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Conditional victimhood: examining social and legal attitudes toward sexual violence survivors in a progressive state context

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BOSTON UNIVERSITY
COLLEGE OF ARTS AND SCIENCES

Honors Thesis

**CONDITIONAL VICTIMHOOD: EXAMINING SOCIAL AND
LEGAL ATTITUDES TOWARD SEXUAL VIOLENCE SURVIVORS IN A
PROGRESSIVE STATE CONTEXT**

by

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Abstract

Since its rise in the 1970s, the anti-rape movement has been described as one of the most successful projects of second wave feminism. Reforms in criminal law, gains in funding for rape research and service providers, and the passage of the comprehensive Violence Against Women Act strengthened criminal due process protections for victims, improved the medical response to rape, and raised the public profile of sexual violence (Corrigan, 2013). However, in the wake of the #MeToo and #BelieveHer movements, the general public has been forced to reckon with the reality that there remains a profound cultural and legal bias against survivors of sexual assault. Through a comparative analysis of criminal cases arising from non-sexual assault- and sexual assault-related charges, my project examines the ways that rape myth narratives are mobilized by defense attorneys and how other legal actors attempt to derail them in a progressive state context. Incorporating evidence from a four month-long period of court observations (involving proceedings from 40 criminal cases) and 25 in-depth interviews with attorneys, judges, and police detectives, this study explores the pervasive concept of “real” or “legible” victimhood and why, despite significant legal reform, this rhetoric continues to prevail. I identify three distinct categories through which survivors of sexual violence are judged against societal expectations of a "legitimate" victim: (1) the victim’s display of non-consent, (2) the victim’s perceived culpability, and (3) the victim's response and presentation after the assault. I also articulate the barriers in legal infrastructure that stand in the way of attorney-level reforms.

Ultimately, this research contributes valuable insights into the complex dynamics surrounding sexual violence cases, highlighting the need for a paradigm shift in societal attitudes and a disengagement with legal frameworks to ensure justice for survivors. With an increased

awareness of these structural failures and a simultaneous recognition of the fact that incarceration is not a productive solution, I argue we must address the root causes of systemic sexual and gender-based violence and rechannel our resources toward its prevention (Greer, 2021).

Keywords: sexual assault; rape, criminal assault; case; charge; court; legal, legitimacy

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Introduction

According to the Rape, Abuse & Incest National Network (RAINN, 2023), sexual assault is the most under-reported crime in the United States, and for good reason. Not only is there shame associated with assault itself, survivors of intimate partner violence often experience victim-blaming and other types of retraumatization when they tell their stories. This retraumatization compounds the already significant barriers victims face, leading them—and their cases—to fall through the cracks (Katirai, 2020). Prosecutors in the last few decades have fought to create better protection for sexual assault survivors who choose to testify in court. However, there is little research on if or how victim-sensitive prosecution tactics impact general procedure or outcomes in criminal rape cases.

Massachusetts is frequently characterized as the “most liberal state” in the country, with 65.9% of voters voting Democratic and a mere 32.3% voting Republican in the most recent presidential election (World Population Review, 2023; Politico, 2021). Reflective of such, the state has seen a recent string of increasingly progressive district attorneys who express an interest in criminal justice reform. Current Suffolk County District Attorney Kevin Hayden has conveyed a commitment to progressive prosecution (Ehrlich, 2023) and his predecessor, former Suffolk County District Attorney Rachel Rollins, effectively decriminalized a host of nonviolent offenses while in office (Smith, 2019).

My research demonstrates that despite the state and district attorneys’ increased political progressiveness, rape myths and victim blaming attitudes continue to prove effective. What this indicates is that even with liberal advancements in the outlook of the state, prosecutors are faced with juries and defense attorneys that still subscribe to a script of rape culture. Regardless of distinct progress in much of how the state “sees” victims, the legal outcomes for survivors

remain the same. To analyze the rhetoric, I immersed myself in the day-to-day operations of the Suffolk County Superior Court. Prejudice in rape trials has markedly profound impacts, and with this in mind, my research supplements existing literature to guide better legal support for survivors of sexual assault. With my research findings, I envision a future in which a survivor of rape is treated no differently than a survivor of an armed robbery, a court system that empowers victims and strives for a reduction in sexual violence at large.

My focus on defense attorneys as a site where rape myths and victim-blaming attitudes can be located is not to imply that defense attorneys are somehow arbiters of social norms more so than prosecutors. Defense arguments would likely be one of the last to be affected by anti-rape reforms and progressive change, given that the purpose of the defense is to discredit the complaining victim by any means necessary. Rather, a more accurate measure of change is the effectiveness of anti-rape counterarguments made. Thus, what my research demonstrates is that despite a collaboration among prosecutors and judges in Suffolk County to derail rape myth narratives mobilized by the defense, juries do not react differently and defendants continue to be acquitted. DV/SA prosecutors operate within a distinct subculture of anti-rape attitudes and are faced with defense attorneys and juries who share a larger culture of minimizing sexual violence.

What my research articulates is both a theory of conditional legitimacy and an in-depth analysis of the ways this social construction is ingrained in legal professionals. What I mean by conditional legitimacy is an affordance of legitimacy only to victims who satisfy a number of prerequisite conditions, i.e. sexual modesty or an immediate reporting of their assault. Conditional legitimacy explains that in order for a survivor to be perceived as a “real victim,” they must satisfy the performance of a “perfect” victim. Not only do I reveal a clear discrepancy in the way victims of sexual violence are treated by the legal system when compared with

victims of other violent crimes, but I find that this discrepancy is patterned and almost formulaic. Further, in a state as politically progressive as it is, Massachusetts serves as a particularly instructive site of analysis. Feminist theory has made a difference in the arguments available to prosecutors in sexual assault cases, however this does not meaningfully change case outcomes. The conditions of legitimacy imposed on survivors of sexual violence are consistent across defense attorneys, judges, victims, and defendants *even in a state where prosecutors are actively countering them*. The failures of the criminal legal system make clear that the most effective way to combat sexual and gender-based violence is not through carceral means.

There is no question among researchers that the legal treatment of rape survivors is prejudiced. Brownmiller identified the same patterns in 1975. Maxwell reflected a similar discourse in 2014. Building on the work of scholars before me, I argue that despite existing in a world far more progressive than the 1970s in many ways, the legal treatment of rape survivors is largely unchanged. The *attitudes* of the gatekeepers, or arbiters, of legitimacy have not changed, and for this reason, we have not progressed. We still operate within the same failing constraints, and until we transform our framework itself, efforts to better protect survivors will continue to fall short.

Literature Review

Between the late 20th and early 21st centuries, the nature of rape myths in the courts, or false beliefs people hold about sexual assault that shift blame from the perpetrator to the survivor, flooded the fields of criminology, feminist studies, and legal studies (University of Richmond, 2023). In response, various legislation was passed with the goal of better protecting survivors (Mass.gov, 2023; NIJ, 2023). However, this was where most efforts came to a halt.

Since the implementation of reformed laws and shifts in prosecutorial conduct, there has been little research dedicated to the effectiveness of such changes. Thus, my research applies the methodology employed by some of the most foundational studies on this issue to a current context (Zydervelt, 2017; Weis, 1973; Stewart, 1996). It is worth noting that despite the paradigmatic shifts in cultural thinking and awareness that have preceded 2024, much of the underlying rape myths and biased rhetorics have remained the same. I lean on the existing literature in order to understand how the past has informed the present dynamics. These shifting eras signal the consistency and historical basis of existing rape myths.

Common rape myths include the belief that victims invite sexual assault by the way that they dress, their consumption of alcohol, their sexual history or their association with others with whom they are not in a relationship; the belief that many victims make false allegations of rape; the belief that genuine assault would be reported to authorities immediately; and the belief that victims would fight back—and therefore sustain injury or damage to clothing—during an assault (Costin, 1985; Estrich, 1987; Lonsway and Fitzgerald, 1994). As I analyze and sift through the tactics used in cases by defense attorneys, I cross-reference them with common rape myths as outlined by Costin (1985).

Culturally, there has been a historical divide between who is viewed as a “legitimate” sex crime victim and whose experiences are labeled as “illegitimate.” This false binary then translates into the ill-informed way in which legal professionals think about and discuss rape and victim integrity. For example, “[an assault] is often only deemed a rape [by defense attorneys or a jury] if the assailant is a violent stranger, if the victim reports the rape immediately after it occurred, and if [they] can provide evidence of the attack of [their] active resistance,” asserts

Weis (p. 71-72). Defense attorneys mobilize this warped conception of a “legitimate” rape victim to undermine complainants during trials.

Additionally, many defense attorneys and jurors indicate the belief that it is acceptable for men to act in a “sexually aggressive” manner, while women are “asking for it,” unless they are at home or properly escorted (Stewart 1996, p. 172). This contributes to the routine practice of “victim blaming” myths used as defense tactics. Victim blaming is the act of saying, implying, or treating a person who has experienced harmful or abusive behavior as though it was a result of something they did or said, instead of placing the responsibility where it belongs: on the person who harmed them (SACE, 2023). Many defense attorneys included in Stewart’s survey (1996) assumed that the victim in an acquaintance rape “must have done something outrageously stupid, like getting picked up in a bar or engaging in conduct which was interpreted as provocative” in order to find themselves in a threatening situation in the first place (p. 172). Zydervelt (2017) also found that defense attorney tactics leveraging rape myths are common. In over 85% of cases she surveyed, the complainant’s behavior leading up to and following the alleged offense was used by defense attorneys to infer that the victim had consented to the sexual acts (e.g. that the complainant went somewhere voluntarily with the defendant prior to the offense). In around 60% of cases, defense lawyers allege that the complainant’s personal traits—for example, their work as an actor or prostitute, or their parenting failures—make them less credible. Cultural myths and stereotypes operate as “extra-legal factors,” shaping attorneys’ perceptions—and subsequent discussions—of rape (Stewart 1996, p. 174).

When considering these works, though, it is important to acknowledge that much of the existing literature on rape myths and rape myth acceptance (RMA) relies on an understanding of rape as a tool for (cisgender and heterosexual) men to overpower and exert dominance over

(cisgender and heterosexual) women (Maxwell, 2014). Nearly fifty years ago, Brownmiller (1975) presented a proposition that rape occurs as a result of the patriarchal system of gender inequalities serves as an astute example. However, this view fundamentally explains rape with biological determinism, claiming that men have higher sexual needs than women and therefore are more likely to engage in coercive means to satisfy such needs. This theory not only neglects any recognition of rape survivors who do not identify as (cisgender and/or heterosexual) women or rapes not against a party of the opposite gender, but likewise the influence of cultural and structural factors. Informed by these limitations, Psychologist Louise Maxwell proposes a radical feminist theory that facilitates a more holistic examination of the driving forces behind rape. With Maxwell's (2014) lens as a guide, my research informs not only better protection for survivors who are college-educated, wealthy, cisgender, White, and/or women, but also better protection for those who do not fit this mold and are just as gravely impacted by sexually violating experiences.

As a supplement to the exploration of rape myths and rape myth acceptance, it is essential to expand upon the nuanced strategies survivors employ to navigate tangible manifestations of these institutional pressures. What Sweet (2019) articulates in her conceptualization of this “paradox” of legitimacy is that the medicalization of institutions surrounding domestic violence and sexual assault “creates conditions under which women must prove their survivorhood, performing psychological recovery to achieve institutional legibility” (p. 411). Though Sweet examines legitimacy in the context of medicalization and my research does so in the context of legalization and criminalization, her work is foundational for the approach I employ. It is also worth noting that Sweet's theory employs the concept of “legibility,” or the ability to be recognized as legitimate and worthy of resources within institutions. Legibility is distinct from

my use of the word “legitimacy,” however there are many overlaps as evidenced by Sweet’s conclusions. Sweet finds that women who have experienced domestic violence “become domestic violence survivors as they navigate institutions of surveillance and aid after abuse” (p. 411) In other words, in order to become legitimate, or “legible,” as she articulates it, as domestic violence survivors, Sweet contends that women must prove their survivorhood in order to be recognized as legitimate and worthy of resources within institutions. More specifically, Sweet (2021, 2019) posits that these “politics of legibility and surviving” take their form in three overlapping strategies: (1) extracting domestic violence from their larger life story and presenting it in a narrative of overcoming; (2) explaining abuse through depression and low self-esteem; and (3) performing survivorhood through “respectable” motherhood and sexuality. Through engaging in this process of transforming the presentation of one’s experience with violence, women craft a “domestic violence narrative and a performance of survivorhood that allows them to navigate institutional pressures, granting them recognition as ‘good’ survivors and providing access to resources” (p. 412).

Victims of rape and domestic violence are subject to “gendered standards of respectability” and obedience uncommon for other crimes (Hamby, 2014). For example, in Massachusetts, when a victim of sexual assault visits a hospital or emergency room following their assault, there is an option for their hospital care to be covered by a Victim Compensation program (Mass.gov, 2024). However, this compensation *only applies* if the victim is willing to complete a forensic exam/evidence collection kit, a process that typically takes nearly six or seven hours to complete. The completed Sexual Assault Evidence Collection Kit (SAECK) then provides forensic and DNA evidence that can be used by police in making an arrest and by prosecutors in seeking a conviction of the alleged perpetrator. What this indicates is that the care

and resources offered by the state are contingent on a victim's willingness to participate in the prescribed surveillance and criminalization of their assault. The priority is not what is best for the survivor, but rather what will allow the state to record and investigate the assault.

Moreover, this state-sanctioned biomedical surveillance opens individuals and their bodies up to state control and scrutiny (Sweet, 2015). In order to make sense of and label abused bodies, biomedicine employs diagnosis as a tool to capture domestic violence in particular ways (Sweet, 2014). Because biomedicine has a great deal of cultural legitimacy to define what bodies are and do, diagnostic categories act as pronouncements of what is "real," making it appear that diagnoses describe nature itself (Jutel, 2011a; Rose, 2013; Turner, 1996). In other words, biomedicine has the power to define past, present, *and* future somatic experiences (Sweet, 2014).

The biomedical adoption of our response to sexual assault also breeds a psychologized and micro-level conceptualization of sexual violence. Rather than examining the structural and cultural factors at the root of sexual violence, a biomedical approach over-simplifies and individualizes the larger picture at hand (Coker, 2004). Like criminalization, medicalization represents a deep threat to the response to sexual violence, as it counters the conceptualization of domestic violence as a social problem (Durazo, 2006). Medicalization directs attention away from social injustices and instead highlights individual pathology.

Literature demonstrates that another element of victims being deemed "legitimate" by the state is their emotional presentation and reciprocally the level of agency this response indicates. Victims who present as angry in court or during interactions with police or prosecutors are often viewed as less credible than victims who appear sad (Taslitz, 1999). In a 2019 research study, scholars found "anger is an emotion which is less 'accepted' in a context of a victim's statement than sadness is" (Doorn, p. 86). More generally, Doorn articulates that it seems as though there

are a number of expectations around how a victim should behave: “she should not be angry, too calm, too positive (or possibly, too hysterical), but mainly be sad, in order to be perceived as credible” (p. 87). Similarly, Taslitz (1999) finds that defense attorneys will employ lines of questioning “in the hope of angering the witness, for an angry, aggressive woman, because she thereby violates patriarchal norms, is disbelieved” (p. 93). Victims are seen as palatable and worthy of survivorhood and institutional resources only when their emotional performance is passive and weak.

The majority of victims in prosecuted adult rape cases are women, and the most appropriate emotional outlet for women in our culture is sadness (Seedat, 2009). Rather than biologic, psychosocial, and biopsychosocial factors being the culprit for this gap, this is more accurately due to differences in the typical stressors, coping resources, and opportunity structures for expressing psychologic distress made available to women and men around the world (Seedat, 2009). The key detail here is differences in coping resources and opportunity structures for expressing emotions. Essentially, women are structurally bound by expectations of passive emotions, and this manifests itself in the legality *and* legitimacy of their victimhood. Women are, largely by defense attorneys, categorically funneled into passivity in the emotions they are permitted to express, and the scrutinization of their emotions in court is simply one example of such. Sadness is an appropriate emotion for women to display, whereas anger is not.

This experience of configuring and contorting oneself into legitimacy for state recognition is not unique to that of survivors of domestic violence and sexual abuse. By nature, there is an inherent requirement of legitimacy to appease every institution of state power or authority. State entities require visible legitimacy from their populations in order for individuals to receive any care or supportive services. However, this standard of legitimacy is particularly

exacerbated in cases involving sexual violence and violence against women. In part, this is due to a long history of state control over women's bodily autonomy and sexual and reproductive freedom—particularly in relation to women of color, poor women, and women with disabilities.

The controlling of bodily autonomy is a dynamic that has been naturalized by the state in an interest to preserve their control (Mehta, 2020). There is nothing more intimate and personal than an individual's physical body, thus, by extending its reach to the most basic site of the people it governs, the state extracts a monopoly over every aspect of a person's life. Instead of discretely regulating an individual's financial status, social currency, ability to obtain healthcare, or citizenship eligibility, by inserting itself into an individual's relationship with sex and sexual violence, the state has ultimate control.

How the state sees, and particularly how it makes subjects legible has been central to research into state knowledge production and with it, the mechanics of power (Rodriguez-Muniz 2017; Scott 1999). In this discussion, legibility can be defined as something a state imposes on its people and resources. Legibility is a coercive abstraction, not only treating different people, places, and ways of life as if they were the same, but creating an environment which encourages people to forget those differences ever existed (Scott, 1999). Many scholars point to the argument that states seek to force legibility on their subjects by homogenizing them and creating standards that simplify pre-existing, natural, diverse social arrangements (Scott, 1999). What James Scott articulates in "Seeing Like a State" is that manifestations of state-sanctioned legibility such as the introduction of last names, censuses, uniform languages, and standard units of measurement in effect collapse the expansive experiences that do not fall into "legible" categories. This then naturalizes the arbitrary and socially constructed lens through which the state "sees" legibility versus illegibility. A population is easier for a state to control if it is

uniformly organized, and therefore by requiring individuals to perform “legibility” in order to receive social support or services, the state furthers its regime of sanctioned control.

