’s biography) are two different and pivotal focuses of trials. In the case of an offender who is found guilty, an emphasis on one of the two sides (offense/offender) by the court may well tip the scales in the direction of imprisonment or of an alternative, milder sanction (Ashworth & Roberts, 2012, p. 887).

Thirdly, *categories* are of crucial importance to understanding narrative legal interactions. “Categories” does not refer to statutory definitions but to cultural, commonsensical typifications of offenders, victims, and others in terms of how they are expected to behave. Establishing these roles by relying on background expectancies as “sets of taken-for-granted ideas” (Scott & Lyman, 1968, p. 53) is part and parcel of trials. Judges, jurors and prosecutors evaluate individual narratives by using information they deem relevant in order to establish which account

of an incident is trustworthy and true (and which is not). They draw on aspects of accounts such as “internal consistency, narrative coherence, the reliance on ‘hard’ or physical evidence and perhaps most importantly (...) the stability of the story over time” (Scheppelle, 1994, p. 93). In their evaluation of the formal structure and content of accounts, legal professionals consolidate their judgments by relying on culturally pervasive knowledge, i.e. “social standards of normality and plausibility” (Arnauld & Martini 2015, p. 359), which are supposed to account for how people “usually” behave. In the case of offenses, this is connected to typifications of “criminal behavior”: “an account actually given makes more or less sense insofar as it appears more or less similar to the narrative typification” (Jackson, 1996, p. 32) of the behavior of “offenders”. *Offenses are expected to be committed by offenders who act like offenders*. Thus, a typification of incidents (“offense”) is culturally associated with a typified category of people (“offenders”) and their category-related activities (“acting like offenders”) (Watson, 1976).

Below, we will draw on this interconnection in order to explore the interactional construction of identity by young offenders in the context of their trial. We can do so because the abovementioned categories and their connection to activities are culturally pervasive beyond the context of law (Watson, 1997). In their evaluation of narrative accounts, judges rely on commonsensical knowledge that is just as available to them as it is to defendants, witnesses, victims or, say, researchers.

## Methods and sample

### Analyzing membership categories

Referring to the significance of typified commonsensical knowledge, we argue that narrative competitions in the context of court hearings are mainly a question of membership categorization. If a court deems an individual guilty and deserving of, say, a prison term, then it categorizes the accused as “a hardened criminal” deserving of harsh punishment. Aggravating or mitigating factors may contribute to or attenuate this categorization, and a trial comprises much more than just the assignment of categories. Yet at the core of a conviction is the imputation of categories with their associated sets of attributes, activities and moral properties. Categories represent parameters of activities and blameworthiness without which a sentence could not be legitimized (or delegitimized).

In his “Lectures on Conversation”, Harvey Sacks (1995) developed a tool that can be used empirically to analyze legal and extra-legal categorizations. A starting point was his seminal analysis of the sentence “The baby cried. The mommy picked it up”, which he used to define pivotal concepts of what became “Membership

Categorization Analysis" (MCA). A detailed discussion of MCA is not within the scope of this paper (on the methodological implications of MCA, see for example Lepper, 2000; Schegloff, 2007; Silverman, 1998; Stokoe, 2012). We will also not elaborate on recent developments in MCA and its links to conversation analysis (CA). Instead, our approach regards MCA as a methodological tool without constitutive grounding in a CA framework. MCA and CA may well be utilized in a joint research design, but, beyond this, MCA possesses "analytic flexibility"; it offers "potential relevance to any discipline interested in aspects of identity and social knowledge" (Fitzgerald, 2012, p. 307).

We follow Fitzgerald's notion that MCA can provide an "ethnomethodologically thick description of a single case in which the layered depth and texture of members' category work" (Fitzgerald, 2012, p. 309) can be explored. In this regard, we aim for a detailed analysis of a single case in order to reveal basic principles of the narrative establishment of identity in the context of a looming severe punishment. In the center of the respective narrative and legal contention lies the category "offender" and its possible application to a defendant.

