

The Law of Perjury:
Theories of Lying in Practice

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MA Linguistics: language and communication

Argumentative and Rhetorical practices

July 2020

Keywords: perjury, lying, linguistic analysis, law, legal systems

Words: 18841 (excluding abstract, references, and appendix)

Abstract

This research is aimed at characterizing the Dutch law of perjury with theories of lying as described by philosophers of language. In American law various inconsistencies of perjury cases led to research on the topic. Those studies all have concluded that lying and perjury differ greatly in several notable areas. Often discussed is the well-known perjury case of former US President Clinton. Research states Bill Clinton obviously was not speaking the truth, but he was never impeached with perjury. Possible explanations could be a political agenda or the lack of adequate evidence.

This research paper will discuss the differences between the Dutch and American legal systems, as well as offering a critical analysis of why these systems differ. The central question in this research answers in what ways the Dutch law of perjury can be characterized by the pragmatic theories of lying. Four court cases, all different in outcome, will be linguistically analysed. The linguistic analysis performed in this research is based on Grice's maxims of Cooperation, Searle's Speech Act theory, the provided definition of lying and the analytic tools as described by Shuy. This will provide various insights in the interpretation of the Dutch perjury law.

Based on the results, this research paper concludes that lying cannot perfectly characterize the Dutch law of perjury, however, they cannot be fully separated from each other either. What this analysis clearly shows are the possibilities of a linguistic analysis when discussing perjury lawsuits. The discourse analysis can provide insights in someone's intentions, as well as the weaknesses in someone's statements. This paper strongly promotes the statement that using linguistic analyses is beneficial to the legal system, especially in court cases concerning crimes of language.

1. Introduction

Perjury, explained simply, is the act of providing false evidence in a courtroom. This could be in the form of written documents, edited photos or false statements. The court is responsible for finding out the truth, the whole truth, and nothing but the truth. Anyone under oath is expected to adhere to this rule. Therefore, perjury and lying, in theory, feel closely related. However, in practice, the two seem to be more like second cousins twice removed. This relationship between perjury and lying has received significant academic attention (e.g., Green, 2001; Harrison, 2003; Meitl, 2006; Douglis, 2017). Without exception, these studies conclude the two have notable differences.

Green (2001) focusses on the relationship of perjury in comparison to lying, deception, and falsely denying. He states that sometimes a witness or someone taking the stand might deceive under oath, without actually violating the law. He explains this by naming the well-known perjury case of former US President Clinton. Clinton stated he “did not have sexual relations with that woman, Ms. Lewinsky” (Green, 2001, p. 204). The former president also could not recall if he spent time alone with Ms. Lewinsky. However, Ms. Lewinsky, as well as six security agents, testified that Clinton and Lewinsky spent more than an hour together on multiple occasions. Even though his lie was caught and it was clear that Bill Clinton was not speaking the truth, he was never impeached with perjury. The reason, Green (2001) believes, was that his assertions did not meet perjury’s legal definition. According to Green (2001), it seems that a witness might lie, deceive or mislead on the stand, without actually violating the law and committing perjury.

Lack of evidence is found to be the most common reason for the declination of perjury, according to Meitl (2006). US prosecutors are rarely successful in the prosecution of lying. Which leads to multiple risks and problems, e.g. that lying under oath to the court has almost become acceptable. Nevertheless, the court is responsible for finding out the truth, the whole truth and nothing but the truth. In contradiction to this rule, Meitl (2006) noted that attorneys even go as far as telling witnesses that conviction of lying to the Congress is extremely rare, which might be considered as an encouragement to the witnesses to tell lies.

The previous examples make clear that perjury does not catch all people in a lie, but is that not exactly what perjury is supposed to do in a courtroom? Perjury should prevent people from misleading, deceiving, manoeuvring with the truth, and anything that does not involve telling the truth. The phenomenon of lying has been a popular topic in the philosophy of language, St. Augustine, Kant, Schopenhauer, and Nietzsche are only some of the famous philosophers that addressed this topic (Meibauer, 2015). Interestingly, there does not seem to be particular nonverbal cues that are unique to lying (Vrij et al., 2008). Analysing

lying can, therefore, best be done by analysing the used language and its context. Thus, the analysis of lying is predominantly linguistic.

Even though lawyers and judges are intuitively fairly good at interpreting language, it is likely that various aspects are in effect in lying (and thus in perjury) that cannot be explained intuitively (Solan & Tiersma, 2005). Especially recognizing indirect communication and interpreting the reasons for doing so (Solan & Tiersma, 2005). According to Solan & Tiersma (2005), linguistically analysing legal cases could help in achieving a more consistent legal system (Solan & Tiersma, 2005). Essentially, they show how “linguistic knowledge and expertise can help ensure that the guilty get their just deserts and, even more critically, prevent the innocent from going to prison” (Solan & Tiersma, 2005, p.11).

