The Investigation of Grammar and Pragmatics in Testimonies and Cross-Examinations:

A Look into Sexual Assault Cases in the United States

by

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ABSTRACT

This paper examines the function of grammar and pragmatics in testimonies and cross-examinations, specifically in sexual assault cases in the United States. Past research demonstrates a society's view of sexual assault, particularly as a means of control, is reflected in cross-examination methodologies, which propagates into the laws surrounding sexual assault. This aims to investigate the impact the shift in societal perspective on sexual assault has on the cross-examination methodologies and ultimately the laws surrounding sexual assault in the United States. The incorporation of Conversation Analysis (CA) is used as a framework to evaluate the court transcripts. The framework is coupled with guidelines previously used to examine sexual assault cross-examinations in other countries. It is imperative to apply this to the United States as the view on sexual assault differs. The cross-examination and testimony transcripts in three court cases are examined. The guidelines for grammar include transitivity, use of adverbials and modals, nominalizations and subjects of unaccusatives, while the pragmatics focus on strategic questioning, presupposition, and selective reformulation. The findings in this qualitative study demonstrate the lack of progress the United States judicial system has made in terms of sexual assault. While the societal perspective shifts, the cross-examination methodology and the language of the laws remain constant, despite increase in awareness and supporting Acts. Given the small scope of research conducted in the United States, more research is necessary, along with reformation of the court proceedings and laws surrounding sexual assault.

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CHAPTER 1

INTRODUCTION

Recent decades show an increase in interest of forensic linguistics, however there is still a great need for studies to investigate the language used in the court room, specifically in sexual assault court proceedings and law. The way in which the American society views and operates around sexual assault changed rapidly over the course of the last few years. The interest and necessity in field of forensic linguistics has increased and gained greater traction. Sexual assault continues to be a prevalent crime in the United States as the self-reported incidence of rape or sexual assault doubled between 2017 and 2018, making it 1.4 victimizations per 1,000 persons age 12 or older (Benner, 2019). As sexual assault and rape continues to be a growing crime, it is necessary to combat this with every means necessary. Amongst other forensic evidence used in these cases, forensic linguistics can be used as a tool to analyze the court language to better understand the adversarial system and serve the victim. Forensic linguistics can be used to aid the legal side of the devastation that is sexual assault.

The present research describes a qualitative study of grammatical and pragmatic analysis in court transcripts of sexual assault cases. More specifically, this is an analysis of the language used in the cross-examinations of the victims and the statements provided to the court. The goal of this study is to explore the influence this particular language has not only on those involved in the cases, but on laws pertaining to this topic. This study combines specific grammatical guidelines with the theory of Conversation Analysis (CA) to interpret the meaning and further implications of the language used in cross-examinations and victim and perpetrator statements in sexual assault cases in the United

States. As language holds functionality, language is an integral part of the legal system's function and it is a powerful part of how our adversarial system operates as a whole. The linguistics in the in the cross-examinations have the ability to facilitate the way in which laws handle sexual assault and rape cases. This research aims to study and comment on the specific way in which the linguistics in cross-examinations trap victims of sexual assault cases, based on linguistic analysis.

Research Questions:

1. *How do grammatical and pragmatic properties shape the way we think about sexual assault in the United States?*

2. *Do the grammar and pragmatics shift over time in sexual assault cases? If so, does this propagate into perspective and further, laws surrounding rape?*

1.2 Necessity of Research

There is very limited qualitative research utilizing forensic linguistics in cross-examinations for sexual assault pertaining to adults, particularly in the United States. In the early 2000s, two quantitative studies were performed focusing predominantly on the line of questioning practiced in the courtroom.

Kebbell et. al (2003) focused on the questioning type of both complainants and defendants. They structured their findings into coded categories including "open", "closed", "leading", "heavily-leading" and "yes/no" questions. Further, questions that witness have a higher difficulty understanding, such as negatives and double-negatives were included in the study. It was noted that the methodology for complainants was very similar to that of defendants, however the number of questions were greater for the complainant than defendant. The study ultimately evaluated the influence of questioning on the witnesses' ability to accurately recount the events that occurred during the time of assault. This study only looked at the types of questions used.

Zajac and Cannan (2009) analyze the cross-examination in child and adult complainants of sexual assault. The goal of this study is to any potential differences in the line of questioning between the two groups. While there were slight differences in the particular questions, both children and adults were asked questions of high difficulty. This ultimately led to adults slightly changing their accounts of the assault from their original statement. These slight discrepancies made during the attorneys' utilization of leading questions and different questioning methods were not straightforward and easily misunderstood by the complainants. Further, this diminishes the complainants' credibility, negatively taints the eyes of the jury, and effects the outcome of the trial.

A more recent study has combined the findings of the aforementioned research in the pursuit of seeing if the methodology for questioning has evolved over the past 50 years. The 2017 study investigates historical and contemporary courtroom questioning of complainants of sexual assault (Westera et al., 2017). The study found that over time, complainants' amount of response increased and the particular questions shift to a greater openness. However, the questions still lead the complainants to a particularly premeditated truth orchestrated by the attorney. These results enable and inspire reformation in both law and legal practice.

This is not just specific to the conduction of sexual assault case proceedings. The United States adversarial system holds two separate parties in a dispute and have the responsibility for finding and presenting evidence. In any type of court case proceeding, it is necessary for both sides to ask and answer questions to reach a just truth. Each type of case has its own methodology for questioning. While this research will point out and

discuss the issues with the sexual assault case line of questioning, it remains problematic in other areas of the adversarial system as well.

While these studies target a neighboring, helpful topic, there is a large gap in the research. Clearly the attorney's questioning methodology is used with premeditated goals. The questions hold presuppositions rather than simple yes or no questions. The methodology surrounding sexual assault and rape in the courtroom will be addressed later on. Susan Ehrlich (2001). researchers the particular language used in cross-examinations. Her research in presuppositions, a thing that is assumed beforehand at the beginning of a line of argument or particular course of action, and the power and control dynamic will be essential in this research.

Later, we will use certain guidelines used by Ehrlich and apply them to court cases in the United States. Ehrlich focuses her work on Canadian cases which is helpful, however the cultural mythologies and framework around rape and sexual assault differs in the United States than in Canada (Carson, 2007). Additionally, laws and regulations and the progression of forensic linguistics varies per country. Thus, Ehrlich's research is vital to this research, but a gap still remains.

Peggy Reeves Sanday is a cultural anthropologist predominantly focusing on the cultural dynamics of sex and gender in society. While she conducts research in Southeast Asia and investigates various tribal studies, Sanday pioneers the research in female power and dominance in society and investigates the history of sex and rape in the United States.

In a separate article, "The Socio-Cultural Context of Rape: A Cross-Cultural Study", Sanday discusses "rape-prone" and "rape-free" societies (Sanday, 1981). The

"rape-free" societies are ones in which rape occurs on a significantly small level, usually as a product of males seen as equals to their female counterparts. Additionally, men are inclined to or already value the female attributes such as nurturance, nature, and emotional growth (Sanday, 1981). The research proposes that men are not inherently violent, rather it is society that pushes them towards violence and cultivates it based on the way sexual assault is viewed and handled. Men are not created with an inherent programming for violence and to merge this violence into the sexual part of their lives. This ties to "rape-prone" societies where rape is a common occurrence either by ceremonial act, or a means of punishment by man to a woman. In this dynamic, men do not prioritize the attributes of women, rather they are in opposition to women. This creates a harsh, power struggle, in which men attempt to gain power and assert dominance over women. In this setting, men use sexual violence as a means of showing women their half of the binary is superior. In this demonstration, the men not only violate the woman, but have no regard for the values women bring to society (Sanday, 1981).

The "rape-free" and "rape-prone" societal distinction operates under the assumption that rape is performed by a man to a woman, while boys and men are also victims of sexual assault and rape. According to the Rape, Abuse, and Incest National Network (RAINN), one in every 10 rape victims are male. It does not go unnoticed that sexual assault and rape is a heinous act not merely done by men to women, however this study will only look at court case transcripts in which the victims are female and the perpetrators are male. According to statistics from RAINN and the NSCRV, females are more commonly victims of sexual assault. Male victims are somewhat of a statistical outlier in this research and the great number of female victims demonstrates the societal

power dynamic. In order to further understand the power dynamic and the judicial system used to address it, it is necessary to look at female victims and male perpetrators. Therefore, the aforementioned articles and frameworks are used to further our understanding of rape in society.