MCA is well established as "a powerful apparatus for conducting sociological analyses of interaction" (Housley & Fitzgerald, 2002, p. 59); we can therefore restrict our methodological explanations to some specific references. According to Sacks, a category does not stand for itself but relates to other categories and to rules of application ("Membership Categorization Device"; MCD). One facet of a device is activities and attributes that are typically bound to a category. For instance, "mother" relates to "child" (or "father", or "woman") – without the latter, the category "mother" would not make sense or it would sound as if something were missing. The category "mother" conveys associated characteristics and actions because mothers have children, are caring or provide care. In the same vein, "offenders" (relating, for instance, to "victims" and "witnesses") are dangerous, they break rules, etc. A membership category provides a broad spectrum of connotations referring to categorized persons; in other words, it carries with it "things about them" (Sacks, 1995, vol. I, p. 238) that let us "understand" who they "really" are. Vice versa, if we learn that somebody is doing things that are usually done by, say, mothers (like caring for a baby) or by offenders (like violating laws) then we "know" that the person is a mother, an offender or whatever membership category suits the respective "category-bound activity" (Sacks, 1995, vol. I, p. 241).

This also applies to the penologically pivotal display of motives. Within MCA, motives are not reasons for action but "constituent features of the description of deeds and of accounts 'surrounding' those descriptions" (Watson, 1997, p. 90). Without a "proper" motive, the application of the category "offender" and the corresponding allocation of blame is difficult to establish. Therefore, a great deal of time and effort in criminal investigations is dedicated to ascribing motives to deeds

and persons, and the same kind of motive work takes place beyond the context of law. Like categories and category-bound activities, vocabularies of motive are culturally pervasive. They are “part and parcel of the many ways in which society members (...) articulate and apply the logic of moral order” (Watson, 1997, p. 91).

Drawing on these principles, “our aim should be to try to understand when and how members do descriptions, seeking thereby to describe the apparatus through which members’ descriptions are properly produced” (Silverman, 1998, p. 77). Yet the term “apparatus” may be misleading. A category does not exhibit “a thing-like quality, lying behind, pre-existing their use in particular instances of membership categorization” (Hester & Eglin, 1997, p. 15). Instead, categories are negotiated in and bound to specific contexts of interaction. They exist because people are doing categorization work. Categories are thus “collected’ with others in the course of their being used. In turn, then, this means that the ‘collection’ to which a category belongs (for this occasion) is constituted through its use in a particular context” (Hester & Eglin, 1997, p. 21). This paves the way for an analysis of the strategic and rule-oriented self-presentation of defendants in the context of their trial as “a particular task at hand” (Jayyusi, 1984, p. 62).

## Data

In order to ensure that we spoke to defendants to whose construction of identity the trial and its outcome were relevant, we chose young defendants who were facing conviction and youth custody, i.e. prison. Whether or not they did ultimately receive a custodial sentence made no difference, as the main criterion was the possibility of imprisonment.

We selected defendants irrespective of the type of crime of which they were accused. In addition to a possibly serious conviction, the deciding factor was that they were being prosecuted in accordance with the German Youth Court Act. The German Youth Court Act applies to crimes committed by youths (between the ages of 14 and 17) as well as, in most cases, by young adults (between the ages of 18 and 20 at the time of the crime). We carried out interviews with 15 male defendants.<sup>2</sup> Each of them had a hearing in the near future and all had a long history of involvement in crime, with multiple run-ins with law enforcement agencies.

We conducted intensive individual case studies with the defendants. The three specific stages in our methodological approach were as follows:

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2. We interviewed 15 persons because our resources were limited, and after 15 extensive case studies, we had the impression that we had compiled a sufficient basis for comparisons that made it possible to reconstruct the main relevant patterns of categorization. We chose male defendants because the majority of individuals accused of severe crimes are male.

- An initial narrative interview before the main hearing explored the defendant's background and criminal history from the perspective of the defendant. We also asked about previous contact with social institutions and law enforcement, the upcoming hearing and family.
- We then conducted participatory observation of the defendant's main hearing. The main purpose of this was to reconstruct the interaction between professionals and the defendant. As audio recordings are not permitted in court, we drew up extensive reports.
- A second narrative interview after the hearing served to explore the defendant's account of the judgment, the hearing, and the professionals involved. Just like the first interview, we recorded and transcribed the second in its entirety.

