

[Address]

Dear Chief Justice [],

This letter is on behalf of “The Judicial Language Project,” a unique program based at New England Law | Boston, which uses sociolinguistic research to critique the language used by courts to describe violence against women and children. By identifying both problematic and appropriate words and phrases, we hope to influence the impact of judicial language on law and society.

In recent years scholars have identified important ways in which language in legal matters influences the way readers interpret and react to the information conveyed.<sup>1</sup> Words can connote and legitimize myths and stereotypes that readers may attribute to individuals involved in legal proceedings.<sup>2</sup> We are writing to you out of concern that such language may inhibit fair assessments of information and undermine the integrity of legal decision-making.<sup>3</sup>

We are particularly concerned about judicial use of the word “perform” to describe a victim’s conduct in a sexual assault matter. Words like “perform” suggest voluntary or pleasurable conduct,<sup>4</sup> and bring criminal behavior discursively into the range of everyday and pleasurable human activity. This inhibits the reader’s understanding that a person experienced fear, disgust, objectification, and pain.<sup>5</sup> In criminal cases in particular, it is important to assign complete responsibility to the offender because unlike civil torts where responsibility can be shared, criminal conduct is the exclusive responsibility of the harm-doer. This point is even more salient when the victim is a minor who lacks capacity to consent.

When we began examining judicial language in this context we noticed the frequency with which courts use the word “perform” in settings in which they do not intend to invoke concepts of voluntariness or pleasure. It is our hope that the use of more appropriate terminology by appellate court justices will help to educate colleagues and other officials who deal with such matters in inferior courts.

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<sup>1</sup> L. Coates, J.B. Bavelas, & J. Gibson, *Anomalous Language in Sexual Assault Trial Judgments*, *Discourse & Society*, 5(2), 38 – 39 (1994); S.J. Collings & B.M. Bodill, *Methodological Issues in Research on Child Sexual Abuse Attributions*, *South African Journal of Psychology*, 33(3) 170 – 75 (2003).

<sup>2</sup> Nina Philadelphoff-Puren, *The Right Language for Rape*, EBSCO Publishing (2003).

<sup>3</sup> *Id.*; L.D. Cromer & R.E. Goldsmith, *Stereotyped Beliefs, Myths, and Individual Differences that Influence Believing Child Sexual Abuse Disclosures*, *Journal of Child Sexual Abuse*, Special Issue: Forensic Issues and Disclosures (*in press*).

<sup>4</sup> Coates & Bavelas, *Supra* note 1 at 38 – 39. The word “perform” is defined as “to adhere to the terms of; [to] fulfill, [as in to] perform a contract; to carry out, to do, [or] to do in a formal manner or according to prescribed ritual.” <http://www.merriam-webster.com/dictionary/perform>.

<sup>5</sup> *Id.*

We have identified below in decisions of [relevant state's] appellate courts consistent use of the word “perform” in narratives related to sexual crimes. Research that follows demonstrates the ways in which this language causes harm to society.

A review of [relevant state's] appellate decisions in sexual crimes cases since 2004 reveals the following:

- Fifteen cases include a description of a victim “performing” oral sex.
- Ten of those cases include a description of a victim “performing” oral sex on the defendant.
- Four of those cases include a description of the defendant permitting, aiding, compelling, or forcing the victim to “perform” a sex act.

One recent example of the [relevant state's] courts' use of this type of harmful language can be seen in [citation to case] which involved attempted sexual assault in the second degree and sexual assault in the second degree. On appeal, the court wrote, “[Defendant] tried to get Complainant to *perform oral sex on him* [ . . . ] [Defendant] did not succeed in forcing Complainant to *perform oral sex on him* again [ . . . ] She confirmed that there were two acts of *vaginal sex* and one act of *oral sex*.” *Id.* [emphasis added].

Studies show that use of the word “perform” in this context is inappropriate because it conveys action and voluntariness on the part of the victim, thus suggesting that the victim was morally responsible for her own victimization.<sup>6</sup> Furthermore, use of the word “perform” alongside the phrases “oral sex” and “vaginal sex” exacerbates the problem because such erotic terminology connotes mutuality, pleasure, and consent.<sup>7</sup> When a term can be understood to mean consensual or pleasurable activity, a crucial distinction in the law between sexual pleasure and sexual violence has been obscured.<sup>8</sup>

As an alternative to “the victim performed oral sex,” a court could write “the defendant forced/pushed/inserted his penis into the victim’s mouth.” This accurate, if blunt, use of language makes it clear that the victim was a recipient of someone else’s harmful criminal act.

We hope this information proves valuable.

Yours truly,

Wendy Murphy, Esq., co-Director  
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<sup>6</sup> Janet Bavelas & Linda Coates, *Is it Sex or Assault? Erotic Versus Violent Language in Sexual Assault Trial Judgments*, *Journal of Social Distress and The Homeless*, 30 – 32 (2001).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*