In her lengthy review of rape in the American culture, Peggy Reeves Sanday discusses the history and progression of the issue. In *A Woman Scorned*, the focus begins with the Puritan New England. The initial society contained very strong religious practices and rules, but maintained a spirited and healthy sexual dynamic. A shift is noticed by the late 18th century in which the binary between masculine and feminine adopted new definitions to the sides. For example, the definition of masculine shifted from having its own property and value simultaneous to the definitive properties of what it means to be feminine, and became synonymous with properties of domination, specifically sexual aggression. The feminine half shifted as well, in which it became passive and lacked the original passion (Lehrman, 1996). Through this cultural shift, rape became glorified as men continued to assert their dominance over women. According to Sanday's research, the Puritans shifted from a "rape-free" to "rape-prone" society. Men stopped their value of their female counterparts' attribute and began a rampage for dominance and maintaining a social hierarchy based in fear and power. Sanday states that rape "is an expression of social ideology of male dominance" (Sanday 1996). This ideology, perpetuated by men and passively allowed by women, ultimately promotes men's sexual domination and violence against women, while demoting women's sexual autonomy, as it can be taken by males. The judicial system in the United States was not equipped with the appropriate laws and regulations to combat this shift. Additionally, the

US judicial system is a male dominated space. So, the shift in male perspective currently consumes every space including the laws and regulations that could ever be put into place to re-regulate society back into a "rape-free" society.

Sanday's work is often critiqued for an over-simplification and the lack of recognition for the United States courts' reformation pertaining to sexual assault and rape(Lehrman 1996). The progression of laws and regulations surrounding sexual assault and rape in the United States will be expanded upon later in this paper. The purpose of Sanday's work is to show the origin of rape and the way in which the American society viewed it and understand the gap in our knowledge on the topic. Furthermore, there is a gap in our understanding, as a society, in terms of the laws and regulations. Sanday points out the absence of laws and the way in which the judicial, male dominated space used their framework of sexual violence to create the laws that are in place. While reformation has happened, especially over the last two decades, there is still a large amount of language that perpetuates the male agenda of domination; "judicial decisions continue to reflect traditional cultural mythologies about rape" (Comack 1999). This pertains to both laws and the language used by attorneys in different aspects of the case.

These studies display the beginning of the research on this topic. Many studies investigate the history of rape in their particular country or begin to touch the forensic linguistics component in rape trials. While studies have slowly approached this, there is a large gap in research. Very little research is conducted in the United States, however the research conducted in other countries have laid the ground work for research that can be studied in the US. The information in this particular research will apply previous studies on older and newer cross-examinations of sexual assault that will later be discussed in

this paper. The intent of this paper is to analyze the shift in the United States' perspective on sexual assault and rape, the influence these views have on questioning methodology and cross-examinations in the trials, and ultimately the language of the laws surrounding rape.

1.3 Methodology

1.3.1 Methods

The methodology for this study is a qualitative study; the investigation of complex phenomenon and the way in which the components work together. The case study methodology is used to analyze the gathered data. This method is mostly commonly used when looking at social research. Because there are societal and social components to this topic, a qualitative case study was deemed the most fitting. Case studies include a philosophical phase, pre-field phase, field phase, reporting, and a discussion and conclusion section (Rashid et al., 2019). The research in this paper will section it off into the framework section as the philosophical phase, the literature review and definitions and the pre-field phase, the outline and analysis of the court cases as the field and reporting phases, followed by the conclusion. Thus, it will look at the language used in the cross-examinations and testimony in rape court cases and the further laws surrounding them, enabling conclusions to be drawn about our current legal system.

1.3.2 Theoretical Frameworks

Language is not merely viewed as verbal communication. Conversation Analysis (CA) studies the human social interaction across disciplines including Sociology, Linguistics, and Communication (The Handbook of Conversation Analysis, 2013). This will enable the awareness of cultural perspectives and mythologies surrounding rape

while the language in cross-examinations is investigated. Furthermore, this can help the understanding of the implications of the language used in sexual assault and rape cases in the United States.

Susan Ehrlich also proposes guidelines for analyzing attorney questioning in these cases. She discusses grammatical functions such as agentless passives, grammatical nominalizations, specific placing of adverbials, use of the "unnaccusative", presupposition, and strategic questioning (Ehrlich, 2001). The cross-examinations and testimonies provided to the courts will be analyzed through the provided categories.

We are combining the Conversation Analysis framework with a compilation of previous analysis used by Ehrlich (2001) and Mateoesian (1997) to investigate cross-examinations and testimonies to ultimately make conclusions about the United States adversarial system as it pertains to sexual assault cases.

1.3.3 Sampling Process

This study will analyze United States sexual assault cases of adult females. This limits the scope as rape is not subject to any gender binary. Furthermore, each legal domain and society has their own way of looking at sexual assault, consent and the legalities around the topic. While different states have different laws, limiting the research to one particular country permits a consolidated and more unified view of the topic.

1.3.4 Limitations

Access to the exact court case transcripts was very difficult. In the United States, law firms hold on to the court documents. After speaking with various law librarians and previous researchers on adjacent topics, it became apparent that accessibility to court transcripts is extremely difficult. It is possible to look at cases already used in other

research as well as easily accessible rulings online. Researchers can look at excerpts used in past research or can pay fees per case or per page from various databases to view the entirety of the article. For this particular research, the documents include the cross-examinations and testimonies in sexual assault cases. Different states have different levels of accessibility. To combat this particular limitation, I decided to look into excerpts from transcripts that are already published in research to date. This also proved to have its challenges because very limited research has been done on this topic to begin with, especially in the United States. Thus, I selected what was available online, through libraries, alongside watching videos of the trials and manually transcribing the cross-examination discussion. This ultimately enabled the application of conversational analysis and guidelines created by a culmination of various strategies used in different countries and adapted them to the questioning used in the United States.

While the questioning methodology may have changed over time, the laws surrounding are slow to shift. Laws surrounding sexual consent have yet to change, while there is periodic enhancements on laws surrounding sexual assault and rape. This was a great challenge as the United States makes it very difficult to gain access to sexual assault court documents for research purposes. While it is beneficial and privacy protecting for the individuals involved, it makes it extremely difficult to gain access to specific cross-examination documents. The internet provides various redacted transcripts as well as excerpts high-profile cases. Finding specific cross-examination transcripts proved to be very difficult, as most of the public cases did not contain cross-examinations, rather contained testimonies from the victim and the accused or the defense of the accused.

Time was very limited to conduct research. The analysis happened on a very condensed timeline, which prohibited the production of a corpora and discourse analysis. If more time permitted, researchers would be able to analyze a body of transcripts, rather than a few selections over time.

Case CHAPTER 2

FORENSIC LINGUISTICS AND SEXUAL ASSAULT

This chapter introduces the definition and importance of forensic linguistics. This branch of linguistics enables the analysis of the criminal justice system through language. As the goal of this paper is to look at sexual assault cases in particular, this chapter also provides definitions and surrounding laws pertaining to sexual assault.

2.1 Forensic Linguistics Background

The term was first coined as "forensic English" in 1949 in the study of semantics pertaining to both language and law. The term was not regularly used by fellow linguists, however, 19 years later in 1968, the term forensic linguistics was introduced by linguistics professor Jan Svartvik. Svartvik applied "standard analytical and quantitative methods in linguistics to a forensic issue' (The Association for Forensic Evidence, n.d.). He investigated the particular authorship of investigative statements. He produces precise syntactic and quantitative analysis in authorship identification in statements working with the police. His work pioneered forensic linguistics as he paved the way for research, objective and replicable methodology and standard analytical techniques.

Forensic Linguistics has progressed differently in the United States than in other countries (Ariani et. al, 2014). The United States focused greatly on the rights of individuals during interrogation processes. Those who are arrested are informed of particular rights that they have for the interrogation process. However, Ernesto Miranda appealed to his charge on the grounds that he did not understand the rights that were read to him. Linguists investigated this particular case and interrogated the meaning of understanding and comprehension in order to structure the law and delivery in a more

comprehensible manner. Thus, the language was researched, analyzed and improved through particular guidelines. Various places such as Australia and Germany also had groundbreaking cases that brought forensic linguistics forwards. However, Forensic linguistics came to the forefront as a science when the Federal Criminal Police Office held a conference over the span of two days and presented a speaker identification method that used phonetic-acoustics. Post conference, Britain held a seminar attended by linguists from Greece, UK, Brazil and Germany (Ariani et. al, 2004). This launched a trickle effect of countries holding their own forensic linguistics conferences, with the United States ending the launch of conferences in 1997. Scholars gathered to discuss the role forensic linguistics could potentially hold, but it did not hold as a prevalent, valid field of study for a long time. Thus, forensic linguistics both newly studied and new to the United States. This has propagated into the recognition of a new science. An International Association of Forensic Linguistics has been created to continue these conversations and studies of language and law (Ariani et al., 2014). Sociology and psychology play an important role in forensic linguistics as the frameworks of the society propagates into the society's legal language.