We carried out the interviews a few days or weeks before and then after the hearing. As we conceive interviews “as a site of talk-in-interaction” (Schegloff, 2007, p. 464), we were careful not to impose pre-defined categories, but instead encouraged free narrations (“Please tell me how you came to be where you are now”; for offenders in penal or social work institutions). When the story stagnated, we asked questions and/or mentioned a topic that had not yet been dealt with. Despite this reticence of the interviewer, the interviews were social situations confronting our interlocutors with the expectation that they provide stories relating to their history, their (possible) offenses and their trial. The interviews were not “natural” conversations, but all talk was recipient-designed in the sense that, prior to the interview, others or we had informed the interviewee that we were researchers interested in subjective experiences of trials and verdicts.

We coded all interviews after transcription. Relevant passages were then analyzed in detail, including using MCA. Detailed analysis focused on membership categories and the connotations and activities associated with them.

## Analyses

In the following section, we first address the construction of identity when faced with a possible “harsh” sentence (4.1). We then address the interpretation of the sentence (4.2). Of the 15 interviewees, we select one in order to describe central narratives. We have consciously omitted individual details about the offenses and sentences to ensure anonymity.

## Me and my looming punishment

Most defendants recounted long-term criminal careers and problems that began early in life. Often, despite their remorse for the crimes they had committed, they reported slipping into criminality almost automatically, a process for which the person concerned bears little responsibility.

A divergent case makes the prevailing biographical narrative clear. We chose it because the person affected is significantly different from those in the other cases in the depiction of his biography. It is precisely this deviation that demonstrates the predominant expectations surrounding narrations in court, and how these are reflected in the self-presentation of defendants. We call the youth “KL”. At the time of the interview, he was a minor and had participated in various violent offenses, including the use of weapons.

The following excerpt is from the first interview. The pending hearing was an appeal against a verdict that KL and his defense lawyer deemed too harsh. The criminal charge was for various serious crimes committed by a group of young people. KL did not deny his involvement in the crimes, but he denied that he was the main perpetrator.

Before the hearing, KL resided in a social work institution for several months. At the beginning of the first interview, the interviewer asked him to describe his biography with regard to his current housing in the institution.

- 1 I: ich würd einfach mal so wissen, sag mal ob du mir so erzählst, wie es eigentlich  
 2 gekommen ist, dass du jetzt hier bist. Also, du kannst ruich-  
 3 KL: Ja.  
 4 I: ganz von Anfang an erzählen. Einfach so en Biografie ma en-  
 5 KL: Ja.  
 6 I: bisschen und dass du da mal erzählst.  
 7 KL: Also, ich war so zu Haus mit meinen Freunden. Wir warn eigentlich jeden Tag  
 8 draußen.  
 9 I: Mhm.  
 10 KL: Und wir ham nie Scheiße gemacht so. Also wirklich seltenst (.) ham immer Fußball  
 11 gespielt, warn im Fitnessstudio tagtäglich eigentlich, also meistens so und dann abends  
 12 ab und zu in die Shishabar sind wir gegangen so mit mehreren (..) und dann ham wir nach  
 13 ‘ner Zeit war- Ein Freund von uns, der hat ein kennengelernt, der war fünfzehn, zu dem  
 14 Zeitpunkt und der wollte immer so- Der hatte nie Geld oder er wollte schnelles Geld so  
 15 (..). Wir ham uns dann gesagt, weil wir warn eigentlich- Wir hatten immer unser Geld so.  
 16 Unsere Eltern- Wir kamen aus ‘nem guten Elternhaus und so was. Da war jetzt nicht das  
 17 Problem (..). Und der hat dann gesagt: Wie wär’s wenn wir eine- Also, kam auf die Idee  
 18 Scheiße zu baun (..). Und dann erstmal so Hotelzimmer (..) ist er durchs Fenster rein  
 19 geklettert und wir standen nur am Rand und so ham geguckt, ob jemand kommt. Also,  
 20 nicht groß we- also jetzt nicht wirklich für viel gemacht so und dann hab ich trotzdem  
 21 das Geld dafür bekommen (..).