Moreover, in a system that offers supportive resources based on measurable determinations of need, overlapping identities that haven’t been identified as categories become illegitimate and indiscernible to the state. As Kimberlé Crenshaw (1991) demonstrates, the legal system has historically been incapable of “seeing” certain populations by making these groups illegitimate through the framework of the law. The limits of the law in registering groups at the intersection of multiple identities (i.e., women of color) prevent these populations from being recognized as experiencing harm or violence. Crenshaw (1991) finds that in the context of violence against women, there is a pattern of conflating and/or ignoring intragroup differences. Women of color experience racism differently than men of color and sexism in ways distinct from White women. Therefore, if a system cannot “see” this unique identity and lived experience, women of color are excluded from social support. Moreover, analyses that begin “on the margin” reveal that race, class, gender, and sexuality are mutually constitutive systems that put women of color, queer women, poor women, immigrant women, and disabled women at a greater risk of violence and entrapment by partners (Glenn 1999; Menjivar 2011; Miller 2008; Richie 2012; Sokoloff and Dupont 2005; Stark 2007)). Women of color are differently situated in the economic, social, and political worlds, and as such, rape crisis centers must “earmark more resources for basic information dissemination in communities of color than in White ones” in order to account for the physical and cultural marginalization of non-White and poor women (p. 1250-1251).

There is extensive research on the ways in which women seeking citizenship under the Violence Against Women Act (VAWA) must make themselves into neoliberal citizen-subjects

who embody “individual autonomy, responsibility, and economic self-sufficiency” (Berger 2009, p. 201). In the United States, recognition as a battered immigrant can lead to legalization and citizenship for abused women when provisions in the Violence Against Women Act (VAWA) are applied (Berger, 2009). For this to be possible, Goodmark and Berger find that victims must show that they were once powerless but are *now* on the path to productive citizenship. The state of being “powerless” is a legitimate manifestation of victimhood and survivorhood to the state. And, the consequences of illegitimacy in the face of VAWA are striking. There is a pervasive issue of abuse victims being seen as perpetrators by authorities who lack proper training to intervene in abusive situations, particularly poor, non-White, queer, or non-citizen victims (Cheung, 2023). There are a number of coded victim-blaming myths around “mutual abuse” which cast victims who defend themselves or retaliate against abusers as abusers, themselves.

An overwhelming number of domestic violence and sexual assault (DV/SA) advocacy organizations accountable to the new provisions under VAWA explicitly limit their services to certain “legitimate” or “real” groups of survivors. One group consistently excluded from support and state-mandated services is queer/trans survivors (Jordan, 2020). Legal scholars describe patterns of acute discrimination, harassment, and mistreatment of trans victims both by law enforcement and when seeking criminal and civil legal remedies, such as the failure to respond or take victim statements, attacks on witness credibility, misidentification of survivors as perpetrators, and unjust arrest and detention (e.g., Goodmark, 2013; Greenberg, 2012; Mogul, Ritchie, & Whitlock, 2011; Spade, 2015).

Part of this is due to the single-dimensional nature of viewing DV/SA as exclusively a form of gender-based violence. The dominant analysis of gender-based violence is largely insufficient for understanding the complex root causes of violence, and particularly for those

who are multiply-marginalized due to racism, poverty, immigration status, and disability (Jordan, 2020). Advocacy that emphasizes gender-based analysis may misjudge the nexus of interpersonal violence, stigma, and social, cultural, political, and economic exclusions. While trans survivors may seek out and benefit from existing resources, advocates report that theories of violence underpinning typical service models often fail to capture the nature and sources of violence in the lives of trans people and are insufficient for preventing future harm (Jordan, 2020). Further, many women's efforts to survive, particularly those of Black and Brown women, are not only discounted or invisible, but are also increasingly criminalized in contemporary society (Richie, 1996). For scholarship on domestic violence to remain emancipatory, it must emphasize both individual and structural analyses of race, class, and gender inequality and marginalization in culturally diverse communities (Mann and Grimes, 2001; Sokoloff, 2005).

For immigrant women seeking U-nonimmigrant status (U visa) in the United States as a result of domestic violence, there is another host of requirements victims must meet. As defined by the U.S. Citizenship and Immigration Services, the U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse *and* are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity (USCIS, 2023). Not only must the domestic violence adhere to an understanding of physical crime defined by the criminal laws of the United States, but victims are *only* eligible for consideration if they are also cooperative and compliant with government officials in the prosecution of their abuser. Similar to the conditional coverage of a victim's hospital care by "Victim Compensation," it is abundantly clear that this legislation is first and foremost intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of

domestic violence, sexual assault, and trafficking of noncitizens. The protection of victims is a secondary outcome if, and only if, they are willing to help law enforcement authorities.

As Cheung (2023) articulates, “we’ve been taught to understand violence from a uniform, racist, and classist lens, while ignoring institutionalized, White-supremacist state violence that unfolds all around us” (p. 62). The Violence Against Women Act is an example of carceral feminism, embedded in a long history of gender and “carcerality” (p. 63). Legislation like VAWA teaches us to understand the criminal legal system as “cops keeping rapists and killers off the streets,” instead of questioning the vast, overarching intersections between these two supposedly oppositional groups (Cheung 2023, p. 62). Carceral feminism *ennobles* itself in promises of protection for women and victims through the incarceration of abusers, all while ignoring the devastating impacts that criminalization disproportionately carries for non-White survivors (Cheung, 2023). As Beth Richie highlights, such a premise creates a binary between the “criminal” and the “victim,” thus excluding criminalized populations from the services they need as survivors of sexual and gender-based violence, including undocumented immigrants, substance users, sex workers and welfare recipients. It further alienates individuals from criminalized communities (such as people of color, queer and transgender people), who are more likely to be targeted, than helped, by the criminal-justice institutions that anti-violence activists so often turn to.

This contributes to the stereotypical notions that (1) rapists are “others” and (2) one person or identity constitutes a more “real” or “legitimate” rapist than another. The anti-rape movement and campaign against sexual violence created a moral panic over a supposed “epidemic of sexual abuse and the pandemic threat of sex criminals” (Bumiller 2008, p. 7). This social construction of a “pandemic threat of sex criminals” fuels racialized fears around men of

color, particularly Black and Brown men, as serial perpetrators of sexual assault. The anti-rape movement has upheld and cultivated the White victim/Black assailant rape dyad by making the Black male the ultimate and most feared assailant (Pittman, 2023). This discourse around rapists as “others” also paint sexual violence as the work of anonymous predators rather than friends, lovers, and family members who commit the vast majority of intimate violence (Barnett, 2008; Mack & McCann, 2021). Rapists are viewed as fundamentally alien, and although this may seem more moral than the alternative, it also distracts from the fact that rapists do not exist in isolation, that their behavior is not discrete. This rhetoric obscures the fact that rape is a learned behavior, conditioned by society at large. Labeling rapists as “monsters” absolves society at large of responsibility, implying that rapists are simply an inevitable part of life.

In contrast to the old idea that individual perpetrators of sexual violence are abnormal outliers who come out of nowhere, Jackson Katz uses the concept of “rape culture” to make the case that perpetrators are always acting within the larger context of social and cultural norms. Katz employs a “continuum” theory of sexual violence to build the argument that rape is on one end of a continuum of behaviors that also includes pervasive catcalls on the street, groping, unwanted touch on public transportation, victim-blaming, revenge porn, and misogynistic trolling and bullying online. A “continuum” theory of sexual violence should not rank the various stages of a rape attempt according to level or severity of harm done. Instead, this theoretical framework serves to demonstrate the relationship between all forms of sexual violence and harassment. Any attempt to transform the sexist and misogynistic attitudes, beliefs, and behaviors of the rape culture must first “come to grips with the cultural ideologies of manhood that reinforce abusive behaviors” (p. 17). Radical efforts must address the root of the

problem—the cultural ideas around rape and sexual violence at large—rather than simply focusing on the resulting symptoms..

Beyond the limitations and failings within the framework of criminal-legal interventions, recent literature suggests that such interventions may be ineffective altogether in reducing rates of violence (Weiss, 2019). Bumiller argues that the anti-rape movement’s focus on reforming medical and legal institutional responses to rape meant that “the feminist movement became a partner in the unforeseen growth of a criminalized society.” For Bumiller (2008) and many critics on the left, the success of the anti-rape movement—along with other hyper-punitive efforts such as the “war on drugs” and the “war on terror”—has become a problem, as governments and law enforcement adopt and stimulate public fears of crime and claims about victims’ rights to advance the neoliberal governing strategies and carceral priorities of the modern state (Garland 1995; Gottschalk 2008; Scheingold 1998; Simon 1997; Zimring and Johnson 2006). Much of the advocacy being done by criminal-legal nonprofits functions primarily to reproduce the normative institutions within which the carceral state creates. Criminal-legal work limits staff and advocates’ knowledge of the variety of alternative interventions available, generating the belief that the current systems are our only options (Weiss, 2019). Individuals are capable of interpreting, challenging, and modifying existing institutions, however to do so, they must first have some alternate understandings of the world with which to challenge dominant institutions (Hallett and Ventresca 2006; Pache and Santos 2013; Weiss, 2019).

Essentially, scholars argue that the solution to our problems is not yielding to the logic of the colonizer and teaching survivors how to appear most legitimate to the state (Bumiller, 2008). The path forward is not informed by how best we can learn and appease the politics of

conditional victimhood. The solution is disengaging with the system and transforming the frameworks within which we operate so that survivors are not required to “perform” legitimacy in the first place. The co-optation of the movement to eradicate sexual violence by the neoliberal state and White feminism creates the potential to inadvertently harm impoverished women and support punitive and racially based crime control efforts (Bumiller, 2008). In an abusive state, any systemic intervention remains inherently abusive. The reliance on punitive criminal intervention methods increases the risk of state interference and control in the lives of battered women, particularly poor women of color and undocumented immigrant women (Coker, 2000). These women are already vulnerable to intersecting layers of government control through child welfare (Roberts, 2001, 2002), immigration (Espinoza, 1999), criminal justice (Bush-Baskette, 1998), and Temporary Assistance for Needy Families (TANF; Handler & Hasenfeld, 1997; Raphael, 1995, 1996, 2000). Mandatory domestic violence policies increase the risk of further entanglement in these systems (Coker, 2004). Criminal-legal gender violence interventions represent another deployment of spatial forms of governmentality, integrally connected with punishment and discipline (Merry, 2001). These functions serve to uphold the current systems in place.

I argue for addressing impunity for sexual and gender-based violence with alternative approaches that do not rely on incarceration. I contend that embracing transformative justice and community-centered responses grounded in care is the most effective and compassionate way forward. It is essential to redirect our resources towards preemptive measures against sexual and gender-based violence, tackling its underlying systemic causes. For example, preventive strategies encompass investing in education, healthcare, social housing, and establishing non-police, unarmed intervention teams to handle mental health crises, substance abuse issues,

and instances of gender-based violence. I recognize the inherent tension of arguing against engagement with the legal system with an analysis focused almost exclusively *on* the legal system, however my hope is simply to nuance the discussion with further evidence of the legal systems' inability to serve justice.

Building upon the rich foundation of prior research, my methodology is deeply rooted in Costin's (1985) and Zydervelt's (2016) theoretical frameworks surrounding the identification and measurement of rape myths. By leveraging this established theoretical framework, my approach aims to elucidate the ways in which rape myths are mobilized by defense attorneys in a progressive state context and how other legal actors work to derail them. Moreover, I seek to broaden our comprehension of how society interprets and navigates the complexities inherent in criminal rape cases. This methodological framework offers not only a nuanced analysis of legal tactics employed by prosecutors in an attempt to mediate the persuasiveness of rape myths but also sheds light on the persistent broader societal attitudes and perceptions surrounding sexual violence.

Methods

The data for this investigation are based on four months of fieldwork, including in-depth interviews (n=25) with criminal and civil attorneys, judges, and police detectives and ethnographic court observations (involving proceedings from 40 criminal cases). This multifaceted approach allows me to analyze a high volume of ethnographic court observations through the lens of the insight I gained through my expert interviews. By identifying specific themes in defense attorney strategies, as well as in counter-arguments by the prosecution, I isolate the characteristics that distinguish criminal rape cases from criminal assault cases,

specifically as they manifest in the form of undermining victim legitimacy and credibility. I did not sample for victims or survivors of sexual assault, but rather sought out authority figures, addressing the attitudes and rape myths mobilized by defense attorneys in a progressive state context. I sought to determine to what extent prosecutors are effective in disarming rape myth narratives presented by the defense.

My ethnographic court observations were collected both as an independent researcher and in my capacity as a Domestic Violence/Sexual Assault Unit Intern at the Suffolk County District Attorney's Office. For a period of 18 weeks, I spent between two and four full days per week observing trials. In the 120 hours total I spent, I observed 25 non-sexual assault cases and 15 sexual assault cases. I spent a total of roughly 84 hours observing sexual assault cases and 36 hours observing non-sexual assault-related cases, meaning 70% of my time was dedicated to cases specifically addressing sexual violence. I conducted in-depth case studies of each sexual assault-related case, focusing on collecting data in this relevant area. The charges in the non-sexual assault cases included but are not limited to murder, assault and battery with dangerous weapon, and armed larceny. For a full list see Appendix 3. The charges in the sexual assault cases included but are not limited to rape, indecent assault and battery, and rape of child. For a full list see Appendix 4.

Facilitated by ethnographic research methodology, the focus of this study is the rhetoric mobilized by defense attorneys when discussing the legitimacy of sexual assault victims and reciprocal attempts by prosecutors to negotiate such attitudes. During the ethnography, particular attention was paid to opening statements by both sides, closing arguments by both sides, victim cross-examination by defense attorneys, and any prosecution redirects during victim testimony/questioning. In the interest of controlling for unanticipated variables, I conducted all

ethnographic observations at the same court (Suffolk County Superior Court) to promote consistency across all fieldwork. I employed a random sampling strategy, simply attending the cases on the docket for each day. My unit of analysis is individual legal experts and individual criminal cases. Following a similar methodology to that of Zydervelt et al., I track both conditions of legitimacy and how the law informs this. Conditions of legitimacy as constructed by the defense are organized by three broad categories and the various dimensions that define them: legitimacy of the victim's display of non-consent (dimensions: expectation of physical resistance, forensic and physical evidence, behaviors conflated with consent, and relational contexts conflated with consent), legitimacy of the the victim's perceived culpability (expectation of self-protection, slut-shaming and the scrutinization of the victim's sexual propriety, and the marginalization of sex workers), and legitimacy of the victim's response and presentation (dimensions: post-assault response and behavior, post-rape psychological impact, presentation of emotion on the witness stand). I also investigate the strategies used by prosecutors to disarm these arguments, organized by the same conditions of legitimacy. The elements I present as how the law informs this include: the presumption of innocence, victim vs. alleged victim, standard of proof, consent instructions, and the disparity in maximum sentences.

Resulting from a random sampling strategy, the victims in all of the sexual assault cases I observed were women or girls, and none described or identified themselves as trans. Sexual assault is experienced by people of all genders and gender-presentations, however this absence is noteworthy of the fact that cisgender women are the most likely to be found as "real" victims by the system. Anyone can experience sexual violence, however the demographic makeup of my data is reflective of the reality that the legal system does not appear as a safe means of healing and gaining closure for all survivors. Many victims do not feel that they can seek

support from the legal system, or attempt to seek resources and are not acknowledged or “seen” by the system as valid survivors and/or deserving of support. The composition of my data set is indicative of both the disproportionate impact of sexual assault on women as well as the exclusion of non-women from a legal infrastructure that requires victims to prove their legitimacy.

I also employed a series of semi-structured, in-depth interviews. Interviews prompted legal professionals to share their firsthand experience with the rhetoric and attitudes exhibited during discussions of victim legitimacy in Massachusetts rape/assault trials. Legal professionals in this portion consist of four private criminal defense attorneys, five public criminal defense attorneys, five criminal prosecutors, five civil family law attorneys, two law professors, two superior court judges, and two police detectives. Interview data are paired with the aforementioned ethnography in an attempt to fill any gaps in knowledge that became apparent while conducting fieldwork. Through purposive sampling, subjects were recruited through a mix of my existing personal networks, introductions from colleagues at the Suffolk County District Attorney’s (SCDAO) Domestic Violence & Sexual Assault Unit (DVSAU), and sending emails or approaching court staff during observations. Interviews were a mix of in-person meetings and Zoom sessions, and all but two were audio-recorded. Interviews ranged from 15 - 80 minutes. Participants were presented with a consent form prior to the beginning of our discussions and each confirmed they understood and agreed prior to proceeding with the interview. After conducting and transcribing the interviews, I used an abductive process to analyze the data (Timmermans, 2012). Upon review, I extracted initial themes and eventually identified patterns that constructed my theory of conditional legitimacy that would then be developed in the analysis and writing process.