This research demonstrates the utility of linguistic analysis to compare whether the found indistinctness between perjury and lying within American law is also seen in the Dutch legal system. By doing so this research aims to find the nuances in the used language that have been rather difficult for the statutes of perjury to grasp. Similar evaluations of discrepancies in the Dutch law of perjury have not been executed in academic research before, nor is there, to the best of my knowledge, any previous research on lying in the Dutch legal system. The central question in this research will be: in what ways can the Dutch law of perjury be characterized by the pragmatic theories of lying?

Chapter 2 of this research will provide background knowledge needed for the linguistic analysis, finalizing the chapter with a working definition of lying. In chapter 3, the Dutch and the American legal systems will be outlined, and the differences will be critically analysed. Additionally, the perjury statutes of both legal systems will be compared to the provided definition of lying. The methodology of this research can be found in chapter 4. Chapter 5 contains an in-depth analysis of four court cases involving perjury, all the court cases differ in outcome. The results will be discussed in chapter 6, providing an explanation for the expected disparity between the perjury cases and the definition of lying. This study will be concluded and evaluated in chapter 7.

2. Theories of Lying

Asserting something that is untrue is the basic understanding of a lie. However, it seems that lying is a more complex concept. Simply asserting something that is untrue, could also happen by mistake or because you are speaking sarcastically. Most traditional philosophers agree that in order to lie, you only do so if and only if (iff) you state something that you believe to be untrue and you have the intention to deceive (Fallis, 2012). In contrast to the traditional philosophers, others point out that some lies are asserted without intending to deceive (Carson, 2006; Sorenson, 2007; Fallis, 2015).

Bald-faced lies are an example of lying without this deceptive intention (Sorensen, 2007). Bald-faced lies concern the cases where both the speaker and the hearer know the speaker is lying, consider Sorenson's (2007) example in which a student, after cheating for an exam asserts he is innocent to the dean, even though they both already know the student is guilty. What the student also knows is that if he does not admit s/he cheated, s/he will not get punished. Thus, the student lies to assure s/he is innocent. The student did not intend to make the dean believe s/he is innocent, s/he did just not want to be punished.

Most philosophers do agree that in order to lie, a proposition has to be asserted, either verbally or written down. By habit, because we learned it in childhood, conversations adhere to certain expectations (Grice, 1975). These expectations can help to detect lies (and explain why they can go unnoticed). In this chapter, I will first discuss these expectations before explaining which definition of a lie will be used in the present study.

2.1 The Cooperative Principle and Implicatures

Grice's (1975) Cooperative Principle (CP) explains the underlying principles of conversation. These principles describe how people developed a certain behaviour when making conversation. In addition to adhering to the principles ourselves, we expect others to, mostly unconsciously, respect these principles as well. Departing from this habit would require putting in extra, intentional, effort. As, for example, telling the truth is by default much easier than inventing a lie (Grice, 1975).

In addition to the CP, Grice (1975) stipulates that there are four maxims that speakers generally use. The maxims of cooperation are called Quantity, Quality, Relation, and Manner. The maxim of Quantity states: "make your contribution as informative as possible, but not more than is required" (Grice, 1975, p. 46). Quality is explained by: "try to make your contribution one that is true and do not say what you believe is false or for which you lack adequate evidence" (Grice, 1975, p. 46). The maxim of Relation states: "be relevant" (Grice, 1975, p. 46), and the maxim of Manner: "avoid obscurity of expression, avoid ambiguity, be brief, and be orderly" (Grice, 1975, p. 46).

Due to personal knowledge of the world, certain features are expected in a talk exchange (Grice, 1975). These characteristics distinguish a cooperative conversation from one that is not. By using the CP and its maxims, it makes it possible for the hearer to understand what someone is saying. Sometimes this is due to the concept called conversational implicature, which is introduced by Grice (1975) as: someone who is "saying that p has implicated that q , may be said to have conversationally implicated that q " (p. 49). The speaker has to take into account that (1) the maxims, or at least the CP, should be observed; (2) he thinks that q is necessary when saying p ; and, (3) the speaker believes that the hearer is able to work out, or intuitively knows, that (2) is required (Grice, 1975). Thus, the presence of the implicature must be clear, or should be able to be grasped intuitively, e.g. by recognising that the speaker intentionally and overtly failed to observe a maxim, which is referred to as flouting that maxim. To work out whether an implicature is present, the following steps are worked out by the hearer: (1) the semantic meaning of the words, plus the references used in the explicit saying; (2) the Cooperative Principle; (3) context; (4) background knowledge; and, (5) the fact that both the speaker and the hearer have access to all this information and they both assume that all the previously named points are taken into account (Grice, 1975).