22 I: Mhm.

23 KL: Ham uns gedacht: Okay, warum nicht. Wir machen nich wirklich was und wir stehn

24 Tisch Arbeit weg und so (..) ((Zungenschnalzen)) dann ist das immer weiter ist das weiter

25 äh also h- hoch gegangen so wurd immer (.) schwerer. (*Interview 1*)

1 I: I would just like to know, just say if you can tell me how it actually

2 came about that you are here now. So, you can just-

3 KL: Yes.

4 I: tell me from the very beginning. Just like a biography a-

5 KL: Yes.

6 I: bit and if you would talk about that.

7 KL: Well, I was at home like with my friends. Actually, we were outside

8 every day.

9 I: Uh-huh.

10 KL: And we never fucked around. Well, hardly ever (.) we always played football,

11 were in the gym every day actually, well mostly and then in the evening

12 from time to time went to the hookah bar like with several others (..) and then we after

13 some time was- A friend of ours, he got to know someone, who was fifteen at the

14 time and he wanted always like- He never had money or he wanted fast money like

15 (..). We said to ourselves, because we were actually- We always had our money like.

16 Our parents- We were from a good home and all that. That wasn't the

17 problem (..). And he then told us: What about if we- Well, had the idea

18 to fuck around (..). And then just first like a hotel room (..) he climbed through the window

19 and we just stood by and like watched if someone was coming. Well,

20 not much- well now not really done much like and then I still

21 got the money for that (..)

22 I: Uh-huh.

23 KL: Thought: Okay, why not. We're not really doing anything and we stay

24 table work away and so (..) ((click of the tongue)) then this went further this ran further

25 er so g- got more and more (..) serious. (*Interview 1*)<sup>3</sup>

Initially, the interviewer refers to the institution where KL is residing. Since it is an institution specialized in the rehabilitation of young offenders, KL responds by giving an account of the place and the associated category of an (alleged) offender. He

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3. We used the following transcription symbols:

(.) Pause (1 second)

(..) Pause (2 seconds)

(...) Pause (3 seconds)

[*text*] Commentary regarding voice quality; ensuing italics indicate duration

/text\ Overlap of speakers (start and end)

- Abruption

(text) Unclear word

(( )) Non-verbal feature

invokes the place-category “home” (line 7) which he quickly repairs to “outside”. The interviewer did not intervene, but the interviewee self-repaired. Often, categories of place are associated with memberships and activities (Lee, 1984; Lepper, 2000, p. 29), and this applies here. “Home” cannot be a suitable category to explain KL’s crimes because it is associated – culturally and later by KL himself (lines 16–17) – with membership of the category “family”. Yet the crimes in question did not take place at home, but, for instance, in a hotel (line 18), so “home” cannot be an appropriate place category for KL’s activity as a suspect. The ensuing category of place (“outside”; line 7) thus replaces “home”.

Even though KL partially admits to having “fucked around” “hardly ever” (line 10), he does not categorize his friends (and himself) as troublemakers or delinquents. Instead, KL depicts them as “regular youths” doing youthful things like playing football, being in a gym, and going to a hookah bar. These activities are bound to the category “regular youth”, not “offender”.