Table 1. Legal Professionals Interviewed, Categorized by Gender

	<i>Private Criminal Defense Attorney</i>	<i>Public Criminal Defense Attorney</i>	<i>Criminal Prosecutor</i>	<i>Civil Family Law Attorney</i>	<i>Law Professor</i>	<i>Superior Court Judge</i>	<i>Police Detective</i>	Total
<i>Male</i>	2	3	2	0	1	1	2	11
<i>Female</i>	2	2	3	5	1	1	0	14
Total	4	5	5	5	2	2	2	25

Table 2. Legal Professionals Interviewed, Categorized by Area of Specialty

	<i>Private Criminal Defense Attorney</i>	<i>Public Criminal Defense Attorney</i>	<i>Criminal Prosecutor</i>	<i>Civil Family Law Attorney</i>	<i>Law Professor</i>	<i>Superior Court Judge</i>	<i>Police Detective</i>	Total
<i>SA Specific</i>	2	2	3	5	0	0	2	14
<i>Non-SA Specific</i>	2	3	2	0	2	2	0	11
Total	4	5	5	5	2	2	2	25

Table 3. Sample Characteristics

<i>Pseudonym</i>	<i>Gender</i>	<i>Profession</i>
Angela	Female	Attorney at Legal Non-Profit (Civil Family Law)
Stephanie	Female	Attorney at Legal Non-Profit (Civil Family Law)
Sarah	Female	Attorney at Legal Non-Profit (Civil Family Law)
Melanie	Female	Attorney at Legal Non-Profit (Civil Family Law)
Amanda	Female	Attorney at Private Firm (Civil Family Law)
Kimberly	Female	Prosecutor in Domestic Violence/Sexual Assault Unit
Daniel	Male	Prosecutor in Domestic Violence/Sexual Assault Unit
Amy	Female	Prosecutor in Domestic Violence/Sexual Assault Unit
Chris	Male	Prosecutor in Major Felonies Unit
Nicole	Female	Former Prosecutor
Matt	Male	Police Detective in Domestic Violence/Sexual Assault Unit
David	Male	Police Detective in Domestic Violence/Sexual Assault Unit
Melissa	Female	Clinical Professor of Law at University

Andrew	Male	Professor of Law at University
Paul	Male	Superior Court Justice
Rita	Female	Superior Court Justice
Michelle	Female	Defense Attorney at Public Defender's Office (Specialized in Sexual Offender Registry Board Hearings)
Heather	Female	Defense Attorney at Public Defender's Office (Specialized in Sexual Offender Registry Board Hearings)
Josh	Male	Defense Attorney at Public Defender's Office
Jason	Male	Defense Attorney at Public Defender's Office
Jessica	Female	Defense Attorney at Private Firm
Amber	Female	Defense Attorney at Private Firm
Brian	Male	Defense Attorney at Private Firm
John	Male	Defense Attorney at Private Firm
Kevin	Male	Defense Attorney at Private Firm

The purpose of the interview series was to extract observed patterns and themes in rhetoric from various experts in the legal field. Participants were also encouraged to reflect or elaborate on the perceptions and meanings attached to such language in court. I adjusted my interview schedule based on the specific expertise of each interviewee. For example, I probed sexual assault-specific prosecutors and civil family law attorneys with questions related to narratives/stereotypes employed by defense attorneys and patterns in the evaluation of a victim's credibility in court. I probed sexual assault-specific defense attorneys with questions and prompts addressing their typical approach when representing a defendant in a rape case and any repeated arguments or strategies they find themselves drawing on. Given the semi-structured nature of the interviews, I developed interview schedules for each participant, however I also allowed the conversation to flow naturally and freely as applicable. In the interest of remaining neutral and appearing objective, I refrained from providing substantive feedback during the interviews. To do so, I avoided inserting my own opinions and limited the extent to which I

nodded or verbally affirmed my interviewees' points. See full interview schedules in Appendices five through ten. During interviews, greatest weight was given to participant anecdotes that addressed victim legitimacy as constructed by the defense, prosecutors' strategies to disarm rape myth narratives, and any distinctions between rape and other assault trials.

Internal validity is an important aspect of my research design, and I employed numerous strategies to ensure this form of accountability. First, data were collected through multiple sources to allow for data triangulation. Second, long term and repeated observations at the research site (five month period) guarantees the collection of abundant data and makes clear which themes are relevant and which may be outliers or exceptions. Finally, peer and mentor examination of my data and methods was continually conducted to facilitate an evaluation of validity from a variety of perspectives. To establish external validity, I provide rich, thick, detailed descriptions so that anyone interested in transferability has a solid framework for comparison (Merriam, 1988).

Particularly in qualitative research, the role of the researcher as the primary collector of data necessitates the identification of personal values, assumptions and biases at the outset of the study. It is worth noting that my perception of the legal system and legal professionals has certainly been shaped by an array of personal experiences. From January to May 2023, I served as a Legal Intern at the Women's Bar Foundation of Massachusetts (WBF). As a Legal Intern, I assisted clients in their family law and restraining order cases under the supervision of WBF attorneys. This exposure to the treatment of domestic violence survivors in family law/restraining order cases enhanced my awareness, knowledge, and sensitivity to the many biases and prejudices held by judges and attorneys at times. As evidenced, I am knowledgeable of both the legal system and the language used in court, and this assists me throughout this study.

However, as I am not formally a legal expert, I remain an outsider of the group I analyze, and thus interviews allow me access to knowledge I may not have considered otherwise. While there is a possibility that my past experiences challenge my impartiality, I make a strong effort throughout to approach interviews and resulting data objectively and without the intention of supporting a predetermined argument.

Moreover, my identity as a young White woman with access to professional attire allowed me to fit in and appear as part of the legal professionals' "in-group" when conducting ethnographic court observations. Attorneys and court staff would assume that I was meant to be in court and that I knew what I was doing. Attorneys even casually made conversation with me at times, lamenting over the delay in cases on the docket or sharing with me how they thought the defendant just needed to "admit he f*cked up." My Whiteness, presentation of comfortable wealth, and cis identity affords me a privilege and protection in my exploration of the legal system. I am treated differently by court staff and officers than many others, and while this both allows me a window of insight into the casual conversations that occur among the "in-group," it also shields me from the many ways the system is inherently racist, classist, violent, and discriminatory. As a White woman, I do not experience the simultaneous and overlapping systems that oppress women of color, trans women, migrant women, and other marginalized groups.

Further, as someone who has never navigated the criminal legal system in any regard, particularly not as a testifying victim, my perspective is limited in many ways. I have briefly interacted with the biomedical/forensic infrastructure that responds to sexual assaults, but in no way can speak from the experience of undergoing the trial process. My life has been touched by sexual violence, both as a survivor, myself, and with many of those close to me having

experienced sexual assault, and this undoubtedly informs my perspective as well.

I have chosen to alternate synonymously between the terms “victim” and “survivor” in the language I use to refer to people who have experienced an assault. In the criminal-legal world, “victim” is considered widely to be the proper and legally correct way of describing an individual who has been victimized by a crime. The term victim acknowledges that an individual has experienced a trauma and that they are not at fault for the event they experienced. Although victim is a legal definition necessary within the criminal justice system, “survivor” can be used as a term of empowerment to convey that a person has started the healing process and may have gained a sense of peace in their life. The language of survivor also recognizes that an individual has agency and is not defined by an assault they experienced. In an attempt to practice intentionality and highlight the importance of trauma-informed language, my hope is to employ the word survivor as often as I do so with victim. Some people choose to identify as a victim, while others prefer the term survivor, and appropriate language should ultimately be determined by the victim/survivor themselves. However, given I am referring to sexual violence in a broader context, I aim to employ accuracy while also respecting individuals’ agency and autonomy.

Anti-Rape Prosecution in Massachusetts

In Suffolk County, the District Attorney’s Office has a unit dedicated to prosecuting criminal cases related to domestic violence and sexual assault. What this means is that nearly all of the cases I observed, with the exception of any child rape cases assigned to the Child Protection Unit, were assigned to a DV/SA Unit Assistant District Attorney. In other words, the attorneys prosecuting rape cases were very well-versed in the construction of conditional

victimhood as mobilized by defense attorneys. The Assistant District Attorneys in the DV/SAU were exposed on a daily basis to rape myth narratives and prejudice toward sexual assault survivors and likely more progressive in their treatment of sexual assault cases than the average prosecutor. Evidenced by both interview conversations and ethnographic court observations, my data show that Suffolk County prosecutors in the DV/SAU exercise multi-pronged attempts to counter prejudicial treatment of survivors.

In addition to the implementation of rape shield laws, which allow attorneys to advocate against an undue use of a victims' medical records or irrelevant evidence of their prior sexual encounters, I witnessed prosecutors (and occasionally judges) employing a variety of anti-rape tactics in their negotiation of criminal rape trials. First, DV/SA prosecutors were adamant in their affirmation that a victim's testimony is proof enough to convict a defendant of rape. As published in a July 2021 decision by the Massachusetts Appeals Court, it was determined that the "sworn testimony of the victim of a sexual assault, including rape, is evidence of the facts asserted," in an effort to ensure rape victims are entitled to same credibility consideration as other crime victims. In closing arguments, I observed prosecutors contend "She told you what he did to her over and over, and this alone is proof beyond a reasonable doubt" and "How do you know? Because [victim] told you. If you believe [victim], that is proof beyond a reasonable doubt." Here, the prosecutors reinforce the notion that the victim's testimony itself constitutes the crux of the evidence in the case. This approach challenges traditional legal frameworks that may have marginalized or discounted victims' voices, emphasizing instead the inherent validity and persuasiveness of their accounts in determining guilt or innocence.

Second, prosecutors challenged expectations around the victim's display of non-consent. During witness testimony, one prosecutor probed medical professionals as to the resilience of an

individual's physiological anatomy, asking "Can you explain more about the vagina's resilience? Would you expect to find bruises/bleeding in the vagina days after an assault?" Then, when nurses or doctors affirmed that, no, the vulva heals almost immediately and often leaves no signs of injury, prosecutors used this response to resist expectations around forensic evidence of the victim's non-consent. Moreover, prosecutors embraced non-consent even in cases without the allegation of a physical altercation: "As she describes it, she's not being thrown down, or being punched, or held down, her clothes aren't being ripped, the defendant didn't strangle her. Still, there was no consent while she was sleeping, and there was no consent when she was saying, 'Get the fuck off of me. What the fuck are you doing.' That's not consent. That's rape." Prosecutors countered the idea that certain behaviors were implicitly indicative of consent, arguing:

"During the evidence, you will not hear about a stranger pulling a woman into an alley, you will not see ripped clothing, you will not hear screams or shrieks in the night, as you might think when you first sat in here and thought, 'well this is a rape case.' What you will hear is that this was a 45 year old lawyer who was in a relationship with the victim's friend. What you will hear is that the victim met him several times before. What you will hear is that they had socialized several times before. What you will hear is that he had come to her work place more than once. And what you will hear is that the victim had been to his house before. This was no stranger, but this was also no consent. This drinking, having fun, and going out, and going to a strip club has nothing to do with consent. "

The prosecutor in this scenario attempted to preempt any rape myth narratives mobilized by the defense by anticipating what the jury might be expecting to hear and dispelling the belief that sexual assault has one specific "look." In the same closing argument, the attorney continued:

“In 2016, this century, here, in this country, asking for a motorcycle ride 3 months ago is not consent. Buying dinner for 3 women in August is not consent. Following a snapchat story is not consent. Calling someone up to meet at a bar is not consent. Letting someone kiss you at a bar and kissing them back is not consent, even if either or one of them is drunk. Those are not consent. Letting a guy buy all the drinks in a bar is not consent, sitting on a lap when drinking in a bar is not consent, all of them combined, stack one on top of the other, is not consent. It wouldn’t equal consent if they had been kissing on that chair in the restaurant. It wouldn’t equal consent if, combined together, if [they had kissed in] the defendant’s car right outside the restaurant, it wouldn’t equal consent combined together and stacked [if they kissed] back on the roof deck at [witness #2’s] place. They most certainly, and with certainty, do not give [defendant] consent, or license to penetrate [victim’s] vagina while she’s asleep after a night of drinking.”

Again, the prosecutor called attention to the behaviors that were conflated with a presumption of consent by the defense and reaffirmed that “consent is not implied or assumed, it’s a conscious, adult decision.” He emphasized repeatedly that dinner does not mean consent, asking for a motorcycle ride does not imply consent, kissing someone earlier in the night does not mean consent, and following someone on social media does not mean consent. He attempted to mitigate the effects of rape myth narratives mobilized by the defense through explicitly pointing them out.

ADAs also resisted defense attorneys’ arguments that drew on slut-shaming and victim-blaming tactics. During the closing argument in a criminal rape case, an attorney prompted, “[The victim] is not on trial for intoxication or for heavy drinking. Drinking is not a defense, his inability to control himself is not a defense. At the end, you will know he is guilty of raping her. He knew she wasn’t capable of consenting.” She continued, asking in exasperation: “In the 21st century- is a rape victim’s form of contraception still relevant? Is a rape victim still being cross examined about what she was wearing? Are you serious? What the evidence proves

is that he raped her.” ADAs openly called out the victim blaming and rape myth narratives employed by the defense, challenging the relevance of irrelevant details such as the victim's contraception or clothing choices and highlighting that these do not negate an individual's victimhood.

Suffolk County prosecutors challenged notions presented by the defense surrounding how a victim “should” present on the witness stand or during police interviews. Prosecutors affirmed to the jury, “[The victim] is here to remember what happened to her. Regarding some of the inconsistencies in her story, they are simply minor details across a bunch of similar instances. What matters is that she remembers the facts - why would we expect her to remember these irrelevant details?” A different prosecutor asked the jury, “If [the two victims] had colluded, do you think they would have inconsistencies about these tiny details, do you think they would have gotten these tiny details wrong?” Prosecutors called the jury to question defense strategies, explaining, “The defense wants you to believe [the victim] is a manipulator, someone who has been able to convey and convince for years, over a decade at this point, over state lines. If she was this master manipulator, isn't this the time to be the person with all the answers, the witness who tugs at your heartstrings and is perfect? What did you get instead? You got a person who's angry, frustrated, hurt, because her mother has chosen her rapist over her. Of course she is resentful.”

Prosecutors also challenged myths mobilized by the defense around a victim's delayed disclosure or reporting, highlighting: “[The victim] was fearful of not being believed - she dropped hints to her mom, asked her dad to stay home with her, she really tried. She was scared, and the defendant had asked her not to tell her dad.” Another prosecutor explained to the jury, “[The victim] is 23 years old. He's a 45 year old criminal defense attorney, well known. She's

scared. Who's going to believe her? Who's going to believe this young woman?" A third prosecutor expressed exasperatedly, "She told you 'I had been touched in ways I never was touched before - it's embarrassing, I just wanted to forget it ever happened.'" As evidenced, prosecutors effectively dismantled defense strategies aimed at discrediting victims' delayed disclosure or reporting of their assault. By addressing the victim's fear of not being believed, their attempts to navigate a fraught situation, and the societal pressures that contributed to the victim's silence, prosecutors in these examples underscored the profound impact of trauma on survivors. Their powerful statements not only challenge misconceptions surrounding delayed reporting but also illuminate the courage exhibited by the victim in coming forward. Prosecutors' efforts served to humanize victims and validate their experiences following an assault.

Finally, prosecutors pushed back against the idea that victims would have any motivation or incentive to lie, countering the characterization of complainants as liars. Prosecutors asked juries, "The defense attorney claims [the victim] made this up—why? She has no reason to claim this. What would she have to gain? What possible purpose would there be for her to do this?" They challenged the arguments mobilized by the defense, underscoring, "She had no motive against this man. The only logical reason why she would say the defendant sexually assaulted her is because he did, because it happened, because he's guilty. I ask you to find him guilty." Prosecutors vehemently refuted the notion that victims would fabricate allegations, emphasizing the absence of any conceivable motive for deception. By questioning the defense's assertions and highlighting the lack of motive for the complainant to lie, they underscored the credibility of the accusations. Ultimately, they urged juries to consider the logical consistency of the victim's testimony and to deliver a verdict of guilt based on the evidence presented.

In examining the practices of anti-rape prosecution in Suffolk County, Massachusetts, it is evident that Assistant District Attorneys (ADAs) in the Domestic Violence/Sexual Assault Unit actively work to challenge rape myths and victim-blaming narratives. Through their daily exposure to such biases, ADAs have developed multi-faceted approaches to counter them, as demonstrated by their advocacy within the courtroom. They strategically utilize legal mechanisms such as rape shield laws to safeguard survivors' dignity and credibility and work to disarm defense strategies that seek to discredit victims' testimonies during litigation. However, despite their efforts, little has materially changed for survivors.

Of the fifteen sexual assault cases I observed, the level to which prosecutors attempted to mitigate the impact of prejudicial defense arguments had little to no effect on the outcome. Prosecutors were seen to advocate equally fervently against rape myths in both child and adult rape cases, however convictions are patterned more closely across a line between child and rape cases rather a line separating cases with and without the utilization of anti-rape prosecution. Although feminist theory has undeniably shaped the available theories and strategies of the prosecution, this appears to have no discernible difference in a case's outcome.

The Construction of a “Real” Victim: Conditions of Legitimacy

Transitioning from the anti-rape prosecution to the rape myths presented by defense attorneys, the most striking pattern I saw repeat itself time and time again was the construction of “real” victimhood as mobilized by defense attorneys in cases related to sexual violence. Evidenced in both interview conversations as well as in ethnographic observations, in almost every possible way, survivors of sexual violence are judged against the expected behavior of a

“legitimate” or “real” victim. Victims are told at every turn that if they were “really” a victim, they would have done x, y, and z differently.

There are a few different “buckets” or categories that these messages fall under. I organize these categories chronologically according to the different stages of scrutiny victims endure. The first refers to a victim’s display of non-consent: how a victim “should have” acted during an assault if they had “truly been in fear” and what forensic evidence is expected to have been left behind. The first questions victims are asked by police officers, medical examiners, and attorneys typically relate to the perceived legitimacy of the victim’s “no” or non-consent. Victims will be expected to defend against any possible indications of consent regardless of any intention behind them. Victims are expected to have physically resisted the assault and be able to present clear forensic evidence of this altercation. Victims are also questioned and probed regarding a host of behaviors and relational contexts conflated with consenting to sex—public kissing or physical affection with the defendant prior to the assault or a history of a romantic relationship with the defendant. The second phase of surveillance relates to the victim’s perceived culpability, or how the victim could have possibly prevented the rape from occurring. Victims are asked why they were in the situation or location in which they were assaulted. They are questioned about their sexual history and potential involvement with sex work. And finally, the third theme regards the expectations imposed on a victim’s response and presentation after the fact: the way in which victims displayed the emotional impact of the assault, the action they took to report the assault, and how they appear when testifying as a witness in court. Victims are held to a collective understanding of how a rape victim “should” react and respond, their credibility resting on an adherence to a “normal” or “reasonable” emotional response. Each of these three

prongs work together to construct the framework of conditional victimhood I will describe in my analysis.

