What Do We Hear in Depp v. Heard?

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Abstract

As you probably know—whether you want to or not—the jury reached a verdict earlier this summer in the trial between Amber Heard and Johnny Depp. The trial, in the Fairfax County Circuit Court in Virginia, involved defamation and counter-defamation claims by the two actors.

Keywords

Music (Subfield), Article, Fandom/Fan Studies, Law, Social Media, Sound Studies



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As you probably know—whether you want to or not—the jury reached a verdict earlier this summer in the trial between Amber Heard and Johnny Depp. The trial, in the Fairfax County Circuit Court in Virginia, involved defamation and counter-defamation claims by the two actors. Heard published a 2018 op-ed in *The Washington Post* in which she claimed to be "a public figure representing domestic abuse." Depp sued her for defamation, she counter-sued, and a seven-week spectacle of celebrity, misogyny, and power followed, in which Depp substantially prevailed.

What does a close listening to Depp v. Heard tell us about this particular trial, as well as about sex and power in the courtroom more generally?

Depp v. Heard did not just randomly become a media circus. As Joanne Sweeny noted in *Slate*, the judge made two procedural rulings that led to the ensuing frenzy—and greatly tipped the scales toward the plaintiff. Firstly, the judge allowed cameras in the courtroom to broadcast the proceedings. The Code of Virginia leaves this decision largely up to the court's discretion, but also stipulates that coverage of "proceedings concerning sexual offenses" is prohibited. Despite the content and high-profile nature of this case, Judge Penney Azcarate decided to proceed with the broadcast.



Untitled Image by Flickr user SethTippie

Azcarate's decision is strikingly at odds with the court's emphasis on silence and decorum. Court order CL-2019-2911 stated, for example, that "Quiet and order shall be maintained at all times. Audible comments of any kind during the court proceedings … will not be tolerated." In fact, Azcarate interrupted proceedings during trial to tell courtroom spectators to keep their mouths shut. During trial, extraneous noise is heard not just as uncivil but as a threat to impartiality and

fairness. However, according to the judge's logic, this threat is only perceived within the courtroom.

This brings us to the second procedural ruling of consequence here. Despite the frenzy enveloping the case, Azcarate decided not to sequester the jury. Jury sequestration involves the members of the jury being isolated from public and press during a trial, in order to avoid accidental or deliberate exposure to outside influence or information. Video from the courtroom flooded the internet and, as commentators have argued, likely and unduly influenced the jury, who were not isolated and prevented from accessing TV or social media. As Depp's legions of supporters raged online, social media effectively became part of his legal team. This work was done in great part through sound.

Social media online commentary forensically dissected Heard's oral testimony, noting changes in her breathing patterns or her speech cadence. Often they would hone in on the fact that she "exhale[d] erratically," or "can talk so fast," as seen in this *Entertainment Tonight* compilation:



https://youtu.be/TuY_Cj6N1XQ

The online jury adjudicated on all these vocal elements as proof that she was lying. One internet article described her in audiotape evidence as "cackle[ing] like a witch" and alternating between "laugh[ing] hysterically" and using a "baby voice." Heard's detractors took her voice as proof that she was emotionless, robotic, calculated, too well-rehearsed—but also that she was chaotic, nervous, crazy.

In contrast, commentators described Depp's voice as "calm," "calming," and "soothing," with Tik Tok users hash-tagging ASMR to audio of him. One fan even posted a ninety-minute ASMR video of his testimony. Multiple Twitter users claimed that "you can hear the pain" in his voice, from an audiotape admitted during trial. At other times, he is applauded for "giggling" and laughing during the trial, with fans hearing it as evidence of his authenticity and "kind soul." One YouTube commentator, Grandma WHOa, writes that they wish he would record an audiobook so they could "listen to his calming, sexy soothing man voice."



https://youtu.be/yKz0YEoR340

So far, so predictable. These are well-established, recognizable patterns about how we hear men's vs women's voices in public life—e.g. critiques of Hilary Clinton's shrill, whiny voice. But listening in to the trial also reveals that this isn't just a case of online fan culture on overdrive. Instead, it shows how broader social dynamics around gender and power don't just create outside noise, but are built into formal legal practice within the courtroom.

Much of the conflict here follows a common pattern in defamation cases involving sexual violence claims, with questions around who gets to be a victim (see in my forthcoming piece in *HAU: Journal of Ethnographic Theory* titled "The Tone of Justice: Voicing the Perpetrator-as-Victim in Sexual Assault Cases"). Depp claimed to have suffered through the defamatory statement and through a longer history of abuse by Heard. His fans framed him as a hero and a victim, using the social media hashtag #HeardIsAnAbuser. On the other hand, they refused to believe Heard's claims of having suffered abuse. This determination was based at least in part on Heard's vocal performance and courtroom testimony, with detractors hearing duplicity in her exhalations, her rapid pace, the occasional firmness and confidence of her tone. As one Depp supporter commented on a video of Heard's testimony, "There's no way a victim sounds like this."