2.2 What is Forensic Linguistics

"Forensic linguistics involves the application of scientific knowledge to language in the context of criminal and civil law" (Ariani et., al 2014). Linguists in this particular area have the ultimate goal of understanding language as it pertains to written law in both its intricacies and its origin; analyzing language used in various processes in the legal systems. This looks like the studying of judicial procedures from the focal points of arrest, the interview, charge, trial and sentencing stages. With different types of cases and

procedures per case, this creates a lot of ground and language to cover. For example, this paper will analyze the cross examinations and statements involved in sexual assault cases in attempts to make conclusions about the methodology and laws surrounding this particular type of case.

To break it down, “An introduction to Forensic Linguistics: Language in Evidence” (Routledge, 2017) divides the subject matter into two categories. Those are “the language of the legal process and the language as evidence” (Coulthard et al, 2020). This creates a binary of written and spoken language to be evaluated. Not only are forensic linguists tasked with analyzing law, they are tasked combing through every moving part in the legal process. In a criminal case, this can look like the primary call to law enforcement, emergency services, police interrogations, witness testimonies, cross-examinations, sentencing etc.

The distinct language used by attorneys is a field day for forensic linguists. While attorneys themselves are not the lawmakers, the way in which our law makers view society is how they write the laws, fueling the way in which attorneys communicate. Forensic linguists are tasked with unpacking the not only the grammatical aspect of the language, but the frameworks through which they are written.

2.3 Conversational Analysis

Conversation analysis aims to evaluate social interactions that happen in the realm of talk-in -interaction. This particular research hold influences across the humanities and social sciences and even in linguistics. This particular analysis can look at audio and visual recordings, natural interactions (Sidnell, 2016). Conversation analysis operates under the assumption that the basic structure of the language is adapted to that

environment. Additionally, this model notes that language holds two phenomena. Those include language as a cognitive function and language as an interactional function. Conversational analysis looks at four domains in particular; turn-taking, repair, action formation and ascription, and action sequencing (Sidnell, 2016). The conversation analysis in this research will use this particular model to evaluate court transcripts.

2.4 Sexual Assault

2.4.1 Rape Definition

Rape is a verb derived from the Latin word “rapere” meaning “to seize” or “carry off by force”. The Old French verb “rapir” and the Anglo-French verb “raper” are legal terms that ultimately came from the Latin word “rapere”. These words carry harsh connotations of taking something against the will of the other party. To seize something or to carry off by force implies that there is struggle on both sides of the scenario (Online Etymology Dictionary, 2022).

The American English definition of rape according to the Merriam-Webster dictionary is “an unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against a person’s will or with a person who is beneath a certain age or incapable of valid consent because of mental illness, mental deficiency, intoxication, or deception” (Merriam-Webster Collegiate Dictionary, 2023). As one can see, the definition of rape shifts from language and societal contexts. In the English etymology of the word, the origin means to seize something from someone. However, in present day American society, it is a nonconsensual act done by someone to someone.

Sexual assault and rape are commonly used interchangeably. In the United States, some states replaced rape in their statues. Thus, when a statute is added to or reformed, the meaning or policy surrounding rape is referred to as sexual assault. However, some

states, such as Pennsylvania, view rape as an act that requires the perpetrator to use threat of force, while sexual assault is any act of intercourse that transpires without consent. Additionally, other states including Washington, deem sexual assault a wide range of acts that include rape under its umbrella in addition to any "crimes with sexual motivation". Some states prefer not to have rape or sexual assault in their statutes or laws, rather South Carolina uses "criminal sexual conduct" and Florida uses "sexual battery". Each vocabulary term has essentially the same meaning, however the conceptualization of the act is different. Different states use different terminology which ultimately alters the way they think about and handle sexual assault or rape. South Carolina's utilization of "criminal sexual conduct" asserts the understanding that sexual assault/rape is against any law, however the definition does not have a harsh presence. Florida's use of "sexual battery" gives the impression that violence is involved similar to the crime of assault and battery. This interchanges assault with sexual to create sexual battery and tying the meaning of the two together.

The United States Department of Justice defines sexual assault as "any nonconsensual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent it" (The United States Department of Justice, n.d.). It seems as though sexual assault provides a greater umbrella of what is deemed assault, whereas rape is commonly thought of as the force of penetration performed by an individual or individuals to an nonconsenting individual. The Office on Women's Health, "sexual assault includes rape and sexual coercion" (Office on Women's Health, 2022). Further, it is any act of sexual contact with someone who either cannot or does not consent. This includes rape, attempted rape, sexual coercion, any form of unwanted touching both

under and over clothes. Additionally, sexual assault can be non-physical or non-contact. This looks like voyeurism, harassment of the sexual nature, sharing unsolicited sexual pictures or messages, forcing someone to pose in a sexual manner for pictures. This further asserts the notion that sexual assault encompasses more than rape in its terminology and definitions.

The word's definition evolution is a reaction to the way in which the society views it at that time. For the purposes of this paper, the specific definitions of rape and sexual assault will be used to maintain clarity throughout the analysis of the court documents.

2.4.2 Historical Background/ Rape Laws

The Code of Hammurabi is one of the earliest written legal documents, written by the Babylonians between 1755-1750BC. While this text originated from the ancient Near East, this legal document accounts for rape. The code states that if a man forces sex upon another man's wife or the force of sex on a virgin was comparable to theft or vandalism. This code structures their society to view women as property and something that is able to be taken or dominated. B.J. Cling's analysis in the 2004 article "Rape Law 'Early History of Rape'", notes that early laws surrounding rape completely disregard the women as victims who have suffered a tragic crime. It is further stated that all laws viewed women as a man's property, so laws treated rape as a defilement of property, disregarding a human life.

The perspective on rape shifted in the 16th century to the common-law definition. The definition deems the consenting age of a woman at 10 years and older. This places an enormous amount of pressure on a female at the age of 10 to be able to advocate for the

needs of themselves and their bodies without the full ability to understand themselves or the world around them. This law was practiced throughout the early American colonies. The age on the rape law was not changed until the late 1800s when activists advocated to have the age of consent between 14 and 18 (Bishop, 2018). It should not go unnoticed that these laws were geared towards the white women of the society. Black women were excluded from these rape laws, this does not mean they did not experience rape by any means, rather they were not privileged to the same security of the consenting age, the legal system simply did not help them (Bishop, 2018). This is important because it shows the societal structure that men asserted their dominance over women through sexual aggression and men held positions of power and perpetuated their domination abilities through the legal system. The entirety of the legal system and the society is furthered by the white male's necessity for control and view of women, particularly women of color, as property and objects. In 1861, rape laws were changed again, insofar as there was a particular range of punishment for the sexual assault of white women while black women were still not allowed to report their own rapes at this time.

Second wave feminism radically changed rape laws in the United States. In the early 1970s, a greater effort was administered to women to help understand the perspective of the survivor and the needs post-traumatic event. This was the first time there was information gathered to understand sexual abuse and bring this to the public's attention (Sexual Assault Advocate and Service Provider Training). Prior to this, rape laws were created by the same category of people that were predominantly guilty of the heinous crime. Thus, the women gained great traction in their presentation of the issue from the victim's perspective when presented to the public. In 1971, a group of women

reframed the perspective of rape to the public. They discussed sex as a weapon used by men to control the women of their society, it was not simply a man's inability to control his wants or desires. This sparked the legal reformation in the United States. In the mid-1970s, the National Organization for Women pushed for laws to be changed in all 50 states. By 1980, each state changed their laws to begin promoting women advocacy and prosecution of perpetrators. Additionally, women were encouraged to come forward with their stories no matter when the crime took place in the past.

At this time, the revised rape laws were as follows:

A. Removal of spousal expectations. This means that a woman maintains her own autonomy inside of a marriage. When both parties consent to a marriage, they are not consenting to sexual intercourse for the entirety of the marriage. This allows the woman to continue practicing her right to consent or not consent and makes a distinction between a woman and a man's possession.
B. Rape Shield Laws. This prohibits the victims' previous sexual history to discredit the her in the courtroom. It is also noted that this significantly helps the victim, but this entire issue of discrediting the victim's experience in a rape trial is still not eliminated to this day.
C. The definition of consent is revised. There is a distinction drawn between consent and submission.
D. It is unnecessary for a someone to witness the rape for the story to be tried and true. Women are able to come forward with the crime without having someone to corroborate their story.
E. The age for statutory rape was increased from 10 to 12 years.