While I organize legitimacy and the construction of conditional legitimacy into the above dimensions and subdimensions, it is important to note that these categories are ephemeral and constantly evolving. The structure and organization of such categories should come second to the content that lies inside. The different understandings of how a victim “should” display their non-consent is intrinsically tied to a victim’s perceived culpability. A victim’s position as a sex worker is often perceived in itself as an indirect signaling of consent. What threads through each condition of legitimacy is a rhetoric of slut-shaming and victim blaming, an inherent skepticism and desire to disprove a survivor’s status as a “victim.” There is a pattern of attempting to locate how a victim could have prevented or is at fault for their rape that underscores my central thesis.

Legitimacy of the Victim’s Display of Non-Consent

Examining Momentary Resistance Criteria

“Did you squeeze your legs closed to prevent the defendant from raping you?” “You say you screamed? But no one heard or came in response?” “You didn’t call 911 or the police or anything? You didn’t start screaming so people in the building would hear you?” “Why didn’t you call 911? You hit him hard with a hot sauce bottle, but it didn’t break? You didn’t fight back? You didn’t yell?” These are real-life examples from my ethnography, in 2023, of questions asked by defense attorneys to victims on cross-examination. They reflect that evidence of resistance in response to a rape attempt is critical for a case to be considered a “real” rape. In the same vein, a lack of physical resistance will be used against the victim as evidence that the interaction was not truly non-consensual. In other words, an absence of consent is not sufficient for a case to hold up

in court — there must be an overt denouncement of consent and a physical reinforcement of this denial by the victim.

For example, in one adult rape case I observed, the victim expressed that she verbally denied consent and repeatedly told the defendant to stop, but did not physically fight him off. The defense attorney used this against the victim during his closing argument, asking the jury to consider “the plausibility factor that you could take someone’s tampon out, finger them, at 7 o’clock in the morning in a house occupied by [witness] and her best friend 12 inches away, pull their pants down from behind and rape them, and the person wouldn’t tell their friend 12 inches away, that the person wouldn’t jump up? That they wouldn’t scream?” The defense attorney here in effect argued that not only could the victim have easily stopped the alleged rape from happening by physically resisting, but her reaction was so outlandish that it was inconsistent with how any “real” rape victim would have acted in the moment. It is not enough for a victim to have said no or pushed a defendant away — they must have also squeezed their legs closed and screamed at the top of their lungs.

Despite the victim claiming that she told the defendant to “get the f*ck off me,” she asked him “what the f*ck are you doing?” and repeatedly told him to stop, the defense attorney characterized this response as not sufficiently clear as non-consensual. The defense attorney’s skepticism towards the victim’s lack of physical resistance reflects a pattern where the absence of overt resistance is misconstrued and used against the survivor in court. Despite the victim’s explicit verbal objections and repeated demands for the defendant to stop, the defense attorney characterizes these protests as ambiguous indicators of non-consent.

In a child rape case where the victim communicated having “kicked and thrown objects at the defendant,” the defense attorney posited that she must not have “kicked or thrown” that hard,

or hard “enough,” because he had “no matching injuries following the alleged assault.” In the same case, the victim also articulated having screamed, and the defense attorney argued that she must not have screamed “loud enough” or the defendant would have been forced to stop. The defense attorney asked the victim, “You say you screamed, but no one heard or came in response,” raising skepticism over her account of the events. In this quote, the defense attorney chose not to deny that the victim screamed, but instead to imply that her scream was not desperate or powerful enough. What this implies is that the goal is not for rape attempts to stop, but rather for these attempts to be halted by the individual being violated before the opposing party is “successful.” The questions asked by defense counsel pertain to the lengths the victim went to resist the rape, rather than any other details about the rape itself. Essentially, victims are expected to have resisted perfectly, or in as physically extreme a way as possible. The problem with this, though, is that “perfect” does not exist. There is always something more a victim could have done or could have said to make their non-consent more clear. This does not mean that they are not victims. Rather, this framing makes it so that defense counsel can employ a critique of the victim as a defense theory.

In a case I observed where the victim fought her rapist off for twenty minutes before he successfully overpowered her, the defense attorney then questioned the plausibility that the victim would have been strong enough to fight him off for this long.

“I asked if you had struggled, you said you struggled with him for 20 minutes? Would you mind standing up for a moment? If I could ask [defendant] if he could stand up? So your testimony is that the person, the assault, you had medical issues? In your testimony you said you struggled with this man for 20 minutes on that couch? And you were up for 24 hours prior to that smoking crack, correct? And then you struggled with this man for 20 minutes?”

Even when the victim in this example actually resisted in the way so consistently implied as necessary to be deemed legitimate, the standard for physical resistance suddenly inverted. The defense attorney's argument became that there was no way the victim could have been strong enough to fight off the defendant. Even in this case where the victim did everything "right" and adhered to the behavior of a "real" victim, she was simply attacked for a different reason. This reveals the true purpose of the construction of conditional victimhood: to dismiss and invalidate victims' experiences.

Forensic and Physical Evidence

Along with this expectation for the victim to have physically resisted an assault is an assumption that this physical altercation will have resulted in remaining forensic and physical evidence. In criminal rape cases, it was far more likely for the court to remain skeptical of complaining witnesses if there was not at least one of three pieces of evidence present: (1) evidence of physical injuries, (2) DNA evidence, or (3) video evidence of the assault. As a symptom of this greater skepticism displayed toward rape victims, lawyers expressed to me that jurors require more forensic evidence in rape trials than in other criminal assault cases to be convinced of a defendant's guilt. Defense attorneys asked victims questions on cross-examination such as the following: "Nothing was ripped, your clothing wasn't ripped or torn or damaged the next day? You didn't have any bruising or scratches or raspberry marks?" Defense counsel asked medical expert witnesses similar questions:

"You looked at her arms, shoulders, legs, and you didn't find a single bruise on her, correct? Excising the vaginal area, you didn't find a single bruise on her?"
"No evidence of any bruising in this case? No abrasion, no redness, no swelling, tearing? Closer to the vaginal opening: within normal limits? No swelling,

abrasions, tearing? So the hymen, other than the petechiae, there was no swelling, redness, or tearing? Posterior fornix: no redness?”

These questions denote that a rape is not considered legitimate unless the victim can report evidence of physical resistance or, in other words, report serious physical injuries. As public defender Jason explained to me, the logic is that “If all of that happened, you're telling me there wouldn't be at least a scratch? Something feels off about the story.” There is an unwillingness to acknowledge sexual violence that does not have outward-facing consequences and damage as legitimate.

Moreover, in opening and closing statements, defense attorneys time and time again were sure to address this alleged “lack” of injury.

“The alleged victim claims the defendant grabbed her, yet she was found to have no injuries to his face or body, the victim’s clothing was not ripped. Where's the evidence? Of course there's no DNA, or fingerprints. They don't find a drop of blood on the scrubs that are introduced into evidence. They don't find any DNA, they don't find any semen or sperm, nothing! Not a single piece of physical evidence. There was no notice or recording of any bruising resulting from this alleged heinous crime the prosecution puts before you today. There is no evidence to corroborate her claims. There is no evidence of injury on her face or body after she claims to have been hurt and touched by him. She had no ripped clothing following the most recent assault.”

As is evident in these examples, the defense effectively communicates that a rape is not to be considered “real” by the court unless it meets an evolving checklist of evidence-related conditions. The defense consistently argues that a rape must (1) involve a physical altercation and (2) result in visible injuries. This is yet another mechanism of denying victims’ right to claim victimhood and survivorship. Complaining witnesses are not entitled to victim status in the eyes

of the law unless they are able to “prove” or “demonstrate” “real” victimhood in the form of sustaining bodily injury.

Behaviors Conflated with Consent

Beyond targeting a victim’s display of non-consent, another theme I witnessed in defense arguments was a utilization of semi-sexual behavior between a victim and defendant as evidence of consent. Without explicitly admitting it, defense attorneys made clear that they viewed a wide array of sexual conduct as indicative of consent to sex. In one interview, defense attorney Brian recalled a previous case he had worked on, expressing, “In that case, one positive thing was that [the defendant] and the girl who accused him were seen kissing the night before. Now, obviously that doesn't mean she consented to having sex, *obviously*, but that was something that helped.” Although not directly stating that he (and the court) view kissing as equivalent to consenting to sex—and even attempting to pretend the opposite—Brian’s implied message was clear. This is just one example of a consistent and patterned conflation of various “sexual” behaviors with consent to sex. Defense attorneys repeatedly argued in court that kissing or hugging between a victim and defendant was indicative of the victim’s eventual consent to sex.

In one adult rape trial I sat through, this logic was particularly overt. The defense attorney repeatedly returned to the topic of whether or not the victim had been seen kissing the defendant throughout the night. During cross-examination of a testifying witness, the defense attorney inquired, “So there was a lot of kissing? [Victim] was kissing [defendant], right? And you clearly saw that right? Who was kissing who, how often, what was this like? During this, was there any physical contact between [defendant] and [victim]? A lot of kissing on the cheek?” The defense attorney in this case even highlighted this line of questioning one final time during his closing

argument: “So, she kisses him in the bar, she kisses him on the roof deck. [Victim] was the one who was kissing him that night.” The attorney’s repetitive emphasis of this point sought to establish a narrative that painted the victim in this case as the initiator of physical contact and as someone who had misled investigators. It also sought to imply that because the victim had been consensually kissing the defendant throughout the night, she was inherently consenting to sex as well.

Relational Contexts Conflated with Consent

In addition to specific behaviors consistently conflated with consent, a victim’s history of romantic involvement with a defendant is also often weaponized against their credibility by defense attorneys. Daniel recalled this logic in an adult rape case he tried as a prosecutor. Daniel told me the victim in this case had been in a prior relationship with the defendant. As a result, the defense attorney highlighted the number of times the victim had engaged in consensual sex with the defendant prior to the alleged rape as a pillar of his defense theory. The defense attorney pressed the victim, “How many times did you have consensual sex before the alleged assault happened? Before this unpleasant time, how many times did he unbutton your pants? How many times did he push you onto the bed? What was so different about this one time?” Daniel shared with me, then, “once he had drilled the number 40 out of the victim in response to the question of how many times they had previously had sex, he made the claim that ‘The most important word in this entire case is 40.’” The defense attorney insinuated that if the victim had consented to sex with the defendant before, it was illogical to believe that she would have denied consent in this one specific case. By repetitively questioning the victim about the frequency and details of her previous relations with the defendant, the defense sought to establish a narrative that cast doubt

on the nature of the alleged assault. The attorney's proclamation that “The most important word in this entire case is 40” underscored his attempt to pivot the narrative towards a consensual context, emphasizing a history of consent as a way to distract from the incident of non-consent at hand. However, he was also communicating something deeper: that we as a society do not view sexual assault in a romantic relationship as a legitimate violation.

Former prosecutor Nicole comments on this idea that rape by a partner is not viewed as legitimate by the court. She pondered on this, explaining “A lot of people think that if you're married or in a relationship, you can't be raped by a partner. If you've had prior sexual encounters with a person and then revoked that by saying no a second time around, that can be a defense sometimes. [There is a] recurring theme that's like, ‘well, you had consensual sex with my client 2 weeks ago, and now you're saying that you were raped by my client?’” Rape within a relationship is a powerful example of sexual violence that is viewed as less credible or legitimate in court. This defense tactic of using victims’ sexual histories with the defendant against them contributes to a harmful misconception that consent is perpetual and irrevocable.

Legitimacy of the Victim’s Perceived Culpability

Expectation of Self-Protection

In addition to this expectation of physical resistance at the time of the assault, it became apparent that there is also an expectation of self-protection. More specifically, there are a number of cultural beliefs employed as defense strategies pertaining to how women should be protecting themselves from rape in the first place. Not only should women be prepared to kick, punch, and scream if faced with an attacker, but there is an impression that women should not even put themselves in situations where they are “vulnerable” to sexual assault. Defense attorney Amber

posits that there are a lot of opinions about what “behaviors you're allowed and what level of protection you're supposed to provide, you know, to be responsible for yourself.” She continues, highlighting that,

“There are different expectations around how you're dressed and how you carry yourself, how you behave in terms of your degree of flirtatiousness and physical contact with other people, how much you drink, whether or not you're using drugs. Are you married and in a relationship? Why were you at that location that night then? Why are you a mom going out at night and dressed that way? Even how late you're out, whether you were out alone.”

This attitude places the onus and responsibility on the victim and not the perpetrator of the assault. And, as Amber has seen, “it show[s] up pretty obviously even in seemingly innocuous questions. There are often undertones of these types of questions and these obvious gender norms and expectations.” This rhetoric pretends as though sexual assault is something that happens passively, an inevitable danger that no one has the ability to prevent. And, it is reflective of the fact that a victim is considered culpable for the situation or environment in which they were attacked.

In our interview, Daniel similarly highlighted this expectation of self-protection. He referenced the way he sees this attitude manifest in court: “If somebody is out in a social setting, a dorm party, house party, frat party bar, barbecue, anything, riding around in a car with a bunch of dudes [they] just met, then it's, ‘What's she doing out there? She must have been down for something. Yeah, she was out for a good time.’” Even if this rhetoric is covert or unspoken, it is alive and well in Massachusetts courtrooms. The belief that a woman's actions in various social settings renders her complicit in any ensuing assault persists and constructs a narrative that scrutinizes the victim's choices instead of the violence committed.

Slut-Shaming and the Scrutinization of Victims' Sexual Propriety

Although this may not come as a surprise, one of the most consistent defense strategies employed in criminal rape trials was to call into question the victim's sexual history of supposed sexual promiscuity or impropriety. Reflective of larger societal attitudes around the slut-shaming and victim-blaming of people who are not cisgender men, victims' sexual propriety was viewed by attorneys as a direct link to their culpability—both implied *and* directly spoken at times.

One example of this was the way in which defense attorneys questioned witnesses and addressed the court regarding DNA evidence. In cases where the victim is a person with a vagina, if DNA evidence is swabbed from the victim's vaginal opening after they are assaulted, this collection can then be tested in search of a matching contributor. Essentially, DNA evidence can confirm or dispute the identity of a sexual partner. However, if the victim engaged in consensual sex with a different partner within five days of the DNA evidence collection, this additional partner's DNA will be mixed in. The victim's own DNA is often also included as a contributor in the sample. Defense attorneys then weaponized these data of “multiple contributors” in an attempt to demonstrate the victim's impropriety.

In one rape case, the defense attorney questioned a DNA expert witness, “The sperm fraction, the result, was a mixture of two or more individuals? Two or more male contributors? But there were two contributors to the sperm fraction? But it might have been two male contributors, correct?” In this case, the defense attorney made no argument about a possible misidentification of the defendant. Therefore, these questions served the sole purpose of placing judgment on the victim's sexual behavior. Affirmed by my conversation with Daniel, he echoed a similar point, “If there's no claim that this is the mistaken identity and it's actually DNA from somebody else who's really responsible. Then what purpose does that evidence serve? It's only to

suggest ‘Hey, it's like Grand Central Station in there.’” Defense counsel used frequent engagement in sexual encounters against victims by alluding to three claims: (1) if victims have allegedly consented to a high number of previous sexual interactions, it is likely that they had consented in the instance in questions; (2) victims who have sex invite the danger of sexual assault onto themselves and should assume responsibility for the risk involved in such a lifestyle; and (3) a promiscuous sexual history is indicative of the victims’ lack of credibility. The manipulation of DNA evidence by defense attorneys reveals a trend of passing judgment on a victim's sexual behavior. By exploiting the possibility of mixed DNA samples or the presence of the victim's own DNA, defense attorneys portray victims as promiscuous and cast doubt on the credibility of their assault claims. Such evidence serves solely to insinuate promiscuity, reinforcing damaging narratives that link victims' sexual history to their likelihood of consent in a specific instance.

In the same vein, inquiring about a victim’s use of birth control was seen as another tactic employed by the defense. For example, in one trial, a defense attorney asked a sexual assault examination nurse the following series of questions, “And has the patient used any type of contraception in the past 24 hours? IUD is checked yes? That’s a device installed for a long time? Not a pill someone takes everyday? An ongoing form of contraception, correct?” Prosecutor Daniel referenced this trial in our interview, frustrated by the questions’ implication that “if somebody has an IUD, it means they want to be ready for anything anytime.” The same defense attorney asked the case’s victim on cross-examination, “In terms of the clothing you were wearing, you said black skinny jeans, white shoes, green crop top and a leather jacket? And to be clear, a crop top is a short top? Went about to your waist?” The logic behind the discussion of a victim’s alleged sexual promiscuity is that “if jurors accept the label ‘slut,’ they will view

the rape victim in all ways and circumstances as a 'slut,' therefore by definition consenting to sex," (Taslitz 1999, p. 18). An individual's choice to engage in sexual relations frequently or with multiple partners is viewed as incompatible with denying sex on any single occasion. Similarly, because dressing in "immodest" clothing—short skirts, crop tops, or "revealing" garments—or partaking in "immodest" behavior—going to parties, drinking in public, having fun—are conflated with sexual promiscuity, this, too, is viewed as a refutation of a victim's allegation of rape.

During my interview with Amy, she brought up an instance where a defense attorney, in his opening statement, said, "You're gonna hear evidence that while she was in college, [the victim] was drinking and she was having sex with gross guys." The defense attorney in this instance aimed to insinuate that "having sex," particularly with "gross guys," was incongruent with the survivor's ability to have been victimized or identity as a victim. Nicole echoed a similar sentiment shared by defense attorneys that if, "you had too much to drink or you dressed a certain way this somehow gave consent for the defendant to [have engaged in] unwanted touching or penetration in an actual rape." Coded nods to the association of "immodest behavior" with an implausibility of refusing sex were abundant. Another defense attorney asked a victim on cross-examination, "You would get fun and crazy when you would drink, correct?" She continued, eventually asking, "You were socializing, having a good time? At one point you and friends got up on a table? So dancing on a table?" Nicole's observation further underscores how coded language links "immodest behavior" with consent to sexual advances, eroding the boundaries between consensual actions and sexual assault. By questioning a victim's socializing habits or drinking patterns, the defense exploits the harmful notion that certain behaviors render individuals deserving of assault.