Yet in a key strategic move, Depp's lawyers chose to make Heard sound precisely as sexual assault victims often do during trial. Seeking to dismantle her credibility, they looked to the toolkit of how to deal with a victim in court, mobilizing a well-worn set of legal techniques used to interrogate survivors of sexual violence. In one cross-examination, for example, the plaintiff's counsel declares that Heard's "lies have been exposed to the world multiple times." This claim is then manifested through a series of vocal disciplinary tactics to undermine Heard's testimony and depict her as a false witness.



https://youtu.be/wUtjCcZa4Bs

For instance, the lawyer, Camille Vasquez, repeatedly employs a common interrogation technique of speaking over and cutting off Heard as she is replying to a question. As legal scholars and sociologists have shown, such techniques are often used in sexual assault cases to intimidate and shape perceptions of the complainant. In a pioneering study on courtroom talk during rape trials, Gregory Matoesian, in *Reproducing rape: Domination through talk in the courtroom* (1993) describes how lawyers reproduce patriarchal relations of dominance and subordination by "usurping" the witness' ability to respond (186). As he notes, questions—wielded like weapons of attack by skillful lawyers—are more powerful than answers.

Vocal technique and dynamics are key here. In Vasquez's cross-examinations, she repeatedly raises her voice to interrupt Heard, disciplining her before the jury and spectators. She laughs at her testimony and infantilizes Heard, at times speaking to her in calm tones before quickly shifting to a harsher timbre. At one point, Vasquez snaps her notes shut and walks back to her seat while Heard is still answering her question. Heard is forced into abrupt silence. Unable to respond to the question she was asked, she audibly loses control of the narrative being spun. Vasquez also frequently speaks over her and directly to the judge, objecting that Heard is being non-responsive. The lawyer performs for the judge and jury her refusal to listen to Heard.

At other moments, Vasquez's voice and affect telegraph exasperation, as she audibly sighs while Heard attempts to answer a question. As Heard and Vasquez go back-and-forth over a line of questioning, Vasquez's voice bristles with irritation as she speaks in clipped tones, with sharp inflection at the end of each line: "Yes?" "Right?" "Yes or no?" These interjections add an aural layer of interpretation to Heard's testimony in real-time, guiding the jury to hear the witness as evasive and therefore unreliable. Vasquez's expressions are all part of a careful vocal strategy, implicitly saying to the jury, "Can you *believe* this woman?"



Screenshot from NBC Today video, "Amber Heard Breaks Silence: I Don't Blame The Jury"

Of course, the answer is no. Jessica Winter, writing in *The New Yorker*, points out that Heard lost in part because of her "tearless crying," the fact that she appeared insincere. Winter acknowledges that successful testimony is about "affect and presentation", a reality that is no secret. In fact, jury instructions in Depp v. Heard clearly state that determinations of witness credibility are based in part on witnesses' "appearance and manner." Jurors must use their "common sense" to "determine which witnesses are more believable."

But how is "common sense" established? Listening closely to this trial reminds us that such understandings are constructed and regulated through sound as well as through determinants of "appearance and manner," both in and out of the courtroom. Vasquez's performance, Heard's subordinated testimony, and the commentary of millions of avid consumers underline that Heard and Depp sound to many people exactly as common sense and conventional norms would dictate.

A woman claiming abuse and assault at the hands of a more powerful man is always subject to patriarchal ways of listening, even if she is rich, famous, straight, and white. These ways of listening are contradictory. Research shows that "masculine" voices are heard as more authoritative and dominant, while women are often heard as weak, uncertain, lacking confidence. The public ear hears other racialized and gendered voices through similar power inequities, including queer, nonbinary, and LGBT voices or voices of people of color. In the context of sexual assault adjudication, however, Heather Hlavka and Sameena Mulla show in their *Law & Society Review* article "That's How She Talks": Animating Text Message Evidence in the Sexual Assault Trial" "that a confident voice and calm performance can work against a victim-witness in court, by suggesting that she is not passive or meek enough to be a 'real' victim." On the other hand, they note that a victim-witness who cries on the stand may give the impression of performing or acting. Lawyers audibly manipulate these perceptions, as the examples here show, and men (particularly heteronormative, white men in positions of power) reap huge benefits from them.

Many observers of Depp v. Heard have noted the toxic social media sludge around the case, as well as the danger that the verdict poses to survivors of domestic abuse and sexual assault. But listening closely to the proceedings shows us that these outcomes aren't random and aren't just part of informal processes like trial by Tik Tok.

Instead, formal court proceedings manipulate and mobilize social scripts around survivors of sexual assault and domestic violence, and around women and marginalized others, to reach their outcomes. We can hear how this strategy plays out through sound and voice, from sighing and interrupting to laughter and silence. The jury instructions in Depp v. Heard state that "Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion." But despite claims that the legal system is based on objectivity and impartiality, we can hear that the law never exists in a bubble – and lawyers often and successfully rely on this very fact.

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Featured image: "Courtroom" by Flickr user Karen Neoh, CC BY 2.0

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