The creation of the National Center for the Prevention and Control of Rape (NCPCR) at the National Institute of Mental Health (NIMH) highlighted the issue of rape and disallowed sexual assault to be ignored by both medical professionals and the public. This significantly increased awareness and helped the public recognize the need for societal and legal reformation. The implementation of this national center perpetuated the need and desire for research on this topic, making it a new beginning for society's understanding of rape and sexual assault.

In 1994, the first Violence Against Women Act (VAWA) was implemented as part of the Title IV of the Violent Crime Control and Law Enforcement Act (Lynch, 2023). The institution of VAWA led to the beginning of the Office on Violence Against Women (OVW), an office inside of the Department of Justice. This office is tasked with implementing the legislation set forth by the Violence Against Women Act. This office now works alongside the Department of Health and Human Services (HHS) to provide funding for shelters and programs on rape and domestic violence prevention and education. This act fights for protection for those who have suffered gender-motivated crimes like rape and sexual assault.

The Violence Against Women Act was reauthorized in 2000, 2005, and 2013. Amendments have been made to the initial Act to increase the inclusivity, education and funding for those in need. The 2013 reauthorization of VAWA expands its definition to include

> "(1) community-based services that offer culturally relevant and linguistically specific services…; (2) 'personally identifying information or personal information' with respect to a victim of domestic violence, dating violence, sexual

> assault, or stalking; (3) ‘underserved populations’ as populations that face barriers in accessing and using victim services because of geographic location, religion, sexual orientation or gender identity; (4) ‘youth’ to mean a person who is 11 to 24 years old” (S.47, 2013).

These expansions are only a portion of what the reauthorizations include. The ultimate goal of the reauthorizations is to recognize areas for improvement in the sexual assault and rape legislation and address it to provide equality and safety across the targeted populations. The 2013 reauthorization received heavy opposition, specifically because it aimed to include American Indians, same sex-couples, and increased protection for victims of sex trafficking (Lynch, 2023) in greater lengths of protection.

As the expansion aims to be a protection umbrella, growing in diversity, the greater opposition shown by the conservative population in the United States. When laws are put into place that protect groups of people that others do not feel have a prominent place in society, there is opposition. This challenges the way in which people believe society should function, as these laws fight for protection over women and targeted groups. This shifts the framework away from women as property through the action of the legal system.

Today, revisions are consistently made to sexual assault and rape laws based on the proactive research. However, rape and sexual assault continue to be an astronomical issue in the United States and our legal system continues to fail the victims the courts are intended to help. According to RAINN, 975 perpetrators out of 1,000 will walk free. Additionally, out of every 1,000 sexual assaults, 310 are reported to the police, 50 of those case reports lead to arrests of a perpetrator, 28 cases will lead to a felony

conviction, and 25 perpetrators will be incarcerated (Department of Justice, 2015). Thus, the perspective and action surrounding rape has greatly shifted over time in the United States but further analysis can be done to improve this topic.

2.4.3 Statistics

While each state creates their own definition of rape or sexual assault and prosecutes accordingly, there is federal law as well. Federal law has the ability to override any state law whenever there is a conflict and is handled through the Supreme Court. Below is a compilation of the data gathered by the National District Attorneys Association & National Crime Victim Law Institute in 2016, showing the various categorizations of rape and the punishments under Federal law.

Categorizations and punishments for rape under federal law

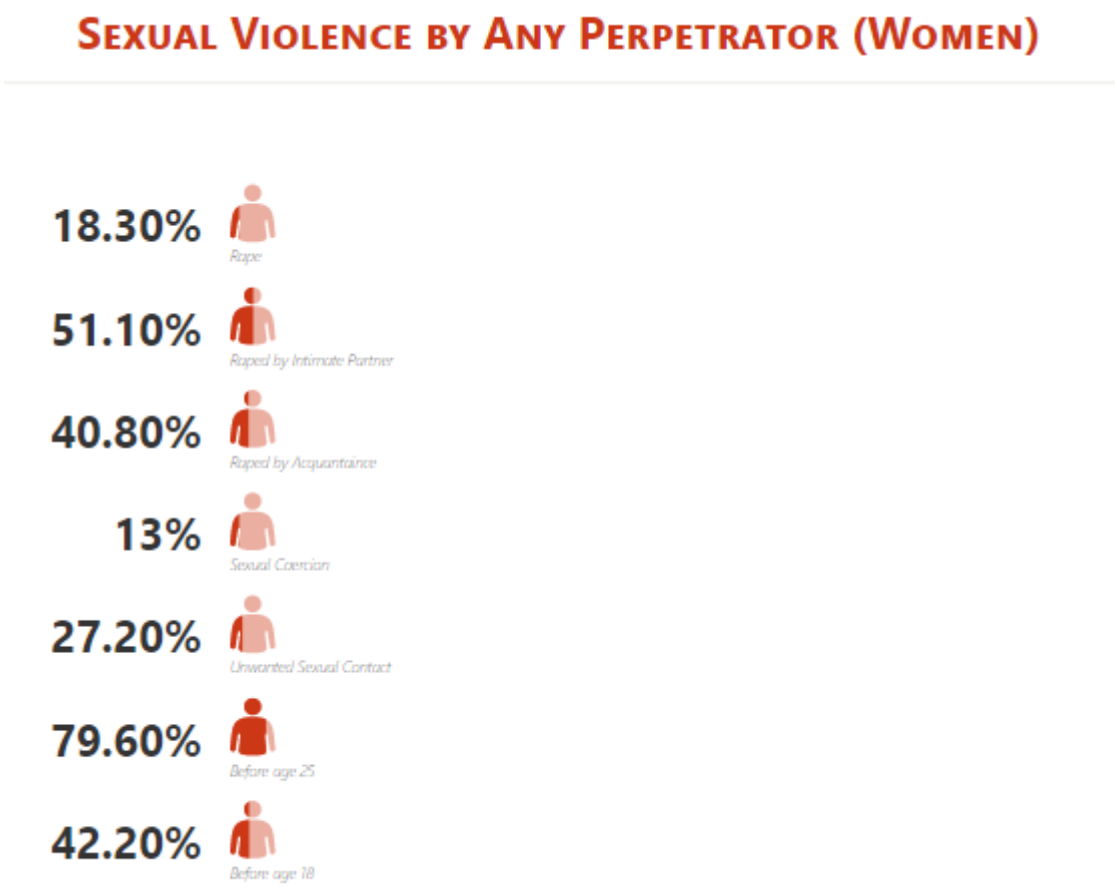
Description	Fine	Imprisonment	Life Imprisonment
Rape using violence to override consent	**unlimited**	**0-Unlimited**	**Yes**
Rape by causing fear to override consent	**unlimited**	**0-Unlimited**	**Yes**
Rape by drugging/intoxicating person, unable to consent	**unlimited**	**0-15**	**No**
Staturory rape with adult perpatrator	**unlimited**	**0-15**	**No**
Statutory rape with adult perpetrator with previous conviction	**unlimited**	**0-Unlimited**	**Yes**
Statutory rape with perpetrator who is a minor	**unlimited**	**0-15**	**No**
When a person causes rape by a third person	**unlimited**	**0-10**	**No**
When a person causes the rape of a child under 12 by a third person	**unlimited**	**0-Unlimited**	**Yes**

It is interesting to note that these Federal laws have progressed over time. While a lifetime in prison is a possibility based on the severity of the offense, it is an uncommon

sentence. The sentencing of the maximum punishment in any category is a rarity in the prosecution of rape trials because of the way society views sexual assault.

The statistics of victims will now be shown and explained. Below is the depiction of a report conducted in 2010 in which the victims of the sexual assault were women.

Figure 1



Note. This chart is based on the 2010 Data Brief by National Intimate Partner and Sexual Violence for sexual violence by any perpetrator in which the vicitm is a female.

The data below shows the statistical categorizations as shown before, however this is based on the data collected five years later in 2015.

Figure 2

NISVS 2015 Data Brief - Sexual Violence by any Perpetrator

- "Approximately 1 in 5 (21.3% or an estimated 25.5 million) women in the U.S. reported completed or attempted rape at some point in their lifetime, including completed forced penetration, attempted forced penetration, or alcohol/drug facilitated completed penetration. About 2.6% of U.S. men (an estimated 2.8 million) experienced completed or attempted rape victimization in their lifetime.
- About 1 in 14 men (7.1% or nearly 7.9 million) in the U.S. was made to penetrate someone else (attempted or completed) at some point in their lifetime.
- Approximately 1 in 6 women (16.1% or an estimated 19.2 million women) and approximately 1 in 10 men (9.6% or an estimated 10.6 million men) experienced sexual coercion (e.g., being worn down by someone who repeatedly asked for sex, sexual pressure due to someone using their influence or authority) at some point in their lifetime.
- A majority of female victims of completed or attempted rape first experienced such victimization early in life, with 81.3% (nearly 20.8 million victims) reporting that it first occurred prior to age 25.
- The majority of male victims (70.8% or an estimated 2.0 million) of completed or attempted rape reported that their first experience occurred prior to age 25."(Smith et al., 2018, p. 2)

The statistics demonstrate an increase in sexual assault and rape in the United States between 2010 and 2015. While rape and sexual assault does not simply just happen to women, there is a significant difference in numbers between male and female victims. These statistics further the societal structure and domination hypothesis while also demonstrating the growing prominence in America.