The Marginalization of Sex Workers

This scrutinization of sexual propriety can also be located in the context of victims who have been or are currently sex workers. Stephanie brought this up and astutely articulated, “In cases with sexual assault, for some of the women, that's what they're getting paid money for. I think that that is a way to discredit them a lot.” There is a notion that sex workers can not be victims of sexual violence: “it’s their job, they’re asking for it, it’s what they are paid to do” (IDAS, 2017). However, the fact that someone is offering sex for compensation does not negate that there is still consensual and non-consensual paid sex. For example, in sex work, consent is based on conditions such as protection and payment (Miren, 2019). Further, whether or not sex is being paid for, if one party is asking the other party to stop or is expressing that they are in pain, the opposite party choosing to continue still constitutes assault.

Defense attorneys weaponize the harmful myth that sex workers can not be victimized, arguing against the credibility of victims who engage in intimate labor. As John expressed, “if there's evidence that she's a prostitute, maybe the jury might not believe her. The jury might say, you know, she was agreeing to it.” When I asked interviewee Melissa if there were any narratives she sees used in court to discredit the victim, she referenced a similar point. “Another narrative we see or hear is that our clients are slutty, or prostitutes, or willing to have affairs with other people, and therefore that takes away from their credibility.” As evidenced, sex workers are often discredited by the defense based on the misguided notion that their profession implies constant consent to sexual acts. The misrepresentation of sex workers in rape cases as inherently sexual and always interested in sex is a dangerous and problematic pattern, and functions only to diminish their credibility.

Legitimacy of the Victim's Response and Presentation

Post-Assault Response & Behavior

Moreover, victims' legitimacy is scrutinized by defense attorneys through the actions they took following an assault. There is a hegemonic notion of what a "real" victim would do, and what it says about a survivor if they do not mirror these behaviors. Stephanie sees the idea in court as "if you didn't do X,Y, and Z, you're not a legitimate or valid survivor, a real victim. [She's not a real victim] if she didn't go to the hospital or the police, go to a domestic violence organization, or tell her doctor about it." Amanda echoes a similar point, illuminating the assumption that "A real victim would leave when that happened. A real victim would call the police when something like that happens." Elaborating on her point, Amanda explains, "I guess it goes to, like, this person isn't really afraid. Like, if they were really afraid, they wouldn't have behaved in this way afterwards. So it's really to try to point out what could be construed as counterintuitive behaviors after an incident." The discrediting of victims' legitimacy perpetuates a narrow and unrealistic idea of what constitutes a "real" victim. Melanie shares that she's found, "Nobody does all that within 24 hours, so there's always some room to be like, 'wait, you're saying this horrible thing happened, and then you waited 3 days or 3 weeks, or whatever it is,' it's a traumatic event. There's always some room to say you would have done more, sooner, better cause that's what a real victim would do." Melanie finds that this is an unfair rhetoric and "doesn't take into account the nuances and complications of these relationships."

What Melanie, Stephanie, and Amanda all highlight is the eerily formulaic standard of responses to which survivors are expected to conform. This rigid framework, as Amanda articulates, insinuates that a genuine sense of fear or trauma should dictate a specific post-assault behavior, disregarding the diverse ways individuals cope with trauma. By scrutinizing survivors

based on arbitrary criteria, this approach not only contributes to victim-blaming but also undermines the complex and varied responses that individuals may have in the aftermath of a traumatic event.

During the closing arguments for one rape trial I observed, the defense attorney focused on what the victim did and did not do after the assault, aiming to raise skepticism about the victim's credibility. The defense attorney inquired the jury rhetorically, as if the victim's actions were plainly incompatible with the complaint she had alleged.

“Here's a woman who was allegedly violently raped and she walked him to the elevator? She told numerous people she was raped? Not one said let's call the police, go to the hospital, neither called police or hospital until 7 days later when [victim] went to the hospital and gave a statement.”

Essentially, the attorney sought to demonstrate that the victim's actions did not match the story she had told, creating an atmosphere of doubt about the consistency of her behavior with the alleged crime. Instead of discrediting the facts of the assault, this tactic discredits the victim herself. Instead of refuting the evidence that the assault happened, this approach tries to make the victim seem crazy or unreliable.

A delay in a victim's disclosure of their assault was also a particularly significant point of discussion in court. Nicole explains that “delayed disclosure” often results in a report being dismissed as not credible. Reminiscent of the manner in which victims are questioned by defense counsel as to how they resisted a sexual assault in the moment, victims are also interrogated about how they responded after the fact. Defense attorneys asked victims questions such as, “Why didn't you call the police?” Melanie finds that this dynamic is indicative of the cultural belief that “If the abuse allegations were true, “She would have done more sooner.” Again, as

illustrated in the “*Victim’s Display of Non-Consent*” data section, there is no victim that behaves in the “perfect” way they are expected to, and therefore this is simply a veiled attempt to invalidate their experience. The scrutiny of delayed disclosure mirrors the unrealistic expectations placed on survivors to conform to a predetermined script of response. The pervasive belief that a “true” victim would immediately report the assault fails to acknowledge the complex and often traumatic nature of such experiences. The questioning by defense attorneys, as illustrated by Melanie's insights, perpetuates the notion that there exists a “perfect” victim who reacts in a specific way, undermining the diversity of individual responses to trauma.

However, there is a glaring paradox at play here. For example, if an individual did not leave their house for a week after their assault, the defense argues that if they were a “real” victim, they would have reported sooner. In one case, a defense attorney questioned a victim on cross-examination asking, “This incident you allege happened on October 30th, 2021? And you didn't go to the doctor’s until November 6th? And how many days had passed? Seven days?” The defense attorney attempts to highlight the number of days here in order to insinuate that the victim “should” have reported sooner. At the same time, though, if the victim went to a birthday party the next day or attended work as normal, the defense argues that they must be lying because there is no way a “real” victim would have been able to engage in these activities following a true rape. In another case, a defense attorney asked, “So, on the day after this alleged incident, did you have an opportunity to go to a party that night? So did you go? So you had gone that next day?” This overt contradiction in the logic of defense arguments affirms that conditional legitimacy does not function fairly; it serves only to discredit and undermine victims’ stories.

A second prominent point of victim scrutiny is in cases where victims did not entirely cut ties or contact with the defendant following the assault. According to Daniel, Amanda, and David, defense attorneys repeatedly ask victims “why didn't you leave?” Amanda detailed that “Where there is communication between the parties after an alleged incident that indicates ‘I miss you,’ or maybe there is a sexual encounter after a violent incident, that is presented by a defense attorney to say, ‘if they were really afraid, they wouldn't have behaved in this way afterwards.’” David affirmed Amanda’s point, offering, “Some survivors will reach out to the suspect and try to find out what happened, and in my experience, defense attorneys will use that against them.” In another example, Daniel shared that defense attorneys will use it against victims if “when [the defendant] texts them [the next morning] asking, ‘how you feeling,’ the answer isn’t immediately, ‘I’m blocking you because you raped me.’” These examples demonstrate that defense attorneys exploit a cultural lack of understanding around the dynamics involved in cases of sexual violence.

Amanda tells me that at the root of these strategies, the idea is for the defense attorney to “[Provide] evidence that might contradict [the victim’s] story, or point out things that they think would make the plaintiff's story appear not consistent with a real victim.” Daniel, Amanda, and David highlight the way in which defense attorneys exploit any continued communication or interaction between the parties to cast doubt on the authenticity of the victim's fear or trauma. The defense theory weaponizes the intricacies of victims’ experiences against them, distorting nuanced responses into misleading evidence and misrepresenting victims’ full experiences.

Post-Rape Psychological Impact

A second part of victims proving an assault was “bad enough” is performing the expected post-rape psychological impact. This challenge is exemplified in courtrooms where defense attorneys employ tactics aimed at undermining the credibility of survivors based on their perceived emotional resilience. These tactics involve scrutinizing the victim's behavior before and after the alleged assault to cast doubt on the validity of their claims, as evidenced by the cross-examination of both child and adult rape cases. In one child rape case (where I substitute the victim's name with “Jane”), during cross-examination of the victim's mother, the defense attorney asked, “How well did [Jane] do in school? She did very well in high school? Did she earn a scholarship? And she went to Thailand? Academically, she had no problems in high school? How about college?” He continued, inquiring, “[Jane] didn't have any problems, not isolating herself, not just doing nothing - she was active, great grades, outgoing, plenty of friends?” What he attempted to demonstrate was that if Jane was telling the truth and she had truly been sexually abused, her mental health would have been more *visibly* impacted. He eventually asked the jury, flat out, “Does that sound like a victim? Scared? Someone who's been raped?” In an adult criminal rape case, the defense called a witness to testify saying he had seen the victim, Kate, “laughing,” the morning after she alleged being sexually assaulted. He asked the witness, “But you clearly saw both of them laughing? Were able to look at their faces though, you were able to see them laughing?” Later, in his closing argument, he references this moment in court, “And as they're walking, an independent witness says they're joking and laughing. Doesn't sound traumatized like the prosecutor just told you. She said [defendant] raped her, but her actions, you will hear, are completely inconsistent with someone who claims to have been raped.”

Here, defense attorneys contrast victims' post-rape psychological impact with the "norm" that is expected of them. In one example, Jane was criticized and doubted for her "unaffected" high academic performance following the assault. The defense attorney implied that if the assault was as bad as Jane claimed it was, she would have been traumatized to the extent that her schoolwork was affected. Kate, on the other hand, was scrutinized by a different defense attorney for casually laughing while driving home the morning after she was raped. The defense attorney mobilized the myth that she should not have even been able to smile after such an event. However, this is unrealistic and inaccurate. And further, as discussed in the referenced jury trial from the "*Post-Assault Response and Behavior*" section, even when a victim exhibits all of the behaviors that these two victims "should have" done, she is then attacked for the opposite reasons. Evidently, the standard of a victim's post-rape psychological impact is unattainable and represents a veiled attempt to further discredit the victim's testimony. Regardless of how a victim responds or presents after an assault, defense attorneys will identify something they did wrong.

Presentation of Emotion on the Witness Stand

This surveillance of victims' emotions is not limited to their emotions directly following the assault—there is a similar scrutinization of their performance, or presentation, on the witness stand. Because women are the only ones seen as "real" victims of rape, much of this psychological impact is expected to align with hegemonic feminine norms around emotion, such as presenting as weak, helpless, and sad.

In my interview with Amber, she shared, "I think there's such a need for victims to be sympathetic." This was reinforced by the trials I witnessed in court, with victims consistently held to a standard of appearing "visibly afraid in court, crying," as Amanda characterizes.

Victims are expected to present as sad, weak, and tearful, because this is what legal professionals and juries have been taught by society to envision a rape victim. Amber clarified that when she says victims are expected to be “sympathetic,” she means sympathetic in a Eurocentric and feminine context. More specifically, the quality of being sympathetic refers to a victim positioning themselves as non-autonomous. A weak and/or sad victim is one with no agency, with no anger at their assailant or the system itself for allowing their assault to occur. An agitated and confrontational victim is not palatable to a society who wants women—the majority of victims in prosecuted cases—to be incapable and in need of someone to protect them.

Interviewee Angela remarked, “I’ve had clients who present as super angry, and that’s not how Western Convention likes to see fear, especially [in] women.” Evident from my conversations with defense attorneys, victims are expected to conform to a presentation as passive and helpless. Public defender John told me that in his 30+ years of experience as a defense attorney, he finds that if a victim exhibits outbursts of emotion, this raises red flags to him. Even anecdotally, he demonstrated a clear belief of how a victim should and should not perform emotion in open court. Moreover, this matched what I saw repeatedly during my own observational period. One defense attorney cautioned jurors in his closing statement, “While [victim] was testifying, she kept getting ahead of herself and the questions, the prosecutor had to stop her. I ask you to recall the demeanor, lack of candidness, and untruthfulness of the statements [victim] made.”

Addressing victims’ demeanor and behavior on the stand was consistently a defense tactic used by attorneys in court. As Boston police detective David concluded from his 10 years of experience in and around the courtroom, “Naturally, if you’re the victim or a survivor of sexual assault and you’re being questioned sometimes there’s outbursts. And when that happens,

[defense attorneys] continue to go on with it. That is the desired reaction for a defense attorney and they just use it to their advantage and continue to push. The more emotion you show, the more they push.” Any display of emotion that falls outside the narrow category of sadness and despair is conflated with not being credible and not being a believable victim. David's insight into the deliberate exploitation of emotional outbursts by defense attorneys underscores a manipulative strategy that seeks to provoke and discredit survivors. The limited acceptance of emotions perpetuates harmful stereotypes and reveals a systemic flaw where any divergence from this expected emotional response is unfairly linked to a lack of credibility.

The Construction of a “Real” Rapist

Along with the construction of legitimate victimhood, I also witnessed a profound bias regarding who was considered by the jury to be a “real” or unsurprising rapist. At the same time that victims were scrutinized for falling outside the cultural definition of a rape victim, the same criticism applied to defendants. This played out both in defendants’ favor and to their detriment—depending on their identities.

As was mentioned by nearly all of my interviewees, when someone envisions a rape, likely the hegemonic image that comes to mind is a big, scary stranger who jumps out of the bushes once the sun goes down. Simultaneously, there are powerful racial prejudices that factor into who is deemed “scary.” The cultural idea of a rapist largely parallels the 1990s superpredator panic, sparked by the theory of political science professor John Dilulio (Retro Report, 2014). The superpredator theory argued that America in the 1990s faced “an unrivaled new crime threat: a large and growing generation of unusually violent teenagers.” Tapping into the country’s long history of racialized fear, Dilulio argued that these superpredators would

“disproportionately be Black boys” (Forman, 2022). Although not always named explicitly, I witnessed the frequent employment of coded racial language when discussing rape in the courtroom.

In one of the most blatant instances, Kevin gave an example of a theoretical rape case during our interview. When he referred to the case, he filled in the defendant’s name with “Pedro Lopez of Chelsea,” a Hispanic/Latine-coded name. At a first glance, this might seem like an unimportant detail. However, it is indicative of the larger stereotype that Latine men are more likely to be “rapists” or “criminals” than White men or men of other racial groups. The cultural fear and stigma around rape was repeatedly weaponized against communities of color by defense attorneys as a mechanism of characterizing these groups as morally corrupt and alien.

Across various criminal rape trials, a recurrent defense argument reflected the cultural understanding that there are certain people that just “wouldn’t commit this crime.” Attorneys repeatedly defended their clients against allegations of rape by attempting to demonstrate clients’ education, faith, family values, esteem, respectability, qualities as a friend, and/or performance in extracurricular activities. This implies the idea that someone who’s the captain of their D1 lacrosse team or attends church weekly is not the same type of person as a “rapist.” For example, in an effort to allow the inclusion of testimony from a character witness, one defense attorney claimed, “A person who is peaceful and law abiding doesn’t forcibly rape a child, doesn’t forcibly insert his fingers into a child. This means that being peaceful is a relevant character trait.” This reflects the powerful cultural script that believes an individual who is law abiding and peaceful cannot commit a violence rape. It indicates the notion that being known to be peaceful in one’s community can predict a defendant’s guilt or lack thereof. Again, what this inherently means is that rapists are violent people who have a history of criminal offenses. It implies that if

a defendant is poor, of color, uneducated, or displays any other marginalized identity, they are more likely to be guilty of the crime alleged. What we know, though, is that there is an equal number, if not more, of esteemed, powerful people such as Harvey Weinstein, Brett Kavanaugh, or Brock Turner, who are committing the same acts of sexual violence. This rhetoric mirrors the idea that there is a clear distinction between who we do and do not view as a legitimate rapist.

In another case, the defense attorney chose to address the defendant's character in both her opening and closing arguments. She expressed, "[the defendant] was also a college student... On that night, [he] took a break from being a student and working as a student." After playing the defendant's recorded police interview, she went on to claim, "You can hear his voice, polite, modest, he's not some kind of criminal mastermind who was plotting and scheming and gauging and hiding and manipulating when he would say this or that." Again, this pedals the idea that a rapist is a criminal mastermind, an "other," someone unlike the rest of us. It attempts to convince the jury that because the defendant is polite and modest—one of us—he could not have sexually assaulted someone.

How the Law Enables Victim-Blaming Rhetoric

As discussed, the rhetoric employed by defense attorneys around victim legitimacy in court and interviews appears to be almost formulaic at times. It is not a coincidence that the same messages and attitudes emerge again and again—it is conditioned. Therefore, it is essential to examine the ways in which legal actors, the legal system, and the legal doctrine inform this rhetoric of conditional victimhood.

An investigation into how the law instructs the rhetoric surrounding sexual violence unveils several interconnected themes. I will delve into the nuanced implications of the

presumption of innocence and how it often translates into skepticism towards a victim's testimony in cases of sexual violence. I will further explore this skepticism through the lens of jury selection, where biases and preconceptions play a significant role in shaping who is allowed through to serve on a jury. Next, I will shift attention to the language used to describe the individuals involved, highlighting a distinction in the willingness to refer to sexual assault victims as “victims.” I scrutinize the standard of proof required in rape cases, revealing that I observed a higher threshold for conviction compared to other violent crimes. Additionally, I engage in an epistemological analysis of consent instructions, which were seen to shift focus onto the victim's behavior rather than the perpetrator's actions. And finally, I will interrogate the disparity in maximum sentences for sexual violence-related offenses compared to non-sexual violence-related offenses. Collectively, these factors reveal the legal mechanisms that contour sexual violence adjudication. They illuminate how defense attorneys consistently undermine sexual assault victims' credibility and why these tactics are so effective.