So far, KL’s narration provides an “orientation” for the listener (or interviewer) as he marks and connects “*person, place, time, and behavioral situation*” (Labov & Waletzky, 1967, p. 32). He connects himself to his friends (persons), they do youthful things (behavior) outside (place) on a regular basis (time). What is missing is an account of the offenses in question. They come into play when KL complicates his story by introducing a new actor (“someone”; line 13). An analysis of this introduction is telling as to KL’s handling of his possible accountability for the offenses of which he is accused. Identity-related narratives imply demarcations of social boundaries “so that individual identities and group belongings become visible” (Bamberg, 2012, p. 105). In the case of “someone”, a remarkable social distance is depicted, as it was neither KL nor his group of friends who initially became acquainted with him. Instead, it was only a friend of “ours” (line 13) who got to know the “someone”. This “someone” is not only an outsider of the group, but he is also the first person in the narration who is associated with a motive – a motive that is culturally aligned with criminality: he wanted “fast money” (line 14). The age category (“fifteen”; line 13) is unusual in this context. It stands out as a relatively specific piece of information.<sup>4</sup> Yet, built into the textual context, the narrative relevance of “money” is unequivocal. It delivers a motive for “someone’s” criminality and it deepens the social distance between “someone” and the group of friends, including KL, because the latter are categorized as coming from a “good home”. This “good home” provides youths with sufficient allowances (“We always had our money”; line 15), so there is no need on their side to get “fast money” – and thus no financial motive for committing offenses.

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4. Later in the interview, KL reveals its importance: KL is 16 years old, and the judge connects this age difference to greater culpability compared to the outsider.

“Someone” is different. He needs money and he wants to get it quickly – i.e. without “decent” work or by any other legal means. A development sets in here towards the commission of evermore severe crimes. The narrative and agentive explanation of this change is “someone’s” motive and his influence on the group of friends. No need or willingness on their side to commit offenses is recounted, whereas the outsider of the group transforms his motive into action. He “had the idea to fuck around” (lines 17–18), and – immediately and without any information on why and how the group of friends acted – he breaks into a hotel room.

Over the narrated period, the group becomes deviant. KL and his friends “stood by and like watched if someone was coming” (line 19). Therefore, KL admits to having participated in a crime, but despite being complicit in the burglary, he evaluates his and his friends’ blameworthiness as less relevant than the outsider’s blameworthiness: what the group of friends did was “not much” (line 20) and they “just” (line 19) stood by. Since membership categories are activity-bound and change their interactional meaning with the actions ascribed to them (Leudar et al., 2004), the group indeed becomes deviant. Yet they still are not depicted as greedy criminals, even though a motivation for the commission of crime has been narratively transferred from the outsider to the group: to get money from crime without great effort.

The coda of the story (lines 24–25) completes this temporal and “criminogenic” passage. KL does not provide any further explanation of why the group persisted in committing offenses. His criminal career “ran further” (line 24) and “got more and more (.) serious” (line 25). If something runs “further”, then no active effort is needed to keep it going, it just happens. The meaning of the phrase “stay table work away” (lines 23–24) is unclear; yet the coda enables KL to connect the initial enticement of following the outsider with his own nascent criminal career by invoking an automatism of something that just “ran further”. This automatism simultaneously disavows KL’s agency (thus reducing his blameworthiness) and it conveys a “conventional” moral stance (because he confesses to having committed “serious” crimes, thus pleading guilty and setting the scene for him to exhibit remorse later in the interview).

KL does not overtly tell the interviewer that “someone” is an offender with the outstanding manipulative strength to lure KL and his friends into crime by making them passive bystanders of his actions and turning them into persistent offenders. Yet KL invokes the category “luring offender” and applies it to “someone” in whose case there is a motive to commit offenses, criminal activities, and the ability to influence others. By contrast, KL and his friends are “regular youths” with no initial reason to break the rules. They “just stood by” (line 19), i.e. they were not active. Bamberg (2012, p. 106) calls this depiction of passivity a “world-to-person” narrative: it results “in low-agency marking” that “assists in the construction of a victim

role – or at least a position as less influential, powerful, responsible, and, in case the outcome of the depicted action is negatively evaluated, as less blame-worthy.”

For obvious reasons, a mitigation of blameworthiness is penologically of great significance. KL communicates it primarily by opposing himself and his friends to “someone”, a person with a motive to commit crimes and with agency. In his account, he prospectively controls the possibility of him or his friends being held accountable as the main perpetrators of the crimes in question; he forestalls this assumption and counters it by putting the blame on “someone” (see Watson, 1978 on blame-negotiation). By doing so, KL gives a telling example of the potency of implicit categorization (Rapley, 2012); he uses it to establish an impression that may be an effective means to achieve a mild sentence.