2.5 Consent

2.5.1 Consent definition

Consent, as defined by the Merriam-Webster dictionary, is "to give assent or approval", derived from the archaic definition "to be in concord in opinion or sentient" (Merriam Webster Collegiate Dictionary, 2023). The noun form of the word demonstrates two parties in agreement with each other by defining it as "compliance in or approval of what is done or proposed by another" (Merriam Webster Collegiate Dictionary 2023). The dictionary definitions offer the understanding of a mutual understanding and agreement between two complying parties. In the realm of sexual assault and rape, there is a lack of consent.

The topic of consent, similarly to that of sexual assault, is sparse in data. Researchers are gaining interest in consent as it pertains to the realm of law, sociology, and psychology. Melanie A. Beres' 2007 study analyzes the then current conceptualizations of consent in order to find the gaps in the data. She touches on the idea that consent is a physical embodiment of what someone is thinking and wanting to participate in (Alexander, 1996) or the catalyst that shifts an act that is morally heinous to something that is positive and morally sound (Archard, 1998). At the time of this article, she notes that researchers had only just begun to investigate the types of behaviors that create consent (Beres, 2007). Her observations are furthered when she notices that the aforementioned conceptualizations lack a precise definition of consent as well as neglect the consideration that "dominant heterosexual discourses impact the communication of consent" (Beres, 2007). Her perspective takes the societal dynamic and the causation behind rape into account. Beres' proposed research asserts the necessity to understand the societal pressures in order to understand a crime that happens to preserve that dynamic.

Alongside this study, Tiersma (2007) notes that consent is the most challenging linguistical component of rape law. Rape and sexual assault are crimes because one party does not consent to the sexual activity. The laws surrounding consent in sexual assault cases will be explained later, however the way in which we conceptualize consent is important. Often, the responsibility and pressure are placed on the victim of the assault to demonstrate the lack of consent. Essentially, in the court of law, it is placed on the victim to explain why a crime was done to them. This is problematic as the culpability is shifted away from the perpetrator to the victim.

2.5.2 Laws Surrounding Consent

As previously stated, each state defines rape in their own way whether it be sexual batter, sexual assault, etc. While the terminology and definitions may vary, each state views consent as an integral part of the definition. Additionally, there is no national legal definition of consent, leaving it up to each state to define and handle it individually. However, each state evaluates consent in three main areas in regards to sexual acts. Firstly, affirmative consent through verbal or nonverbal means indicating agreement for sexual acts. Secondly, freely given consent meaning the individual was not coerced, threated by violence or induced by fraud to participate in sexual acts. Thirdly, capacity to consent meaning the individual had the legal ability to consent. (RAINN Legal Role of Consent). The capacity to consent is based off of age, developmental disability, intoxication, physical disability, relationship of victim to perpetrator, unconsciousness, or vulnerable adults (RAINN Legal Role of Consent). Each state evaluates the categories differently and processes consent to varying degrees. Because there is no national law concerning consent and the categories are ambiguous, consent remains a point of contention in sexual assault legal proceedings and trials.

In the legal proceedings, the responsibility is placed on the victim. The laws do not look at the perpetrator not taking a "no" for an answer, rather it looks at the extent to which the victim resisted; how far did the victim, often times female, to deny the sexual advances. A 2013 report on a young person's perception on consent documented the perpetrator, the accused of the rape/sexual assault, is tasked with proving they believed consent was there and that their belief in the consent was reasonable (Coy et. al, 2013). This is an incredibly subjective methodology that is used to perpetuate the heterosexual

male dominant space that is created by society in the first place. The victim is responsible for convincing a population that the advances and actions of the perpetrator were unwanted, rather than the legal system supporting the victim to begin with. Sauntson furthers this point in the theme of miscommunication. She states that "the fact that miscommunication as a common phenomenon in rape and sexual assault proceedings reinforces the stereotypical assumption that women are responsible for rape and that any misunderstandings between men and women are generally a result of the deficient communication of women" (Sauntson, 2020).

To summarize, this chapter is divided into 3 main topics: forensic linguistics, sexual assault, and consent. Each section has shifted greatly overtime in the United States. Forensic linguistics is continuing to gain traction and prove to be a necessity in the legal realm. One specific framework was outlined; Conversation Analysis, which operates as an approach analyze social interactions in a specific category or context. Additionally, sexual assault and rape have come to the forefront in regards to recognized issues in the United States and the laws are slowly beginning to reflect this. The heinous act is understood as an act of domination to continue the suppression of another group or population. The main factor in rape is the notion of consent. The presence of consent creates the legality of the act, whereas any sexual act lacking consent is illegal. The understanding of consent has transformed over the course of the last few decades. While many conceptualizations have been presented, it is noted that they miss the component of domination, suppression and the social dynamics. This heavily influences the legal system surrounding rape. The laws are still formulating in regards to best handle consent. The language used not only in the laws but in the questioning is important to investigate.

Next, the methodology surrounding the cross-examinations for sexual assault cases will be explored, along with the grammatical guidelines that will evaluate the transcripts.

CHAPTER 3

CROSS-EXAMINATIONS AND CASE INTRODUCTION

3.1 Cross Examinations

Cross-examination is an integral part of the legal proceedings in the United States. The examination of someone on the witness stand can happen in two forms. There is the direct questioning, in which a party calls a witness to testify in court, the attorney must follow a specific line of questioning to solicit certain answers before the judge and jury. Witnesses with the ability to be questioned are anyone from witnesses of the crime, forensic examiners, and the accused and the defendant. The other form of questioning is the allowance of the opposing party to question the same witness. This is called cross-examination. The line of questioning are limited to questions that have been somewhat prepared or discussed prior to the examination of the witness in court. The ultimate goal of a cross-examination is to bring awareness to any potential contradictions, reasonable doubt, or even demolish the prior testimony provided by the witness perhaps to law enforcement or in a pre-trial scenario.

The questioning process of a trial is under the Confrontation Clause (U.S. Const. Amend. VI). in which the accused has the right to be face to face with the accuser. They have the right to a full and fair trial in front of an impartial jury (Cornell Law).

The line of questioning by the opposed party is aimed at discrediting the witness and formulating their opposing truth of events or circumstances. The cross-examination uses different rules than the direct-examination. In the cross, attorneys are confined to asking questions already asserted by direct-examination and questions that pertain to the witness's credibility. Leading questions are used in the direct-examination to help the

witness while the same style of questions are used to fuse a particular truth during the cross-examination that is meant to discredit the witness (Cornell Law, Rule 611).

The goal of the defense is to infer that there was some form of consent provided by the victim or that the accused had reason to believe there could be some form of consent. A book was published by the National Association of Criminal Defense Lawyers, *Pattern Cross- Examination for Sexual Assault Cases: A Trial Strategy and Resource Guide*, providing a game plan to discredit the victim of the assault. The advice is designed to "level the playing field" (Waddington, n.d.) as they view the victim's attorneys as ruthless advocates that will stop at nothing to throw the accused in prison. They define the ultimate goal of their proposed line of questioning is a function to "dominate prosecution witnesses". This terminology is interesting because the act of sexual assault and rape is to dominate and the line of questioning used on the victims is a reiteration of the trauma they have already experienced. Matoesian (1997) discusses the powerful language in cross-examinations and the retraumatizing and revictimization of the witnesses that occurs. This suggests that what is happening in the courtroom is linked to lawyers' socialization interaction with witnesses in specific ways. However, it seems like this is the goal of the defense cross-examination to perpetuate their version of the truth and continue to be in disbelief of the victim. The cross-examination methodology leads to the specific grammatical characteristics that will be used in the evaluation of the transcripts.

3.2 Case Introduction

In the infamous New Bedford rape case in 1983, Cheryl Araujo was brutally gang raped by roughly 4 men at a bar. In this case, there were bystanders that did nothing to

prevent the crime, rather they cheered on the perpetrators. The case caught national attention as it was the first rape case in the United States to be televised to the nation. Everyone watching had the same information as the jury and it sparked a national conversation on rape, bringing forth the various perspectives. The cross-examination is reported to "vilify" (Pettengill, 2020) Cheryl Araujo as defense attorneys claim she "was asking for it" by going to a bar alone late at night. The two of the perpetrators were convicted while the other 2 were acquitted. The questioning and strategies from the cross-examination will be investigated.