The Presumption of Innocence

After sitting through countless jury empanelments, voir dire questioning of potential jurors, and the process of vetting “unfit” jurors, I was struck with an observation. The presumption of innocence until guilt has been proven inherently means jurors are expected to presume an alleged rape victim is lying until proven otherwise. The presumption of innocence is a foundational principle intended to protect defendants against false accusations and unfair assumptions. However, the defendant's innocence and the complainant's allegations cannot both be true — they fundamentally contradict each other. Therefore, if jurors are excused for anything

less than the presumption of innocence, the sitting jurors are narrowed to a group that enters the trial believing that the victim is lying.

For criminal cases related to sexual violence, some of the questions posed to potential jurors by the judge may include:

- Have you or anyone close to you ever been sexually assaulted?
- Do you have any beliefs about rape/sexual assault that would impact your ability to be a fair and impartial juror?
- Would you believe a child who comes forward with allegations of rape?
- Would you automatically be inclined to believe or disbelieve a child who alleges sexual assault?

If a potential juror answers any of these questions with the affirmative, they will be excused from service. A Suffolk County Superior Judge explained to potential jurors, “No one comes to be in a jury with a clean state, but I need to make sure you can be fair and impartial,” which is fairly representative of the attitudes displayed by various judges in similar cases. However, according to the Center for Disease Control and Prevention, “over half of women and almost one in three men have experienced sexual violence involving physical contact during their lifetimes” (2022). What this means is that judges and attorneys are not only pushing women out of juries, but also those with real-life exposure to the impact, dynamics, and elements involved with sexual violence. People who have experienced sexual violence or seen its effects are likely the most informed about its various behaviors and able to resist victim-blaming myths in court. Thus, in a system that “already tends to treat women as though they’re lying,” this skewed jury composition stacks the deck in favor of the accused (Srinivasan 2023, 9–10).

The presumption of innocence, outlined in Instruction 2.160 of the 2009 Edition of Massachusetts Superior Court Model Jury Instructions, reads as follows:

The complaint against the defendant is only an accusation. It is not evidence. The defendant has denied that he (she) is guilty of the crime(s) charged in this complaint.

The law presumes the defendant to be innocent of (the charge) (all the charges) against him (her). This presumption of innocence is a rule of law that compels you to find the defendant not guilty unless and until the Commonwealth produces evidence, from whatever source, that proves that the defendant is guilty beyond a reasonable doubt. This burden of proof never shifts. The defendant is not required to call any witnesses or produce any evidence, since he (she) is presumed to be innocent.

The presumption of innocence stays with the defendant unless and until the evidence convinces you unanimously as a jury that the defendant is guilty beyond a reasonable doubt. It requires you to find the defendant not guilty unless his (her) guilt has been proved beyond a reasonable doubt. The court cites *Commonwealth v. Boyd*, 367 Mass. 169, 189, 326 N.E.2d 320, 332 (1975); *Commonwealth v. Devlin*, 335 Mass. 555, 569, 141 N.E.2d 269, 276-277 (1957); *Commonwealth v. DeFrancesco*, 248 Mass. 9, 142 N.E. 749 (1924).

Further, in the “Function of Charge,” there is a note including the following:

The presumption of innocence is a doctrine that allocates the burden of proof and admonishes the jury to judge the defendant's guilt solely on the evidence and not on suspicions that may arise from the facts of arrest and charge. *Bell v. Wolfish*, 441 U.S. 520, 533, 99 S.Ct. 1861, 1870 (1979). It is not a true presumption, but a shorthand description of the right of the accused “to remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effected persuasion” (citations omitted). *Taylor v. Kentucky*, 436 U.S. 478, 483 n.12, 98 S.Ct. 1930, 1934 n.12 (1978). It is “founded in humanity” and “upon the soundest principle of criminal law . . . that it is better that nine guilty persons should escape, than that one innocent man should suffer.” *Commonwealth v. Anthes*, 5 Gray 185, 230 (1855).

Although numerous interviewees cautioned that this presumption does not truly play out in practice, my ethnographic observations during jury empanelment indicated otherwise. Amber speculated, “I think the presumption of innocence is such a wonderful lofty goal and I wonder

the degree to which it plays out in each individual juror's brain," however the trials I witnessed in court reflected nearly the opposite. If jurors displayed any inclination toward considering the factual basis of a victim's allegations, the defense attorney on record would request the prospective juror be excused from the service. The legal system certainly has an obligation to protect the public from false accusations made about them without any substantiating proof, but this dichotomy isn't without implications. Considering the baseline level of skepticism already shown toward victims when they report an assault, this presumption of untruthfulness has the potential to exacerbate the bias displayed toward victims during jury trials. Additionally, the vigilance of defense attorneys in vetting potential jurors seemed distinct to rape trials.

In the 120 hours and 25 non-sexual assault cases during which I observed criminal jury trials, there was not a single non-sexual violence related case where the defense counsel argued that the victim was a liar or was lying. Out of the 15 sexual assault cases I observed, in three of them, the defense attorney outright suggested the victim was a liar. This does not include times when defense counsel simply implied or hinted at a victim's alleged untruthfulness, which would be all of them. In large part, this exhibits that victims in sexual assault cases enter a case being disbelieved by defense counsel and a jury.

Confronted by this compelling contradiction, I probed my interviewees as to their understanding of this dynamic. In three of the four interviews I inquired about this, I was met with emotional and defensive reactions that stood out in contrast to the otherwise calm and cordial tone of our conversations. Kimberly, a prosecutor at the Suffolk County District Attorney's Office, articulated to me, "You know I've never really heard it put that way. I think that's an unfortunate way of looking at it. I'm just gonna ruminate on that for a second. You have really made me think about it. No, that's interesting. You really made me think about it, because I

don't think it's an unreasonable interpretation.” A defense attorney at the Massachusetts Committee for Public Counsel Services, John, echoed a similar sentiment: “Oh, they're not expected to assume that. Oh no. No, no, no. Yeah. They're told ‘you don't assume anything. Listen to the witness.’ No, but there's no instruction that says you are to assume before the trial that somebody's lying.” For a final example, a partner at a private firm and former Staff Attorney with the Committee for Public Counsel Services, Kevin, expressed “No, I mean the presumption of innocence doesn't say that you presume the person is lying. The presumption of innocence is ‘before you put any evidence, you don't have anything to say that he's guilty just because I tell you, he's charged of rape does not mean he's guilty of rape, right?’ That's all the presumption of innocence says. It doesn't say, when she starts talking, presume that she's being untruthful unless you're convinced otherwise. It's just, you listen to her, and then you believe her or you don't.” Distinct from the tone and demeanor of the rest of our conversations, as soon as I asked this question, interviewees seemed to tense in response and over-emphasized the reasons my interpretation was wrong.

These responses felt indicative of a larger unwillingness of lawyers to challenge the criminal legal system. Interviewees felt attacked and responded defensively because of what they believed it would say about them if my interpretation were true: that they were complicit in upholding a problematic system. One interviewee, Kimberly, even went as far to articulate,

“I don't think you do this for 17 years and not still be able to have some faith in our criminal justice system. Our criminal justice system has a lot of issues, our criminal justice system does not treat everybody equally. Our criminal justice system involves more Black and Brown defendants than it involves White defendants. Our criminal justice system has a lot of improvements that it needs. That being said, I'm still here doing this, trying to make it a criminal justice system that treats people fairly. So, I don't think I would like a criminal justice

system that would be based on the fact that until somebody is found guilty, that a victim is lying.”

The defensive responses from legal professionals when confronted with the suggestion of reevaluating the presumption of innocence reflect a broader resistance within the legal community to critically engage with the flaws in the criminal legal system. Their reactions indicate a hesitancy to entertain the possibility that the system within which they work might perpetuate and protect injustice. Kimberly's response, in particular, highlights the internal conflict that legal professionals may grapple with—the acknowledgment of systemic issues within the criminal justice system while still maintaining that the good outweighs the harm done. The discomfort expressed by interviewees underscores the need for open conversations and introspection within the legal community, which would foster a collective willingness to address the system's shortcomings and the community's role in these. The legal community must consider the fundamental paradox in the inequity perpetuated by a principle designed to protect equality.

Victim vs. Alleged Victim

One of the most obvious examples of the unique rhetoric and attitude in criminal rape cases is the hesitancy for defense attorneys to refer to the complaining witness as a “victim.” In an assault and battery case, assault and battery with a dangerous weapon case, or a murder case, there is no question that the defense attorney will refer to the victim as a “victim.” In sexual violence-related cases, though, the defense frequently tries to prevent the prosecution from being allowed to label the victim a “victim” and instead requests they are referred to as an “alleged

victim.” Prosecutors shared with me that they invariably oppose these attempts, but do not always end as successful.

When I asked Josh if there are times that he’s disagreed with or been frustrated by the prosecution's approach in a rape case, his only complaint was when prosecutors refer to the complaining witness as a victim: “They all call them victims from the get-go on the record when we appear in court. They should not do that. They should say they're alleged victims, complainants, because you need to have a trial to determine who's a victim and who's a perpetrator.” He was clear to me of his belief that the complaining witness in a rape case is not a victim until proven as such. He framed his approach as informed by the law, and by the best interest of a potential defendant he would be representing, however he later contradicted himself during our interview.

Later, when I asked Josh if there are any arguments he finds himself drawing on often in non-sexual criminal assault cases, he disproved the logic he had previously laid out. He told me, “in those cases, we have someone that's dead. It's not a question of self-defense, it's more a question of mostly identification because they're definitely a victim. They're deceased, right?” Barely ten minutes after explaining to me that complainants should not be called victims until a guilty verdict in a case, Josh applied the opposite logic to a theoretical murder case. This reflects the fact that attorneys’ disdain with using “victim” in cases is not exclusively due to a desire for fairness. Rather, it is reflective of the fact that rape victims are not viewed as victims. The discomfort with using "victim" in sexual assault cases appears less about maintaining a fair legal process and more about the societal reluctance to recognize rape survivors as genuine victims.

SCDAO prosecutor Kimberly echoed a similar point, explaining that “when you're dealing with sexual assault, you can deal with the argument of whether or not it happened. That

didn't happen [argument] is not something that a homicide prosecutor needs to worry about unless they don't have a body. Like that person is dead. Somebody killed that person.” She gives me an example, sharing that “a trial [she] had, it wasn't a sexual assault, and one of the defense attorney says, ‘I don't want the Commonwealth to refer to, so and so as the victim,’ and I was like ‘they're dead. They are a victim,’ and the court looked back at me like ‘they are definitely a dead victim.’” Again, even after Kimberly had told me that “we as prosecutors, need to push back in certain situations on whether or not you can say a victim or not,” she exhibits the reason the counterargument is so compelling in court. Kimberly's comments reveal the internal struggle within the legal system to navigate the language and perception surrounding sexual assault cases. This highlights the complex dynamics at play, as even seasoned prosecutors like Kimberly grapple with this unique tension between the legal obligations in prosecuting a sexual assault case.

Further emphasizing the unfair treatment of sexual assault survivors, there are other legal situations where “victim” is used unequivocally despite there not being obvious victimhood. For example, defense attorneys rarely resisted the label of “victim” in child rape cases, even when the victim had not been killed or visibly physically injured. Moreover, there was only one conviction out of the four adult criminal rape trials I observed while 100% of the 7 child rape cases I observed (that have ended) resulted in either a guilty verdict (n=6) or guilty plea (n=1). Moreover, in one of the adult rape cases included in my ethnography, the defendant was found by the jury to be guilty on the charges of perjury and witness intimidation, yet not guilty on two charges of rape. What this indicates is that juries are far less willing to view victims in rape cases as victims and even afford the same individuals victimhood when presented with a different context or set of facts.

Evidently, there is a difference in the legitimacy afforded to victims in rape trials as opposed to victims in other criminal assault trials. Part of this, again, returns to the fact that in rape trials, unlike any others, defense counsel has the ability to argue the encounter simply never happened.

Standard of Proof

In criminal jury trials, the standard of proof is beyond a reasonable doubt. Unless there is a question of a defendant's mental capabilities at the time of the alleged incident, this standard applies to every criminal case heard by the Suffolk County Superior Court. In theory, this means that juries need to reach an identical level of confidence to decide a case's verdict regardless of the charges involved. Although it is impossible to ensure every different combination of twelve jurors follow the same standard of proof, I gathered a consistent disparity across sexual assault cases and non-sexual assault cases from my ethnography and interview conversations. As prosecutor Amy astutely articulated,

“Juries seem to have this idea that beyond a reasonable doubt for a sexual assault case is that standard on steroids. It's just, ‘Oh well, how could we ever know that this happened? Like they were the only 2 people there.’ And it's like, well, with an armed robbery, those are the only people there on that dark street and no one's asking that. [No one asks the victim] ‘why were you flaunting that watch at that time of night?’ We just see way more head scratching, really questionable verdicts in sexual assault cases where there's a lot of evidence as compared to these general cases where the jury just seems to accept that the [victim] didn't want that to happen and we can credit their testimony even in the absence of video or DNA or whatever.”

Amy's observation sheds light on the pervasive challenge of achieving justice in sexual assault cases compared to other criminal assault cases. This discrepancy, as Amy points out,

reflects a reluctance in sexual assault cases to accept witness testimony in the absence of concrete evidence, a leniency typically granted in other criminal cases. She later provides a more specific example, sharing, “In a case I’m working on, the defendant's pants were sent to the lab and his pocket was found to be full of a bunch of date rape drugs - and yet, this is still not enough, it's still not enough to prove guilt. The fact that she was unconscious and it's shown he had date rape drugs is not enough to show it wasn't consensual, it's all f*cked.” The heightened skepticism and unrealistic standard of “beyond any possible doubt” that juries apply in sexual assault cases contribute to a high rate of non-guilty verdicts.

Between 2008-2010, 3269 complaints of sexual assault were studied by three professors in the School of Criminology and Justice Studies at University of Massachusetts Lowell under a \$1.19 million grant from the National Institute of Justice (Morabito, Williams, & Pattavina 2019). What they found was that in cases with charges filed, 189 (53.4%) ended in a guilty verdict; 152 (81%) of guilty verdicts were the product of a plea bargain; seven (3.7%) involved a guilty finding by a judge and 25 (13.2%) involved a guilty finding by a jury. In 11 cases, a jury acquitted the defendant following a trial. Only 45 (1.6%) of cases reported to the police across all six sites were even tried in court. Ultimately, the distinct standard of proof exercised in sexual assault cases is apparent not only qualitatively in my observations but quantitatively in external research on sexual violence case attrition.

Consent Instructions

An additional element of rape trials that differs from the procedure in other violent crimes is the deliverance of “consent instructions” during a case’s pre-charge and jury instructions. Criminal jury pre-charge refers to preliminary information provided to a jury by the judge prior

to opening statements that mark the commencement of a case. As defined by the Legal Information Institute at Cornell Law School (2020), jury instructions are instructions for jury deliberation that are written by the judge and given to the jury. Jury instructions are the only guidance the jury receives when deliberating and are meant to keep the jury on track regarding the basic procedure of the deliberation and the substance of the law on which their decision is based. Most criminal jury precharge statements are fairly consistent and uniform across charges and types of criminal cases. One area where they typically differ, though, is in the section regarding “Legal Principles,” where a judge will outline the “elements of the charge/s.” This is where consent instructions make an appearance in sexual assault cases.

As outlined in the Suffolk County Superior Court Model Criminal Jury Instructions for rape, “to prove DFT guilty of rape, the Commonwealth must prove three elements beyond a reasonable doubt.” The elements are as follows. For context, DFT refers to the “defendant” and AVM refers to “a victim.”

1. DFT had sexual intercourse with AVM;
2. DFT compelled AVM to submit to sexual intercourse by force or threat of force or violence, actual or implied; and
3. the sexual intercourse was against AVM’s will, that is, without [his/her] consent.

The first two points here are fairly standard practice. The final point, number three, however, is not. The jury instructions elaborate on this point. In this passage, BRD stands for “beyond a reasonable doubt.” The third element the Commonwealth must prove is that:

“The sexual intercourse was against AVM’s will. This means that AVM did not consent to sexual intercourse. To consent, a person must be able to choose freely. If a person submits to sexual intercourse because of fear or intimidation, it is not

consensual. The law does not require AVM to resist the intercourse. In deciding whether the Commonwealth has proved that AVM did not consent, you should consider all the surrounding circumstances. Consent or lack of consent may be expressed by words, physical gestures, or other actions. As with the question whether DFT used force, you may consider all the circumstances and the entire sequence of events in evaluating AVM's ability to resist as well as in deciding whether the sexual intercourse happened without AVM's consent. DFT has no burden to prove that AVM did consent. Instead, the Commonwealth has the burden of proving BRD that AVM did not consent."

Essentially, these instructions shift attention away from the crime itself and onto an "eroticization" of sex crimes. As characterized by a colleague at the DA's Office: "The difference between rape cases and other criminal assault cases is that it's sex crimes versus violence crimes - [defense attorneys] eroticize [cases related to sexual violence]. It's their job. Even in child cases, it's not rape or exploitation or violence, it's sex, and it's only a minor tiny thing that they're under the legal age. It's sex. That's their argument."

In non-sexual crimes, there is never a question of consent. To some extent, this can be attributed to the fact that there is no situation where an individual consents to being robbed or shot in the foot. However, it also reflects the consistent hesitancy to believe victims when they report being violated. For example, outlined in the Suffolk County Superior Court Model Criminal Jury Instructions for assault, "to prove DFT guilty [of the first type] of assault [(attempt)], the Commonwealth must prove three elements beyond a reasonable doubt." The elements are as follows:

1. DFT attempted to use physical force on AVM;
2. DFT intended to cause bodily harm to AVM; and
3. DFT came reasonably close to accomplishing the intended harm.