### In youth courts, you better have problems

We have just established KL’s categorization as a “regular youth” who more or less unwittingly stumbled into crime because he and his friends had been enticed by someone outside the group. One problem for this kind of self-presentation remains unresolved, however: the severe crimes that KL himself confessed to having committed. The automatism described above relieves him from having to narrate in detail, in the interactive setting of the interview, how he was involved in the crimes. Yet in the hearing, it is essential to convince the judge. Trials are about the determination of guilt and blameworthiness (Atkinson & Drew, 1979; Ewick & Silbey, 1995; Komter, 1997). A defendant has to reveal how he or she has been involved – or not involved – in the incidents in question. Even though accounts of involvement in crime are often accompanied by mitigations of personal responsibility and blameworthiness (Brookman, 2015; Maruna, 2001; Presser, 2008; Sykes & Matza, 1957), mere references to automatisms are unlikely to be sufficient if these accounts are to be scrutinized in a hearing.

At this point, the two abovementioned focuses of a trial in youth courts come into play: “crime” and “the offender”. If the court highlights and proves the commission of a crime, then punishment is likely to follow. If the court proves a crime but highlights personal problems more than the offense, then help and support are likely to follow. Against this background, the other interviewees in our study presented a troubled past. They talked about their mothers consuming heroin, challenges present from their childhood, problems in school, etc. Conversely, KL presented himself in a way that completely rejected personal and biographical problems as causes for his crimes.

Our research design allowed the results of the hearing and KL’s corresponding narrative to be considered. The outcome of the appeal hearing following the first

interview with KL was that his appeal did not stand a chance. The prosecutor insisted on a harsh sentence, and early in the trial, the judge expressed his negative personal assessment of any reduction in the sentence from the lower court. The judge stated that in the first hearing, KL “got off very, very well” and told the defense to “[l]et it be”. KL and his defense lawyer complied with the instructions; they withdrew the appeal and the hearing ended quickly.

KL’s self-depiction was apparently not successful. In the second interview, he does not just talk about the recent proceedings, but also the first, in which he was given a prison sentence of several years, which, in his opinion, was unjust. According to his descriptions, in this earlier hearing, just as in the first interview, he described himself as a “proper youth” who was barely involved in the criminal acts. As in the second hearing, he was not believed; in both hearings, the prosecutor attested that he had a significant “criminal energy” about him. KL recounted the following story related to the first hearing:

- 1 I: Wi-, wür- würdest du dann sagen, ähm, kannst du dich noch dran erinnern, wie der  
2 Staatsanwaltschaft damals die (Strafe) ähm verteidigt hat, also warum er gesagt hat, das  
3 müssen (...)  
4 KL Ansonsten (.), der hat (...) ja kriminelle Energie (..) [*aufgebracht*] *sonst hat er nichts*  
5 *gesagt*, also der konnt ja nicht sagen, ich hab- ich lunger den ganzen Tag rum oder so.  
6 Mein Anwalt meinte ja auch: „Ja, was ist denn mit den Leuten, die keine Schule haben,  
7 und kein gar- gar nix machen. [*schnell gesprochen*] *Das ist ja bei meinem Mandanten*  
8 *nicht so. Der ist ja /den\*  
9 I: /Mhm.\  
10 KL: ganzen Tag beschäftigt.“  
11 I: Mhm.  
12 KL: Dann sagt er so: „Ja umso SCHLIMMER, dass er da noch Scheiße macht.“  
13 I: Mhm.  
14 KL: Na, dann dacht ich mir auch, ja Eigentor eigentlich, ne? (..) Da meint mein Anwalt  
15 so- (..) [*schnell gesprochen*] *also wuss-, wusste ich gar nicht mehr, was er gesagt hat.*  
16 Irgendwas hat er gesagt, aber war auch SCHWACHsinn. Er wollte uns da noch rausreden,  
17 aber-  
18 I: /Ja.\  
19 KL: /ging\ halt eben schlecht, ne? (*Interview 2*)