Secondly, excerpts from the 2007 case, Commonwealth of Virginia versus Smith and Doe are used. The transcript is of both the direct and cross-examination of the rape victim. For the purposes of this paper, only excerpts will be examined. A limitation of this is that the line of questioning occurred during the pretrial, meaning the line of questioning is very similar to that of the real trial, but not as concise. For context, the victim of the assault was out drinking at a club in Washington, D.C. where she met the two defendants. The defense in this case is that the victim was too intoxicated to give consent to the sexual actions. To conclude the trial, the charges were later dismissed.

The final case transcripts are documents from The People of the State of California v. Brock Allen Turner. The particular transcripts include the cross-examination of the victim and personal testimonies presented to the court. In 2015, the perpetrator, Brock Turner, attended a party in which he assaulted the victim, Channel Miller, while she was unconscious. Two graduate students witnessed the events and intervened to help the victim. This case gained a high-profile status when Turner plead not guilty to the charges of two counts of rape, two counts for felony sexual assault, and one for attempted

rape. The defense attempted to discredit the victim due to her alcohol intake at the party as the defense strategy. The perpetrator was convicted of charges, served 6 months in jail and was then released.

CHAPTER 4

GUIDELINES AND EXAMPLES

` This next chapter will present the aforementioned guidelines for analyzing sexual assault cross-examinations and testimonies in the United States. The guidelines are pulled from Susan Ehrlich's past research on trials from Canada.

4.1 Powerful language

Powerful language used by defense attorneys to pressure witnesses into the agreement of misconstrued events. It is the leading and inferring of a situation that the victim does not fully agree with. The tactic is to pressure the witness and document the agreement with the defense to create reasonable doubt in the minds of the jury.

> Q: Isn't it fair to say that whenever you don't want something to come up, you just say, I don't remember? Isn't that true?
>
> A: That isn't true.
>
> Q: Isn't that what you said to me, 'I don't remember' didn't you?
>
> A: Yes, I did.
>
> Q: Now it's a lie, isn't it?
>
> A: It was not a lie.
>
> Q: You do remember?

(Pettengill, 2020)

The defense attorney, David Wexler, attempts to pressure the victim, Cheryl Araujo, into agreeing with him that she is lying. She is quoted in previously saying she does not remember a specific point in her rape and Wexler aims to capitalize on this. He points outs out that whenever he has the opportunity to twist the events into something that could potentially reflect that she did want to engage in sexual activity ("whenever you

don’t want something to come up” (Pettengill, 2020)) she dismisses what he claims “facts” with a lack of memory. She denies this assumption and the denial is twisted into Araujo as a lair, aiming to discredit all of Araujo’s story. Wexler uses powerful language to create a very specific truth and to shift the jury’s perspective to believing the rape is a construction of a lie.

4.2 Question-Answer Sequences

Ehrlich uses Conversational Analysis to focus in detail upon question-answer sequences in rape trials. She notes that the particular sequencing of questions can be used to demonstrate an inconsistency in the victim’s story (Ehrlich 2001). Additionally, the sequencing tactic, similarly to the powerful language, is to lead the victim to a specific truth. This suggests that the victim was willing, even in the smallest degree, to participate in any sexual activity with the perpetrator. This can be accomplished through the framing of questions in a suggestive or leading manner, using hypothetical scenarios to explore the victims’ supposed willingness, or repetition of the same question to elicit a specific response. The sequencing is a fundamental mechanism of conversation, thus it is how attorneys may try to use specific questioning strategies to lead witnesses and jurors to logical conclusions of a specific truth.

Q And I think you referenced this. When you're, when you're kind of drunk, when you're dancing, you don't feel the pain in your ankle as much; right?

A Yes.

Q So you were able to dance okay, because you were drunk enough at that point, that --

A Yes.

Q -- you didn't feel the ankle. Later in the night, you did begin to feel the pain in your ankle; right?

A Yes.

Q And that's because you were sobering up as the night went along; right?

(Commonwealth v. Virginia, 2007)

In the 2007 trial Commonwealth v. Virginia versus Smith and Doe, the defense attorney strategizes his questions, as demonstrated in this excerpt. The victim previously discusses rolling her ankle and being in pain. The defense attorney takes this line of questioning to speak on her drunkenness. He begins by commenting on the amount of pain felt by the victim inferring that less pain means more drunkenness and more pain is progressing to s sober state. He is alluding to the fact that if she was sobering up by the time she made it back to the perpetrators' apartment, she would be in a position to consent to the sexual activity rather than be too intoxicated. Additionally, sequence-wise, this does a few things. One, it seeks agreement with the attorney and pushes the victim to

ratify the attorney's claims; two, it allows the attorney to maintain the floor and nominate for the next turn.

> Q: You also talked about… pretending to welcome people and singing and embarrassing your sister. That's what you decided to do at that time; right?
>
> A: Intentional to welcome people or to be silly?
>
> Q: To be silly.
>
> A: Yes.
>
> Q: …You drank it all down at once right?
>
> A: Yes.
>
> Q: Like, chugged it?
>
> A: Yes
>
> Q: Okay. And that was a decision you made; right?
>
> A: Yes.
>
> (People v. Turner, 2016)

The question sequencing alludes to the fact that the victim made the conscious decision to become as intoxicated as she was. In asking about her silliness and moving into alcohol consumption, the defense is attesting to her character, trying to paint a picture as though the victim is one who parties frequently, in order to place blame. In persistently asking if it was a conscious decision, it goes to the idea that the event was a conscious decision to engage in sexual activity rather than rape. The defense concludes this part of questioning by interrogating her dinner. When the victim responds yes to her having rice and broccoli for dinner before partying, the defense aims to suggest that Miller's intention was to blackout and therefore get herself into the sexual activities with

Turner. Thus, the specific questioning sequence illustrates a very specific and often, distorted view of the truth to place blame on the victim and discredit her, rather than holding the perpetrator accountable.

4.3 Personal questions

The use of personal questions regarding one's character, personal history including dating and any relationship with drugs or alcohol, function to discredit victim and exonerate the perpetrator. This can also look like questions along the lines of what the victim was wearing which is geared to demonstrate willingness of the victim and sexual history which discredits the allegations of the perpetrator.

The 1983 media covered rape trial was plagued with personal questions during the cross-examination. Cheryl Araujo's cross-examination contained questions such as: "what were you wearing?" "If you're living with a man, what are you doing running around the streets getting raped?" Journals and reports have since noted that the entirety of the cross-examination was a grueling process that led to the revictimization and vilification of Cheryl Araujo. One of the defense attorneys of the perpetrators questioned Araujo, saying:

> Q: You wouldn't have gone into that place if it was boisterous or out of control and the men were acting rowdy, would you?
>
> A: No, I would not?
>
> Q: You woulda turned right around in your heels and walked out, wouldn't you?
>
> A: I guess
>
> (Pettengill, 2020)

The questioning of her entrance into the bar is not to support her. The first question in this excerpt: "You wouldn't have gone into that place if it was boisterous or out of

control and the men were acting rowdy, would you?" is aimed to discredit the victim. Further, if the bar sounded wild, she would have gone home, so it must have been a safe environment. The bar either did not pose a threat to the safety of the victim or she entered the bar with the intentions of sexual activity with men. The mentioning of heels in this line of questioning alludes to the idea that she was dressing with the intention of engaging in a form of sexual activity. The line of questioning is performed to convince the jury, Cheryl Araujo walked into the bar to appeal to the men in a sexual manner by the way she was dress.

In the 2015 Standford Rape trial, Miller was cross-examined with questions such as:

"Are you serious with your boyfriend?
Are you sexually active with him?
When did you start dating
Would you ever cheat?
Do you have a history of cheating?"

(People v. Turner, 2016)

This questioning aims to delegitimize Miller's current relationship with her boyfriend and plant a seed to the jury that Miller may have wanted to break away from the committed relationship and engage with Turner. These extremely personal questions, with absolutely no correlation to the culpability of the perpetrator, are asked merely to demonstrate any sort of willingness on Miller's end. This discredits not only the experience of the victim, but also the character. It paints the victim in a false light that places blame on her rather than the assailant.

4.4 Conversational strategies used in cross-examinations

Transitivity is a linguistic concept that refers to the way that verbs are used to describe the subject to object relationship in a particular sentence. In the context of sexual assault cross-examinations, transitivity can be an important aspect of grammar to

consider because it can affect the way that questions are phrased and how the testimony is perceived.