"To prove DFT guilty of [the second type of] assault [(threatening)], the Commonwealth must

prove three [different] elements beyond a reasonable doubt:”

1. DFT did some act that would cause a reasonable person in AVM’s position to fear or recognize a risk of immediate bodily harm;
2. DFT intended to cause AVM to fear immediate bodily harm; and
3. As a result of DFT’s action, AVM feared or recognized a risk of immediate bodily harm.

In none of these elements is there any mention of consent. The same is true for the Suffolk County Superior Court Model Criminal Jury Instructions on homicide. For murder in the first degree (murder with deliberate premeditation), the Commonwealth the Commonwealth must prove beyond a reasonable doubt the following elements:

1. The defendant caused the death of [victim's name].
2. The defendant intended to kill [victim's name], that is, the defendant consciously and purposefully intended to cause [victim's name] death.
3. The defendant committed the killing with deliberate premeditation, that is, he decided to kill after a period of reflection.
4. [Where there is evidence of self-defense or defense of another] The defendant did not act in proper self-defense or in the proper defense of another.
5. [Where there is evidence of mitigating circumstances] In addition to these elements, the Commonwealth must also prove that there were no mitigating circumstances.

This pattern repeatedly emerged in my conversations with interviewees. From what prosecutor Amy has witnessed in her nearly-16 years of experience, she told me it is as if “sexual assault cases require more evidence than some other type of case. Let's say it's an armed robbery, right? There's no consent defense to an armed robbery, There's no instruction that says the jury has to consider whether the victim gave his money willingly to the person holding the gun. That's just not even a thing, that idea of viewing that evidence with inherent skepticism is just not really prevalent at all in general right types of cases.” This is tied to the inclusion of “consent

instructions” for rape cases. What Amy describes here posits an “inherent skepticism” that exists in rape cases and not other criminal assault cases.

The Disparity in Maximum Sentences

Quantitatively, there, too, is a fundamental disparity in the consequences for sexual violence-related crimes and non-sexual violence-related crimes. This disparity can be located in the maximum sentence for each type of charge. In Massachusetts, if rape results in or is committed along with acts resulting in serious bodily injury, is committed by a joint enterprise, or is committed during the commission or attempted commission of certain dangerous felonies, it is punishable by life imprisonment or any term of years (Mass. Gen. Laws. Ann. ch. 265, § 22; RAINN, 2023). However, rape without one of the aforementioned aggravating factors is punishable by state imprisonment not more than 20 years. A conviction for indecent assault and battery on a person 14 years of age or older in Massachusetts will result in imprisonment in the state prison for not more than five years or imprisonment for not more than 2 1/2 years in a jail or house of corrections (Mass. Gen. Laws. Ann. ch. 265, § 13H). As Kevin expressed frustratedly with me, “the laws on rape are bad. The maximum penalty for raping a woman is 20 years. That is f*cking insane. The maximum penalty for stealing a bicycle from somebody on the street is life in prison. Right, unarmed robbery is life penalty and raping a woman is a 20 year max. What the h*ll are you talking about? Right? That is insane.” The stark contrast in maximum sentences between sexual violence-related criminal trials and non-sexual violence-related trials in Massachusetts reveals a fundamental disparity in the legal consequences for these offenses. The frustration expressed by Kevin underscores the inconsistency and inadequacy of rape laws. The maximum penalty for rape in Massachusetts in principle is indicative of how little we, as a

culture, disapprove of rape. However strong the societal stigma around rape and rapists may be, it is important to recognize how minor the sentencing outcomes are for this crime.

The Consequences of Conditional Victimhood

This rhetoric around conditional victimhood—whether theoretical or in practice—aids in a collective refusal to acknowledge the ubiquity of sexual violence. Choosing to stigmatize rape is a mechanism of separating “rape” from all of the other manifestations of sexual violence in our culture. It is a way of mediating the apparent hypocrisy of our cultural acceptance of sexual assault. The fact that only the “worst of the worst” assaults are even heard by Superior Court, and even fewer make it past plea bargaining further reifies this dynamic. It is easier to label rape as “monstrous” than to recognize it is not far removed from everyday behaviors.

In interviews, a number of attorneys communicated to me a societal understanding that being convicted of rape renders the defendant a “rapist,” while convicting a defendant of murder only cedes a brief moment of weakness. A guilty verdict in a murder trial means a defendant committed a discrete act of violence, but does not indicate anything about who the defendant is as a person. Society views an individual convicted of a rape as a “rapist,” but not always an individual convicted of a murder as a “murderer.” Murder is about impulse; rape is about power (Daniel, 2023). Daniel elaborated on this point,

“Convicting somebody of a rape and putting that label on him for the rest of their lives is probably the hardest thing for a jury to do. I think it's harder than convicting somebody of murder because of what it says about the person. [If] somebody committed a murder, they still could have done it in a weak and impulsive moment. [For] somebody who commits rape, you're basically saying this is the kind of person they are. In cases where somebody is charged with rape

and something else, it's fairly common for them to be convicted of something else and not over rape.”

Part of why rape is so stigmatized is because only a fraction of sexual violence is actually equated to rape. An encounter or behavior is only deemed rape or sexual assault if it looks a certain way. All other behaviors are excluded from this definition. It is nearly impossible to convict a defendant of rape unless it fits a clear and legible mold. A rape conviction then carries so much stigma because it is only understood to refer to an extreme example of the sexual violence normalized in our culture.

Discussion

My research demonstrates that even in progressive settings, the legal system still promotes and enables rape myth narratives. What this makes clear is that the legal system can not deliver justice in any context. I argue that we combat sexual and gender-based violence through non-carceral means. For abolitionist feminists like myself, the struggle to end violence can not be found within punitive and carceral systems, as both sexual and gender-based violence are reproduced by the carceral state. Instead, prisons must be eliminated, along with the conditions that channel individuals from society into prison, including racism, poverty and the root causes of violence. I contend that the way to address sexual and gender-based violence without relying on state violence is through transformative justice and community-based responses rooted in care, which are not dismissive of conditions of poverty, race, and exploitation. As advocated by Angela Harris, the restorative justice lens focuses on healing, repair, and accountability. With respect to healing, this includes investing in resources to assist survivors to leave abusive environments, mental health and trauma counselling, and inclusive

sexual assault centres that are accessible to all survivors. With respect to repair and accountability, this must include counseling for the person who caused harm, as well as a number of restorative justice efforts such as victim-offender mediation, community justice conferencing, workshops and trainings, removal from leadership positions, admission of guilt, public or private apologies, and specific behavioral changes. We must rechannel our resources to the prevention of sexual and gender-based violence before it occurs and address the root causes of systemic violence against women. Such prevention mechanisms include investing in education, health, social housing and the creation of unarmed service teams to address mental health, drug-related crises and gender-based violence. Additionally, prevention requires an investment in the societal and cultural shifts needed to end sexual and gender-based violence.

We must stop turning to the criminal legal system as a vehicle of justice, healing, and restoration. In the same way that defendants in rape trials deserve to be convicted at the same rate as other defendants, sending people to prison accomplishes nothing. It does not stop this from continuing to happen, it does not make our communities safer, and it does not erase survivors' trauma after an assault. As framed by author Stefanie Mundhenk (2019), prisons are “criminogenic”—meaning that instead of rehabilitating individuals, prisons make them more likely to commit crimes in the future.

During an interview I conducted with a law professor, I asked if he had any parting words before we ended our conversation. He told me, “The longer I've taught this material, the more I've become convinced that the law can not generate the kind of genuine accountability that might actually reduce the incidence of sexual assault. The system does not care about victims. Thus, why would victims willingly undergo a process where they essentially become tools for others who are not invested in their healing or closure? The system is simply not built to address

this particular kind of offense in any effective way. Until we re-conceptualize how the system works, it will not serve people's needs.” The legal system is indifferent to what is best for the survivor. Thus, we must listen to the survivors in our lives and ask them what they need. We must hold assailants accountable, whether that takes the form of firing them from their jobs or removing them from our lives. We must turn to other platforms and programs that return power and control to survivors.

Beyond restorative justice, a system that is still connected to the carceral frame in many ways, Mariame Kaba (2021) and Mia Mingus (2019) theorize a “political framework and approach” for responding to violence, harm, and abuse: Transformative Justice (TJ). TJ seeks to respond to violence without creating more violence, recognizing that state responses to violence often reproduce violence and traumatize those who are exposed to them. TJ functions as an abolitionist framework that understands systems such as prisons, police, and ICE as sites where enormous amounts of violence take place and as systems created to be inherently violent in order to maintain social control (Mingus 2019). TJ strives not simply for the absence of the state and violence, but for the presence of the values, practices, and relationships, collectively building the kinds of relationships and communities that could intervene in and prevent instances of violence. As Angela Davis (2003) argues, we should not be seeking “prisonlike substitutes for prison,” but rather envision a “continuum of alternatives to imprisonment” based on reparation and reconciliation rather than retribution and vengeance (p. 107). The criminal legal system and the prison industrial complex are inherently and wholly flawed, built as an instrument of exercising social control of racial groups and other marginalized groups, and the only way to move forward is through their abolition altogether.

In an ideal world, one where the state was not built as a vehicle and instrument of systemic violence and harm, I would argue for the equal treatment of rape survivors within the criminal legal system. However, it is clear that even when state actors engage in anti-rape efforts, prosecutors are halted by defense attorneys and jurors that continue to subscribe to rape myths. Moreover, increased effectiveness in prosecuting perpetrators of sexual assault would merely result in a lower barrier to conviction, neither preventing nor addressing sexual violence at its root. Even in a progressive state context where DV/SA prosecutors are actively working to counter rape myth narratives, the legal infrastructure does not allow these efforts to derail the persuasion of jurors by defense attorneys. Rape myth narratives mobilized by defense attorneys are only effective to the extent that juries already subscribe to similar attitudes, and the quantitative results of my ethnography point to this reality. The legal system does not serve as a tool to shift broader societal attitudes nor serve justice in the long term, and therefore radical efforts must target prevention in the form of a greater social safety net.

Limitations

My research is certainly not without limitations. First, victims' and survivors' first hand perspectives are absent from the narrative. Given the potential harm and retraumatization that could come from triggering conversations and in order to receive approval from the Boston University Institutional Review Board, I chose to center my research on authority figures and those in power, rather than the survivors themselves. While this achieves success in avoiding possible harms done, it also limits the insights gleaned from my interview discussions. Regardless of how outsiders may perceive the negative impacts of the trial process for victims, no one truly understands except the victims, themselves. Any policy reforms or efforts for social

change should be pioneered and fronted by those who have been victimized by sexual violence, and my research was unable to center these voices. Therefore, the interview data collected are quite skewed toward the perspectives of college-educated, upper-middle class to wealthy professionals with considerable privilege in navigating the legal system. My interviews are also limited to participants who felt comfortable enough in their job security and access to privacy to openly and candidly share their observations with me.

Second, my research is limited to a single county in Massachusetts, with distinctions that make my findings less generalizable. According to the World Population Review, Suffolk County is the most densely populated county, with a density of 13,028 per square mile as of 2024. Suffolk County is also 61.3% White alone, as compared to the state of Massachusetts at 79.4%, and 24.1% Black or African American alone, as compared to 9.5% in all of MA (U.S. Census Bureau, 2024). This can be measured against the demographics of the United States as 75.5% White alone and 13.6% Black or African American alone (U.S. Census Bureau, 2024). My study intentionally set out to determine the relational dynamics between prosecutors and defense attorneys in a *progressive state context*, which by nature precludes my results from being extrapolated to a different political setting.

Finally, the randomly sampled trials included in my ethnographic observations depict a fairly narrow picture of victim identities. The victims in all of the sexual assault cases I observed were women, or girls in child rape cases, and all of the defendants were men. One victim out of the 15 I observed identified or described herself as lesbian/gay, however the rest were alluded to as heterosexual/straight. Additionally, outside of participant gender, I did not collect data on the identities of my interviewees. There were several victims of color included in my ethnographic sample, but the racial/identity demographics of victims was not information I had access to

throughout my research. While I engage race-, sexuality-, gender-, and class-based analyses of my findings, my ability to wholly explore these intersecting layers is limited. Moreover, as an upper-middle class White woman, interview participants of color and/or low income participants may not have always felt comfortable sharing their authentic experiences and observations with me.

Conclusion

The trajectory of the anti-rape movement since its inception in the 1970s reflects both triumphs and persistent challenges, underscoring the complex dynamics surrounding sexual violence and anti-rape legal reforms. While a number of legal reforms have been achieved over the decades, including broader definitions of sexual assault, improved victim protections, and heightened public awareness, my research reveals the lack of impact such reforms have had. Despite the strides made by the anti-rape movement in reforming the legal system's response, survivors continue to face significant obstacles when seeking justice and support in both treatment during trials and tangible case outcomes. My research offers valuable insights into the anti-rape strategies employed by prosecutors in an attempt to mitigate rape myth narratives produced by the defense. Despite ongoing feminist advocacy efforts in a progressive state context, entrenched rape myths and victim-blaming attitudes continue to shape the dominant, reigning norms, undermining the pursuit of justice for survivors. The discrepancy between the rhetoric of progressiveness and the absence of material change highlights the need for a deeper examination of how legal reforms are implemented and how they impact survivors' access to justice.

Moreover, my analysis extends beyond the confines of the legal system to interrogate broader societal structures that perpetuate violence and inequality. The reliance on carceral solutions to address sexual violence not only fails to address the root causes of the issue but also reinforces existing power structures and disproportionately harms marginalized communities. By prioritizing punitive measures, the state subjects survivors to further trauma and perpetuates cycles of violence, particularly among already vulnerable populations.

My research underscores the importance of engaging in critical conversations about the intersections of gender, race, class, and other forms of social identity in shaping experiences of sexual violence and access to justice. By centering the voices and experiences of marginalized survivors, we can develop more inclusive and effective strategies for prevention, intervention, and support. Ultimately, achieving meaningful progress in addressing sexual violence requires a multifaceted approach that addresses both the structural and cultural factors that perpetuate it. By challenging entrenched biases, advocating for survivor-centered approaches, and working toward systemic change, we can move closer to a world where all individuals are treated with dignity, respect, and justice, regardless of their experiences of sexual violence.

I advocate for a paradigm shift in our approach to addressing sexual violence—one that prioritizes survivors' autonomy and healing, and centers structural violence prevention. This entails moving away from punitive responses and toward more transformative approaches that center the needs and experiences of survivors. Collaborative efforts across disciplines are needed to dismantle rape culture, challenge systemic inequalities, and create communities where all individuals are empowered to live free from violence and discrimination.

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Appendix

1. Conditions of Legitimacy, Sexual Assault Cases*

	<i>Case Proceeding</i>	<i>Legitimacy of the Victim's Display of Non-Consent</i>	<i>Legitimacy of the Victim's Perceived Culpability</i>	<i>Legitimacy of the Victim's Response & Presentation</i>
<i>Case #1</i> ^{*†}	Jury Trial (Including Verdict)			
<i>Case #2</i> [†]	Hearing for Sentence Imposition		X	X
<i>Case #3</i> ^{*†}	Hearing for Sentence Imposition			X
<i>Case #4</i> ^{*†}	Jury Trial		X	X
<i>Case #5</i> [*]	Final Pre-Trial Conference, Jury Trial		X	X
<i>Case #6</i> [*]	Final Pre-Trial Conference, Jury Trial	X	X	X
<i>Case #7</i> [*]	Final Pre-Trial Conference			
<i>Case #8</i> [*]	Hearing on Motion to Continue			
<i>Case #9</i> ^{*†}	Final Pre-Trial Conference			
<i>Case #10</i> ^{*†}	Final Pre-Trial Conference, Jury Trial			X
<i>Case #11</i> ^{*†}	Jury Trial			
<i>Case #12</i> ^{*†}	Hearing for Sentence Imposition			
<i>Case #13</i>	Jury Trial	X	X	X
<i>Case #14</i>	Jury Trial	X	X	X
<i>Case #15</i>	Jury Trial	X	X	X

*Charges related to an assault on a minor (person under 14 years of age), i.e. rape of child.

†Case resulted in a conviction (either by guilty verdict or guilty plea).