- 1 I: We-, wou- would you say then, um, can you remember how the  
2 public prosecutor back then justified the (sentence), I mean why he said that  
3 must (...)  
4 KL: Otherwise (.), he has (...) criminal energy (..) [*angry*] *he said nothing*  
5 *else*, so he couldn’t say I have- I hang around all day or so.  
6 My defense lawyer said also: “Yes, what about people who don’t go to school,  
7 and don’t do- anything- anything at all. [*spoken quickly*] *That is not the case with my*  
8 *client. He is, /the\*

- 9 I: /Uh-huh.\
- 10 KL: busy all day.”
- 11 I: Uh-huh.
- 12 KL: Then he said: “Yes, even WORSE, then, that he is then still fucking around.”
- 13 I: Uh-huh.
- 14 KL: Well, then I thought, own goal actually isn't it? (...) Because my defense lawyer
- 15 like- (...) [*spoken quickly*] so knew-, I didn't know any more what he said.
- 16 He said something, but was also NONsense. He wanted to make excuses for us,
- 17 but-
- 18 I: /Yes.\
- 19 KL: /went\ badly, didn't it? (*Interview 2*)

KL recounts the justification of his sentence by the public prosecutor who referred to “criminal energy” (line 4). According to §46 para. 2 sent. 2 of the German Penal Code, the attitude embodied in an offense is a statutory criterion for apportioning punishment. Even though there is no exact legal definition, “criminal energy” is an aggravating factor and a residual motive category if no other comprehensible motive can be identified. By contrast, a focus on individual problems would provide a mitigating factor, diminishing personal accountability and highlighting an offender who is more in need of help than deserving of punishment.

The motive “criminal energy” (line 4) and the activity “hang around all day” (line 5) represent these two competing categorizations of a “hardened criminal” and an offender primarily in need of help. As mentioned above, membership categorizations are closely bound to the establishment of “appropriate” motives and activities. The categories do not have to be explicitly specified; they can be inferred from motives and activities. In the public prosecutor’s statement (lines 4 and 12), KL’s story refers to the legal doctrine that “criminal energy” accounts for membership of the category “hardened criminal”, whereas the activity “hang[ing] around all day” represents a “problem youth” whose categorial affiliation is contested between KL and the prosecutor. KL evaluates this controversial relation and its determination by the court by talking about an “own goal” (line 14), thus implying that his self-depiction was some kind of mistaken strategy. The coda and evaluation “went badly, didn’t it?” (line 19) suggests that he had faced the difficult task of presenting himself in court in a way that would lead to a relatively mild punishment, and that he ultimately failed.

We cannot answer the question as to why KL stuck with this strategy all along. It is possible that it was not a strategy in the sense of an arbitrary decision to present himself in a specific way, but – as described above in section two – a strategy rooted in the narrative construction of his identity. However, what we can establish *empirically* is a telling conflict of membership categorizations. Expressed analytically, KL’s (and his defense lawyer’s) error was that he treated the categories “regular youth”

and “hardened criminal” as mutually exclusive or, in the words of Jayyusi (1984, p. 123), as an exclusively usable “disjunctive category set”. Jayyusi (1984, p. 123) uses the phrase “disjunctive category set” to identify categories “which involve the alternative characterization of one and the same person” in cases in which usually one of the two alternatives is “disavowable and non-solicitabile. They thus involve a category set, one member of which would be disclaimed by the categorized person”. She distinguishes different types: type I comprises categories that are “exclusively usable and so usable contrastively by any one categorizer” (Jayyusi, 1984, p. 123); type II consists of alternatives “that are not usable exclusively, although they are usable contrastively.” In the latter case, one category incumbency does not preclude the applicability of the other “but rather trades on its perceivable relevance” (Jayyusi, 1984, p. 123, see p. 132 for a third type).