Further, it is the use of passive voice versus active voice. In passive voice, the object of the verb shifts to become the subject of the sentence, and the agent or doer of the action is often left unspecified or relegated to a prepositional phrase. For example, a question similar to "was the victim assaulted?" uses the passive voice, with "the victim" as the subject and "assaulted" as the verb. In contrast, active voice puts the agent or doer of the action front and center, as in the question "Did the defendant assault the victim?" These grammatical properties demonstrate who is attributed agency in the interaction.

4.4.1 Usage of Adverbials and Modal Verbs

In sexual assault cross-examinations, the use of adverbials such as "perhaps" or modal verbs like "might" can be used to mitigate the agency of the perpetrator and discredit the victim. These linguistic devices are often used to support the idea that the assault may not have occurred or that the perpetrator may not be responsible for the assault. It is often used to shift the blame in the direction of the victim.

For example, a lawyer might ask a victim "Do you think it's possible that you might have misinterpreted the defendant's actions?" This type of question, which uses the modal verb "might" and the adverbial "possible," can be used to suggest that the victim may not be sure about what happened and that the perpetrator may not be fully responsible for the assault.

Similarly, the use of adverbials such as "perhaps" can be used to suggest that the victim's testimony is not entirely reliable. For example, a lawyer might ask a victim "Perhaps you were mistaken about what happened that night?" This type of question can

be used to suggest that the victim may not be sure about the details of the assault and that their testimony may not be entirely trustworthy.

Q Do you remember saying to him: I don't even think I got a drink to drink there?

A Yes.

Q So you don't know if you had a drink at Club Five?

A Upon further reflection, I remember holding a glass in my hand, you know, so --

Q Could it have been water that you remember holding?

A It could have.

Q So you're not sure you had any drinks at Club Five?

A Yes.

Q Okay. So the other -- and that's one drink at Pasha; right?

A Yes.

Q Do you remember what time you left Pasha to go to Fuddruckers?

A I don't remember, exactly, what time it was.

(Commonwealth v. Virginia, 2007)

The defense attorney attempts to diminish the victim's credibility with a lack of memory of the night in question. In this excerpt, the attorney uses "could" a modal verb to suggest a possible truth. The example of water is used in this situation which would help the victim's drunkenness and pull her closer to a state of sobriety and thus a state of consenting ability. The attorney throughout the entirety of this cross-examination, and demonstrated above, uses "so" an adverbial frequently. The presence of "so" furthers the

narrative of the attorney rather than that of the victim. The victim is then placed in somewhat of a trap in which she must agree or disagree with the proposed version of reality. Here, one sees “so” to propose a version of the truth, followed by the modal verb “could” and then again followed with the adverb “so”. As previously mentioned, these words suggest that the victim is unsure of the events that night, a tactic used to dismantle the victim’s stance of being unable to consent.

Additionally, the positioning or sequencing of “so” is not only agreement-seeking, but it also drives the “epistemic engine” forward in that it is creating entailments from prior utterances. As epistemic stance focuses on how the speaker is positioned in terms of epistemic status. The speaker can appear more or less knowledgeable based on how they choose to orient themselves in the turn-taking pattern (Heritage, 2012). The attorney placed themselves in a position of power to drive the conversation towards a specific truth through receiving agreements from the victim. They utilize previous statements from the victim to make inquiries of different topics and seek agreement to perpetuate a certain truth.

A I don't -- I don't know.

Q Might have been some conversation going on?

A Possibly. I have no idea.

Q Joking around maybe?

(Commonwealth v. Virginia, 2007)

Similarly, the defense attorney uses the modal verb “might” coupled with the adverbial “maybe” in this excerpt. The modal verb paired with the adverbial suggests an alternate truth or version of the assault. In this particular instance, the defense lawyer

aims to suggest that it was a lighthearted situation in which there were jokes and laughter. Because the victim's lack of memory of the night is a factor, she is placed in a position to agree. When she responds with "Possibly. I have no idea", she opens the door for the attorney to suggest another version of the truth. This again traps the victim, while the attorney has her in a position where she is forced to go along with an altered version of the events.

The defense of Brock Turner consecutively uses the adverb "right" at the end of his questions. For example:

> Q: Now at the time that these events occurred, you had already graduated college; **right**?
>
> A: Yes.
>
> Q: And you did a lot of partying at college; **right**?
>
> A: I did a decent amount. I would not consider myself a party animal.
>
> Q: Well, you tell the police when you were interviewed that you did a lot of partying there too; **right**?

(People v. Turner, 2016)

The usage of "right" is to reaffirm the narrative the defense attorney is presenting to the court. He is trapping the victim in a truth that may be inaccurate, but paints a picture of her in a negative light, only to be emphasized by this adverb. The victim only has the option to agree or disagree with the narrative, but it is made more challenging when it is emphasized in this manner. Similarly, to "so" in the aforementioned section, "right" is used as a turn-final tag question that also drives the conversation, what Heritage deems as the "epistemic engine" (Heritage, 2012). While it pushes the victim towards a particular

narrative, the positioning of the adverbial is strategic in that it is used to drive the conversation.

4.4.2 Agentless passives

These grammatical properties demonstrate who is attributed agency in the interaction. Agentless passives depict a sense of consensual action. There is no force of sexual encounter done by the perpetrator, agentless passives create a dynamic of mutual participation. For example, "it was decided" "it was agreed" obscure and conceal responsibility for his acts of sexual initiation and aggression (Ehrlich, 2001).

The mitigation of agency is important to look at. The victim often blatantly explains the agency used by the perpetrator to perform the assault, while the perpetrator uses various grammatical tactics to shift the culpability.

> "I go up to her and tell her that I like her dancing. We started talking *together* since I thought we had hung out for some amount of time before. I asked her if she wanted to dance, so we began to dance *together* and eventually started kissing *each other*."
>
> (People v. Turner, 2016)

In Brock Turner's statement to the court, his phrasing and word choice aims to promote unity and the notion of consent. Prior to the assault, Turner highlights their actions as he deems them "together". Opposing Chanel Miller, the victim's testimony, in which she has no recollection of the night, he states that they participated in all events to an equal degree. The utilization of the word "together" demonstrates an equality and negates any sort of culpability he could have. Additionally, he mentions that they kiss "each other". It should be noted that he does not say that he kissed her, the only accountability he takes is for speaking that he likes her dancing. He places all of the actions in which they are together with equal action, rather than focusing on the actions of himself.

4.4.3 Grammatical Nominalizations and Subjects of Unaccusative Verbs

Susan Ehrlich's research on grammatical nominalizations and subjects of unaccusative verbs in cross-examinations highlights how attorneys can use linguistic strategies to shift blame away from the perpetrator and onto the victim in sexual assault cases.

Nominalizations involve turning a verb into a noun, which can make it easier to distance the perpetrator from their actions. For example, a lawyer might use a nominalization like "the act of sexual intercourse" instead of a more direct verb like "rape." By using a more abstract and less direct term, the lawyer can downplay the severity of the assault and make it seem less like a deliberate act of violence.

Additionally, Ehrlich's research demonstrates the usage of unaccusatives and the same can apply; the blame is shifted away from the perpetrator and directed towards the victim, usually by means of discrediting (Ehrlich 2001). Unaccusative verbs are those that describe a situation where something happens to a subject without the subject being responsible for the action. For example, in the sentence "The vase broke," the vase is the subject and the action of breaking happens to it, rather than it actively breaking itself.

In cross-examinations, attorneys can use unaccusative verbs to describe the victim's behavior in a way that suggests that they were responsible for the assault. For example, a lawyer might say "The victim became unconscious" instead of "The perpetrator drugged the victim." By using an unaccusative verb to describe the victim's behavior, the lawyer can suggest that the victim was responsible for their own assault and shift blame away from the perpetrator.

Overall, Ehrlich's research highlights the importance of understanding how linguistic strategies can be used to shift blame away from perpetrators and onto victims in sexual assault cases.

In the 2007 Washington D.C. Nightclub case, the defense attorney consecutively refers to the sexual assault as “what had happened”. This creates ambiguity in that it doesn’t confirm or deny the accusations brought against the perpetrator. This does not demonstrate any cause for the sexual assault, it only describes a plain event without culpability.

In Brock Turner’s statement to the court, he structures his testimony to negate any culpability. He presents the act in question by saying “ I naively assumed that it was accepted to be *intimate* with someone in a place that wasn’t my room” “where *each of us* fell to the ground” “ thought she was satisfied with the *sexual interaction*”. In these sentences and phrases, Turner does not address his own actions, rather he downplays the severity of the act, not incriminating himself, and perpetuates a consenting narrative. He uses the abstract terms “intimate” and “sexual intercourse” to distance himself from violence. This makes it seem like the only thing Turner is at fault for is engaging in sexual activity in a public space under the influence. There is not violence attached to his rendition of the events. This particular tactic is individually used to create an overall effect that mitigates or denies any culpability of the perpetrator.