2. Conditions of Legitimacy, Non-Sexual Assault Cases

	<i>Case Proceeding</i>	<i>Legitimacy of the Victim's Display of Non-Consent</i>	<i>Legitimacy of the Victim's Perceived Culpability</i>	<i>Legitimacy of the Victim's Response & Presentation</i>
<i>Case #1</i>	Lobby Conference			
<i>Case #2</i>	Motion Hearing			
<i>Case #3</i>	Jury Trial (Including Verdict)			
<i>Case #4</i>	Jury Trial			
<i>Case #5</i>	Hearing for Change of Plea			
<i>Case #6</i>	Hearing for Change of Plea			
<i>Case #7</i>	Jury Trial			
<i>Case #8</i>	Jury Trial			
<i>Case #9</i>	Final Probation Surrender Hearing			
<i>Case #10</i>	Final Probation Surrender Hearing			
<i>Case #11</i>	Final Probation Surrender Hearing			
<i>Case #12</i>	Final Probation Surrender Hearing			
<i>Case #13</i>	Conference to Review Status			
<i>Case #14</i>	Conference to Review Status			
<i>Case #15</i>	Final Pre-Trial Conference			
<i>Case #16</i>	Hearing for Sentence Imposition			
<i>Case #17</i>	58A Dangerousness Hearing			
<i>Case #18</i>	Conference to Review Status			
<i>Case #19</i>	Pre-Trial Conference			
<i>Case #20</i>	Pre-Trial Conference			
<i>Case #21</i>	Arraignment			
<i>Case #22</i>	Arraignment			
<i>Case #23</i>	Arraignment			
<i>Case #23</i>	Jury Trial			
<i>Case #24</i>	Not Reported			
<i>Case #25</i>	Jury Trial			

3. The charges in the non-sexual assault cases included the following:

1. 265/1-0 Murder C265 §1 (Felony)
2. 269/10/G-2 Firearm Without Fid Card, Possess C269 S.10(H) (Misdemeanor - More Than 100 Days Incarceration)
3. 269/10/Aa-0 Firearm, Possess Large Capacity C269 §10(M) (Felony)
4. 265/13a/B-1 A&B C265 §13a(A) (Misdemeanor - More Than 100 Days Incarceration)
5. 265/15a/A-1 A&B With Dangerous Weapon C265 §15a(B) (Felony)
6. A&B With Dangerous Weapon, Serious Bodily Injury C265 §15a (C) (I)
7. 269/10/K-0 Firearm, Carry Without License, 2nd Off C269 §10(A) & (D) (Felony)
8. 269/10/Tt Ammunition Without Fid Card, Possess C269 §10(H)(1) (Misdemeanor - More Than 100 Days Incarceration)
9. 269/10/Ee-0 Firearm, Carry Without License Loaded C269 S.10(N) (Felony)
10. 269/10/Aa-0 Firearm, Possess Large Capacity C269 §10(M) (Felony)
11. 265/15a/A-1 A&B With Dangerous Weapon C265 §15a(B) (Felony)
12. 266/18/B-1 B&E Building Daytime For Felony C266 §18 (Felony)
13. 269/10/Aa-1 Firearm, Possess Large Capacity C269 §10(M) (Felony)
14. 266/20/A-0 Larceny From Building C266 §20 (Felony)
15. 94c/37-0 Drug, Larceny Of C94c §37 (Felony)
16. 266/30/E-0 Firearm, Larceny Of C266 §30(1) (Felony)
17. 269/10/J-1 Firearm, Carry Without License C269 §10(A) (Felony)
18. 269/10/Tt Ammunition Without Fid Card, Possess C269 §10(H)(1) (Misdemeanor - More Than 100 Days Incarceration)
19. 266/14/A-0 Burglary, Armed C266 §14 (Felony)
20. 265/13a/F-0 A&B, Viol Abuse Prevention Order C265 §13a(B) (Felony)
21. 265/13m/B-0 A&B On Family / Household Member C265 §13m(A) (Misdemeanor - More Than 100 Days Incarceration)
22. 266/30/C-1 Larceny Under \$1200 C266 §30(1) (Misdemeanor - More Than 100 Days Incarceration)
23. 265/15b/A-0 Assault W/Dangerous Weapon C265 §15b(B) (Felony)
24. 265/17/A-0 Robbery, Armed C265 §17 (Felony)
25. 268/13b/A-5 Witness/Juror/Police/Court Official, Intimidate C268 §13b (Felony)

4. The charges in the sexual assault cases included the following:

1. 265/23a/A-1 Rape Of Child, Aggravated, Five Year Age Difference C265 §23a (Felony)
2. 265/13b/A-5 Indecent A&B On Child Under 14 C265 §13b (Felony)
3. 265/22/A-1 Rape C265 §22(B) (Felony)
4. 265/13h-3 Indecent A&B On Person 14 Or Over C265 §13h (Felony)

5. 265/23a/A-1 Rape Of Child, Aggravated, Five Year Age Difference C265 §23a (Felony)
6. 265/26c-1 Entice Child Under 16 C265 §26c(B) (Felony)
7. 265/23a-0 Rape Of Child, Statutory, Aggravated C265 §23a (Felony)
8. 265/23a/A-0 Rape Of Child, Statutory, Five Year Age Difference C265 §23a (Felony)
9. 265/23/A-0 Rape Of Child, C265 §23 (Felony)
10. 265/13b/C-0 Indecent A&B On Child Under 14 After Certain Offenses C265 §13b (Felony)
11. 272/16-2 Lewdness, Open And Gross C272 §16 (Felony)
12. 272/28/A-1 Obscene Matter To Minor C272 §28 (Felony)
13. 265/23a-0 Rape Of Child, Statutory, Aggravated C265 §23a (Felony)
14. 272/53a/C-1 Sexual Conduct With Child Under 18, Pay For C272 §53a(C) (Felony)
15. 265/50/B-0 Trafficking Of Person Under 18 For Sexual Servitude C265 §50(B) (Felony)
16. 272/29a/A-1 Child In Nude, Lascivious Pose/Exhibit C272 §29a(A) (Felony)
17. 272/29c/A-1 Child Pornography, Possess C272 §29c (Felony)
18. 265/22b Rape Of Child With Force, Aggravated C265 §22b (Felony)
19. 265/23a/B-1 Rape Of Child, Aggravated, Ten Year Age Difference (Felony)

5. Interview Schedule: Civil Family Law Attorney

1. For context, could you tell me a bit about your current professional position? Generally speaking, what is your role?
2. Could you describe any opposing counsel arguments you frequently encounter in family law cases, particularly cases regarding protective orders? In what ways do you find these fair? Unfair?
3. Could you describe some of the narratives/stereotypes you've seen opposing counsel draw on in an effort to discredit the victim? The most frustrating? In what ways do these inform how you approach a case?
4. Tell me about a time you disagreed with an opposing counsel's approach in a domestic violence/sexual assault case? Agreed?
5. Tell me about a time you were concerned about how your client's credibility came across to the judge. What typically makes an individual seem credible? What will raise concern for you?
6. In what ways do you feel your evaluation of a victim's credibility is similar to that of an opposing counsel's evaluation? A judge's evaluation? In what ways is it different?
7. Could you tell me about any instances you have seen the topic of physical injury brought up? Has this been used for or against the victim? What about a history of (or lack thereof)

making 911 calls? Emergency visits? A victim's sexual history? Relationship with the opposing party? Time before disclosure? Are these important details in your approach to the case? Do you find them to be reliable indicators of a victim or opposing party's credibility?

8. Tell me about a time you found a judge's decision to be appropriate in a family law case, a restraining order hearing for example? Inappropriate? What about it?
9. Is there anything I haven't asked you about that you feel might be relevant? Is there anything else that has stood out to you over the course of your time working in the courts?

6. Interview Schedule: DV/SA Prosecutor

1. For context, could you tell me a bit about your current professional position? Generally speaking, what is your role?
2. Could you describe any defense arguments you frequently encounter in rape cases? In what ways do you find these fair? Unfair?
3. Could you describe some of the narratives/stereotypes you've seen defense attorneys draw on in an effort to discredit the victim? The most frustrating? In what ways do these inform how you approach a case?
4. Tell me about a time you disagreed with a defense attorney's approach in a rape case? Agreed?
5. Tell me about a time you were concerned about how a complainant's credibility came across to the jury. What typically makes a complainant seem credible? What will raise concern for you?
6. In what ways do you feel your evaluation of a victim's credibility is similar to that of a defense attorney's evaluation? In what ways is it different?
7. Could you tell me about any instances you have seen the topic of physical injury brought up? Has this been used for or against the victim? What about the state of a victim's clothing? What the victim was wearing? A victim's sexual history? Alcohol consumption? Continued relationship with the defendant? Time before disclosure? Are these important details in your approach to the case? Do you find them to be reliable indicators of a victim's credibility/lack thereof?

8. Tell me about a time you found a judge's sentencing to be appropriate? Inappropriate? What about it?
9. I understand that during a case, prosecutors are often prohibited from referring to the victim as "victim" or the event as an "assault," especially when introducing evidence to the discovery (these words may be redacted, etc.). Could you explain the significance of this? Do you find this practice to be fair? Unfair?
10. My understanding is that the basic concept of "innocent until proven guilty" means a jury is expected to assume the victim is lying until evidence proves otherwise. Do you find this to be fair? Unfair?
11. Is there anything I haven't asked you about that you feel might be relevant? Is there anything else that has stood out to you over the course of your time working in the courts?

7. Interview Schedule: DV/SA Police Detective

1. For context, could you tell me a bit about your current professional position? Generally speaking, what is your role?
2. When you are dealing with a rape case, could you talk about what some of the most important facts/details are for you to know/address?
3. Tell me about a time you were concerned about a victim's credibility. What typically makes a victim seem credible? Not credible?
4. What will raise concerns for you about a victim's report of an incident? Are there any red or green flags you look for?
5. Could you talk about some of the corroborations/indicators of credibility you look for when interviewing witnesses or generally investigating an alleged rape?
6. Does the presence or absence of physical evidence impact your understanding/perception of an incident of sexual assault?
7. Could you describe what some of the elements of incidents are when you might consider them to be especially severe?
8. What characterizes a "strong" sexual assault case in court in your experience?
9. In what ways do you feel your evaluation of a victim's credibility is similar/different to that of an attorney's evaluation?

10. In your experience, are there any themes you find defense attorneys tend to focus on when cross examining you in a rape trial?
11. Could you describe some of the narratives/stereotypes you've seen defense attorneys draw on in an effort to discredit the victim? The most frustrating? In what ways do these inform how you approach a case?
12. Tell me about a time you disagreed with the way the court handled an alleged rape? Agreed?
13. Is there anything I haven't asked you about that you feel might be relevant? Is there anything else that has stood out to you over the course of your time working in the courts?

8. Interview Schedule: Public Defender/Private Criminal Defense Attorney

1. For context, could you tell me a bit about your current professional position? Generally speaking, what is your role?
2. Could you describe your typical approach when representing a defendant in a rape case? Are there any arguments or strategies you find yourself drawing on often?
3. Could you describe any times you've felt your defense strategy in a rape case was particularly effective? What made it so effective?
4. What are the biggest challenges you have to overcome in the defense in a rape case?
5. Could you describe any common narratives/stereotypes about victims you see emerge? In what ways do these inform how you approach a case? Are there any you draw on?
6. Tell me about a time you disagreed with a prosecutor's approach in a rape case? Agreed?
7. Tell me about a time you were concerned about a complainant's credibility. What typically makes a complainant seem credible to you? What will raise concern for you?
8. In what ways do you feel your evaluation of a victim's credibility is similar to a prosecutor's evaluation? In what ways is it different?
9. Could you tell me about any instances you have seen the topic of physical injury brought up? Has this been used for or against the victim? What about the state of a victim's clothing? What the victim was wearing? A victim's sexual history? Alcohol consumption? Continued relationship with the defendant? Time before disclosure? Are

these important details in your approach to the case? Do you find them to be reliable indicators of a victim's credibility/lack thereof?

10. Tell me about a time you found a judge's sentencing to be appropriate? Inappropriate? What about it?
11. I understand that during a case, prosecutors are often prohibited from referring to the victim as "victim" or the event as an "assault," especially when introducing evidence to the discovery (these words may be redacted, etc.). Could you explain the significance of this? Do you find this practice to be fair? Unfair?
12. My understanding is that the basic concept of "innocent until proven guilty" means a jury is expected to assume the victim is lying until evidence proves otherwise. Do you find this to be fair? Unfair?
13. Is there anything I haven't asked you about that you feel might be relevant? Is there anything else that has stood out to you over the course of your time working in the courts?

9. Interview Schedule: General Prosecutor

1. For context, could you tell me a bit about your current professional position? Generally speaking, what is your role?
2. Could you describe any defense arguments you frequently encounter in criminal assault cases? In what ways do you find these fair? Unfair?
3. Could you describe some of the narratives/stereotypes you've seen defense attorneys draw on in an effort to discredit the victim? The most frustrating? In what ways do these inform how you approach a case?
4. Tell me about a time you disagreed with a defense attorney's approach in a criminal assault case? Agreed?
5. Tell me about a time you were concerned about how the credibility of your witnesses came across to the jury. What typically makes a witness seem credible? What will raise concern for you?
6. In what ways do you feel your evaluation of a witness' credibility is similar to that of a defense attorney's evaluation? In what ways is it different?

7. Could you tell me about any instances you have seen the topic of physical injury brought up? Has this been used for or against the victim? What about the state of a victim's clothing? What the victim was wearing? Alcohol consumption? Continued relationship with the defendant? Time before disclosure? Are these important details in your approach to the case? Do you find them to be reliable indicators of a victim's credibility/lack thereof?
8. Tell me about a time you found a judge's sentencing to be appropriate? Inappropriate? What about it?
9. Is there anything I haven't asked you about that you feel might be relevant? Is there anything else that has stood out to you over the course of your time working in the courts?

10. Interview Schedule: Judge

1. For context, could you tell me a bit about your current professional position? Generally speaking, what is your role?
2. Could you describe any defense arguments you frequently encounter in rape cases?
3. Are there any arguments that you see to be particularly compelling for a jury?
4. What does the strength of the victim's testimony depend on?
5. What makes a victim appear credible or not credible?
6. How do you approach deciding on a sentence in a rape case?
7. What are some examples of types of corroboration?
8. How do you counter your own biases? What are strategies that you referenced to make sure this doesn't go into your sentencing?
9. I understand that during a case, prosecutors are often prohibited from referring to the victim as "victim" or the event as an "assault," especially when introducing evidence to the discovery (these words may be redacted, etc.). Could you explain the significance of this?

11. Outreach Email Example

Dear [blank],

I hope this email finds you well.

I am an undergraduate student at Boston University, and for my senior honors thesis in the Sociology Department, I am conducting a research study on the strategies used by experts in the legal system when dealing with cases involving aggravated assault or sexual assault. Given your knowledge on the legal system, I would like to invite you to participate in a brief interview. Interviews will last between 20-40 minutes and are to be held between mid-May and the end of June either over Zoom or in-person at a location of your choosing. The study has been approved by BU's Institutional Review Board and there are no known risks involved in this research. **If you are interested, please respond to this email and further information will be shared with you shortly.**

If you have any questions, please don't hesitate to let me know.

Best regards,
Lily Belisle

12. Consent Form

Consent Form For Research Interviews

Please read this form carefully. The purpose of this form is to provide you with important information about taking part in a research study. If any of the statements of words in this form are unclear, please let us know. We would be happy to answer any questions.

Taking part in this research study is completely voluntary and you may withdraw at any time.

Purpose of the Study

This research study is led by Lily Belisle, a student at Boston University. The purpose of this study is to analyze the legal treatment of survivors in cases related to sexual violence. We are asking you to take part in this study due to your knowledge of the Massachusetts legal system and experience within the area of domestic violence/sexual assault.

Study Procedures

If you volunteer to participate in this study, you will be asked to do the following:

1. Take part in an interview about your knowledge of court proceedings in cases regarding sexual or domestic violence and understanding of Massachusetts laws.
2. Participation in this study will involve about 20-40 minutes of your time.
3. If you do not want to be recorded, you can still participate.

If you agree to take part in this study, we will give you this consent form before we do any study procedures.

Audiotaping

We would like to audiotape you during this study. If you are audiotaped, it may be possible to identify you in the recording. Audio files will be stored on a password-protected computer and only study staff will be able to hear tapes. Tapes will be labeled with a code and not your name.

Do you agree to let us audiotape you during this study?

Yes

No

Confidentiality

Any identifiable information obtained in connection with this study will remain confidential. Your name and affiliations will not be used at all in this research. The data will be stored in a computer with a secret password that only the researcher will know. The data will be kept for seven years after the completion of the study. When the results of the research are published or discussed in conferences, no identifiable information will be used. We will label all your study information with a code instead of your name. Nobody outside of the Principal Investigator and Co-Investigator will know which study information is yours.

We will make every effort to keep your records confidential. However, there are times when federal or state law requires the disclosure of your records. Boston University Institutional Review Board may access the data. Information from this study and study records may be reviewed by the institution and by regulators responsible for research oversight such as the Boston University Institutional Review Board. The Institutional Review Board is a group of people who review human research studies for safety and protection of people who take part in the studies. Additionally, federal and state agencies that oversee or review research may access this data.

A list of the people or groups who may review the study records for purposes such as quality control or safety (e.g. the Institutional Review Board at Boston University, the sponsor or funding agency for the study, federal and state agencies that oversee or review research, Central University Offices).

Participation And Withdrawal

Your participation is voluntary. You are free not to take part or to withdraw at any time for any reason. No matter what you decide, there will be no penalty or loss of benefit to which you are entitled. If you decide to withdraw from this study, the information that you have already provided will be kept confidential.

Potential Risks And Benefits

The main risk of allowing us to use and store your information for research is a potential loss of privacy. We will protect your privacy by labeling your information with a code and keeping the key to the code in a password-protected computer. There are no direct benefits for participants.

IRB & Investigators' Contact Information

You can call or email with any concerns or questions. Our contact information is listed below:

Lilian Belisle - PI
(503) 964-8464
lbelisle@bu.edu

Dr. Saida Grundy – Faculty Advisor
grundy@bu.edu
(617) 353-2591

If you have questions, concerns, or complaints about your rights as a research participant, you may contact the Boston University Charles River Campus IRB at 617-358-6115. The IRB Office webpage has information where you can learn more about being a participant in research, and you can also complete a Participant Feedback Survey.

Statement Of Consent

I have read the information in this consent form including risks and possible benefits. I have been given the chance to ask questions. My questions have been answered to my satisfaction, and I agree to participate in the study.

Study Participant's Signature Date

I have explained the research to the subject and answered all of their questions. I will give a copy of the signed consent form to the subject.

Signature of Person Obtaining Consent Date

13. Debriefing Form

Thank you for participating in our study. Please feel free to ask us any questions regarding the study, at any time. Do you have any questions for us now?

If you have questions or concerns later, you can reach us with the contact information provided below.

Researcher

Lilian Belisle
(503) 964-8464
lbelisle@bu.edu

Research Supervisor

Dr. Saida Grundy
grundy@bu.edu
(617) 353-2591

Please remember, you have the right to rescind your permission for us to use your data in our study. To do so, contact Lilian Belisle or Dr. Saida Grundy to let us know.

14. Thank You Email Example

Dear [blank],

Thank you, again, so much for your willingness to participate in an interview with me this afternoon. I really appreciate that you not only took the time out of your day to meet with me, but shared incredibly thoughtful and reflective insights in response to my questions. Again, I cannot express enough how helpful you've been. My research would not be possible without you.

Please feel free to be in touch if you have questions or concerns at any point in the future. I hope to cross paths again soon!

All the best,
Lily Belisle