This distinction is useful for elucidating KL’s predicament. He used membership of the category “proper youth” (i.e. a youth with a wealthy family background who does not hang around but is “busy all day”; line 10) as incompatible with the category “hardened criminal”. He admitted that he – as a “proper youth” – was an offender, but only in a marginal, hardly punishable way because he was not a “hardened criminal” (type I). On the other hand, the public prosecutor – and presumably the judge – used the category alternatives “proper youth” and “hardened criminal” as contrasting but not exclusive (type II). According to KL and his defense lawyer, hanging around is an activity engaged in by hardened criminals (lines 6–7), but KL does not hang around, therefore he is not a member of this category but rather of the exclusive and incompatible category “regular youth”. The prosecutor disagrees. Normally, as he says, criminality is associated with hanging around (otherwise, the prosecutor could not have said “even” worse; line 12). In KL’s case, however, the prosecutor identifies him – correctly, given that KL had pleaded guilty – as an offender, but the “hanging around” activity is lacking. For the prosecutor, therefore, KL is not a “typical” criminal, but one who is as the prosecutor emphasizes (“WORSE”; line 12) more criminal than usual: KL is both a “hardened criminal” and a “proper youth” in the sense of a youth with a wealthy family background who does not hang around. To the prosecutor, “proper youth” incumbency corroborates KL’s “hardened criminal” membership. As there is no particular need for rehabilitation in the light of KL’s “proper”, problem-free life, it is therefore consistent to mete out strict punishment in response to his offenses and not to decide to offer help for a needy offender.

KL’s strategy was counterproductive. From the court’s verdict and the public prosecutor’s statement, we can infer a crucial tenet of hearings in youth courts, namely that *in youth courts, you better have problems*, because problems allow for rehabilitation. Youths presenting themselves in a hearing might be well advised

to adhere to this largely implicit rule. If they do not, the result may be harsh punishment.<sup>5</sup>

## Discussion

Court hearings are exceedingly complex. This complexity relates to the identity constructions of defendants who, to some extent, mirror the contradictory dimensions of a hearing in their self-presentation. Our case example of KL makes this clear, as he deviates from widespread forms of self-presentation, including those in our other interviews, and is harshly penalized accordingly. He contradicts the expectations built into the logic of youth court hearings that young defendants will depict themselves as problem youths, i.e. as youths with credible potential to be “ameliorated” by social support. The deviating case thus makes routinized and implicit patterns of expectation in main hearings clear.

Narrative approaches are well suited to revealing these expectations and how they are reflected in interactional self-presentation by defendants. Hearings allow free space for individual accounts, including accounts of guilt and responsibility. Depending on how they correspond to (implicit) legal models of self-depiction, the youths’ narratives are either honored or penalized. Findings from studies of the courts’ evaluation of defendants’ narratives indicate that judges use everyday knowledge and common sense to decide which stories are plausible (and reduce the sanctions) and which are not (and increase the sanctions) (e.g. Arnould & Martini, 2015; Drew, 1992; Komter, 2013; Loeschper, 1999). Based on our findings, we conclude that the defendants in our samples at least, i.e. individuals with long experience of legal proceedings, know this and adjust their self-presentation accordingly. However, this is not always successful. The defendants’ adjustment to the court’s expectations requires an interactive and communicative balance between motives, activities, and membership categorizations, which is evaluated during a trial and can be used against the defendant.

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5. Of course, we are not suggesting that a “suitable” kind of self-presentation would clear youths of all charges. Judicial reality is much more complex and intricate than that. Nonetheless, it is likely that defendants’ self-depiction is connected to the severity of a verdict. One important aspect that has to be taken into account here is the demonstration of repentance, which is also a significant part of KLs narrative reflection of his failure. We cannot elaborate on this issue in this paper, but would like to mention the fact that he himself explains his self-presentational failure mainly by his inability to show remorse because he felt so ashamed during the trial (“And I just couldn’t weep. I don’t know why. Well, I couldn’t show any emotions, when the victims came in or so. I just was ashamed when they came in and it was so embarrassing and awkward”; Interview 1).



Hearings involve great uncertainty. The young people in our sample described a number of hopes and fears with regard to their upcoming trials. After their trial, young people do not only interpret its outcome, they also reflect on their own self-presentation and weigh it up against the expectations of the professional participants in proceedings.

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