4.5 Pragmatic Functions of Questions

Pragmatics in cross-examinations is an area of research that is focused on understanding how language is used to achieve specific goals in a legal setting. Susan Ehrlich's research on this topic has shed light on how legal professionals use linguistic

strategies to achieve their objectives during cross-examinations, particularly in sexual assault cases.

4.5.1 Strategic Questioning

Strategic questioning involves using questions that are designed to elicit specific information from the witness. This allows the questioner to influence and evaluate evidence but the victim cannot do the same. In sexual assault cases, lawyers may use strategic questioning to focus on details that suggest the victim was willing or complicit in the assault, such as what they were wearing or their sexual history. By focusing on these details, lawyers can create the impression that the victim was responsible for the assault, rather than the perpetrator.

As previously outlined in the grammatical sections, the questions are skillfully created. They are not only grammatically structured to create a specific response, but are placed in an order that depicts a specific narrative. The defense attorneys skillfully craft the sequence of words and order of questions to create reasonable doubt in the character of the victim or in her position of consent. While the victim sits helplessly at the stand, the defense attorney is capitalizing on structure to blame the victim for the heinous crime of rape and sexual assault.

4.5.2 Presupposition

Presupposition involves phrasing questions in a way that assumes certain information to be true (Ehrlich 2001). For example, a lawyer might ask "When did you first meet the perpetrator?" instead of "Did you meet the perpetrator?" This presupposes that the witness did meet the perpetrator, which can make it easier for the lawyer to extract further details that support their case. In sexual assault cases, lawyers may use

presupposition to suggest that the victim was willing or complicit in the assault, even if this is not true.

In the public rape trial in 1983, one of the most broadcasted questions was posed to Cheryl Araujo in cross-examination: “If you’re living with a man, what are you doing running around the streets getting raped?” (Pettengill, 2020). This presupposes that Araujo went out of her home for this specific event. It assumes that she left her house for this encounter, rather than placing blame on the men who held her down on the pool table, it places blame on the victim for leaving her house in the first place.

Additionally, this can be seen in the examination of Chanel Miller in the 2015 Standford Rape case. In the victim’s statement, she reports being asked “You didn’t notice any abrasions, right?” The affirmative word “right” is begging the victim to agree with the question. However, it is more important to notice this presupposition. Rather than asking the victim “did you notice any abrasions?” Miller forced with a presupposition that there weren’t any abrasions to begin with. This suggests that there was a lack of markings on Miller’s body, further suggesting a lack of violence and a greater inclination that Miller did not oppose the sexual activity.

4.5.3 Selective reformulation

Cross examining defense questioner formulates and reformulates utterances as a means of strategically presenting particular version of the events in question. Selective reformulation involves repeating a witness's response back to them in a different way that emphasizes certain details (Ehrlich 2001). In sexual assault cases, lawyers may use selective reformulation to highlight details that suggest the victim was willing or

complicit in the assault, while downplaying details that suggest the opposite. By selectively reformulating the witness's responses in this way, lawyers can create the impression that the victim was responsible for the assault, rather than the perpetrator. In this particular example, the defense attorney does not reformulate to demonstrate willingness. The selective reformulation in this instance is to discredit the victim's entire credibility.

> Q: Isn't it fair to say that whenever you don't want something to come up, you just say, I don't remember? Isn't that true?
>
> A: That isn't true.
>
> Q: Isn't that what you said to me, 'I don't remember' didn't you?
>
> A: Yes, I did.
>
> Q: Now it's a lie, isn't it?
>
> A: It was not a lie.
>
> Q: You do remember?

(Pettengill, 2020)

If the defense can demonstrate the lying by the victim, they can infer that she is lying about the sexual assault/ rape. Thus, the defense attorney reformulates what the victim has said along with his version of the truth. This merge aims to discredit the victim and detract from the perpetrators' violent assault of the victim. Similarly,

> Q: And this is three and a half, maybe four hours later. You're not as drunk as you were at Club Five at that point. You will admit that; right?
>
> A: I felt more drunk then, and more exhausted…

> Q: My question was, leaving the fact that it was late night and you were tired aside, and talking about drunkness, you were a lot more sober at 5:15 in the morning than you were at 2:00 in the morning when you were dancing at Club Five. Is that fair enough?
>
> (Commonwealth v. Virginia, 2007)

In an inexplicit way, the defense is arguing that the victim was sober enough to consent to the sexual activity that was endured at this time. The defense attorney clearly restates his question in a different way that creates a story that the victim was sober and therefore, ultimately able to consent. Ehrlich notes this as "kinds of powerful discursive mechanisms are ultimately designed to cast doubt and suspicion on the opposition (i.e. the victim's) version of events" (Ehrlich, 2001).

4.6 Discussion

The three examined cases all fit into the various guidelines set out by researcher Susan Ehrlich. Surprisingly, the 1983 New Bedford case shared great similarities with the 2015 Stanford Rape case in terms of grammatical and pragmatic qualities. It is interesting that cases in 1983, 2007, and 2015 can share such great similarities in terms of discrediting and revictimizing the victim, while society becomes more educated on sexual assault and rape through greater accessibility to resources, enabling the attainment of a more progressive understanding of sexual assault. Further, victims of sexual assault and rape are still being vilified by the cross-examination structure. The style of these cross-examinations remains to discredit the victim and create doubt in terms of consent. The aforementioned guidelines depict both new and contemporary rape mythologies lingering in the language used in a system to cultivate justice. The cross-examinations and

testimonies analyzed in this research suggest that rather than bringing justice to those who suffered violent, life-altering crimes, the United States judicial system is plagued with perspectives that aim to trap women and revictimize them, while bolstering up the lives of young men and protecting them. Additionally, all of the perpetrators in the aforementioned cases were sentenced to significantly smaller sentences than previously sought out. In the 1983 case and the 2017 case, jurors were present and found most, if not all of the perpetrators guilty. However, the judge in the 2017 Brock Turner case stated that he did not want to ruin a young man's life, and only sentenced him to 6 months of jail time. The judge in this particular instance imprisoned himself to the language used by the defense attorney, seemingly negating police reports and witness statements. This highlights the judge's cultural perspective on sexual assault and weight of the defense attorney's language.

This conclusion is only part of the story. It is important to refer to the beginning of this paper, as the entirety of the United States adversarial system is structured to produce strategic questions to achieve various truths. The system incentivizes this means of questioning on both sides. The issue here lies within the type of questions specifically pertaining to sexual assault cases as they revictimize and traumatize the victims and perpetuate historic, problematic perspectives on sexual assault. In terms of combatting this, there is no outlawing of adverbials or modal verbs to aid the victim. In addition, prosecutors of the defendant are not evaluated in their weaponization of language in this research, thus it seems unfair to create suggestions to combat the line of question used by the defense. Ultimately, there is a problem or feature of the system in terms of

questioning victims of these crimes. While this research shows that there is a need for adversarial reformation, more data is needed in order to propose solutions for this change.

CHAPTER 5

CONCLUSION

The current research aimed to investigate the grammar and pragmatics in sexual assault trials in the United States.

The central questions for this research were as follows:

3. *How do grammatical and pragmatic properties shape the way we think about sexual assault in the United States?*

4. *Do the grammar and pragmatics shift over time in sexual assault cases? If so, does this propagate into perspective and further, laws surrounding rape?*

All court documents were analyzed using Susan Ehrlich's guidelines on cross-examinations and conversational analysis on testimonies. The analysis also operated under conversational analysis noting that all words were carefully selected to serve with a specific purpose in the question. While it is the attorney's job to utilize language to further their specific truth, whether it be in the advocacy of the victim or the defense of the perpetrator, based on the aforementioned examples, it is clearly demonstrated that the defense attorneys weaponize various grammatical structures with the function of creating a certain narrative. Each word is skillfully placed in the questions for optimal functionality. The words also carry a separate meaning. The words are strung into a question posed by the defense attorney to the victim. Rather than simply stating that there could be ambiguity in the realm of consent, the defense chooses to use grammar to discredit and revictimize the victim. In the analysis of a 1983 rape case, a 2007 rape case, and a 2015 rape case, the same usage of grammar and pragmatics held strong despite a societal shift in the view of rape and the revision of rape laws in 2013. This demonstrates a hefty disconnect in the societal perspective on rape with the way in which our judicial

system chooses to handle them in court. Due to a time constraint and limited access, further research can be conducted on the documents pertaining to grammar and pragmatics in United States rape cases.

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