Sometimes a person does not fulfil a maxim. The failure to observe a maxim does not immediately imply that someone was uncooperative. The only requirement of non-observance to be cooperative is that this fact should be overt enough that the hearer recognises the non-observance (Oswald, 2010). This way, the hearer can figure out that the

speaker means something different than what s/he says, as is the case with, for example, sarcasm, metaphors and rhetorical questions.

There are various ways in which failure to observe the maxims can occur: as the maxims can be violated, opted out, they can clash, or be flouted (Grice, 1975). A violation takes place when a speaker intends to refrain from observing certain maxims (Grice, 1989). For example, when attempting to deceive the hearer, in order to succeed in their communicative goal, the speaker has to covertly violate a maxim. This covertness makes violating harder to fit within the Gricean Theory, as in order to stay cooperative even when not observing the maxims, you have to do so in an overt manner (Oswald, 2010). This seems impossible when covertly violating a maxim, resulting in cases that might be perceived as deceiving, manipulating, misleading, or even lying (Oswald, 2010). All these concepts are covert in nature, as they would otherwise not be successful.

Opting out of a maxim happens in cases where the speaker cannot observe the requirements of the maxims (Oswald, 2010). The speaker is unable to observe a maxim, and thus chooses to opt-out of that maxim. An example is:

- [1] Q: Did it rain last week?
A: I don't recall.

In [1] the speaker is supposed to give an answer to a question, but s/he does not know the actual answer to that particular question. So, in order to not violate the maxim of Quality (do not say anything you believe to be false), s/he opts out of the maxim of Quantity (be as informative as possible). In the cases of opting out, the act has to be done overtly in order to succeed. Therefore, as Oswald (2010) states, opting out cannot be seen as uncooperative, nor as misleading, deceiving, or manipulating.

When a clash arises, a person cannot observe one maxim without failing another. This can occur before opting out. In [1] it might be the case that the person cannot be as informative as possible without stating something for which s/he has sufficient evidence, hence there is a clash between the maxim of Quantity and the maxim of Quality. In [1] the speaker chooses to opt-out of the maxim of Quantity. The choice is then that if a speaker wants to be precise, s/he faces untruthfulness. On the other hand, if the speaker wants to be truthful, s/he will not be precise (Oswald, 2010).

Lastly, a maxim can be flouted, in these cases a maxim is intentionally and overtly not observed (Grice, 1975). Flouting a maxim seems closely related to violating a maxim, the difference is that flouting happens overtly and violating is a neutral term, encompassing both overt and covert non-observation of the maxims. The speaker is not trying to hide the fact that s/he is choosing not to observe a maxim. This way the hearer understands that the

speaker is not observing the maxim, thus the hearer can conclude the speaker has a different reason for what is said; the speaker wants to convey something beyond the literal meaning of the utterance.

- [2] A: Have you heard that thing about Susan?
 (B sees Susan walking past)
 B: Isn't the weather beautiful today?

[2'] Talking about Susan is not a good idea at the moment.

In [2], A has no reason to believe B is violating the maxim of Relevance (be relevant) in order to be uncooperative. A can understand that B chose to flout the maxim for another reason. A should be able to work out the implicature as stated in [2']. It can be noted that the intention of the implication of B is sincere, B is keeping both the speaker and the hearer out of trouble. It is clear that the speaker is not trying to mislead, deceive, manipulate or lie (Oswald, 2010). Cooperation is thus not dependent on fulfilling the maxims, but on the way the maxims are violated. If the maxims are violated covertly, it could be said the speaker is most likely uncooperative (Oswald, 2010). In the case of a lie, most interesting is the covert violation of the maxim of Quality (do not say what you believe is false). How this corresponds to the definition of lying will be discussed in section 2.4.

Utterances like the question in example [2] are also called speech acts. There are multiple sorts of these speech acts, the analysis of such a speech act helps discover what-is-implicated with what-is-said and also what is expected of the speaker and hearer to do in accordance to the saying.

2.2 Speech Acts and Felicity Conditions

The example in [2] about warning someone by changing the topic of conversation can, additionally to the CP, be explained by addressing speech acts. All speech acts, e.g. questions, requests, promises, and others, have a certain set of felicity conditions they have to adhere to in order to be proper instances of that speech act. In [2], B performs the direct speech act of asking, which is based on what-is-said. B also performs the indirect speech act of warning, which is based on what-is-implicated. By, for example, following the CP, A is able to figure out B is implicating something by answering A's question with another question. In [2] B violates the maxim of Relevance (be relevant), as it is irrelevant to ask about the weather as a response to A's question. The implicature would be [2'], to which A is expected to stop talking about Susan for a moment. The expectation of performing certain actions, and what certain speech acts have to adhere to in order to be successful are explained by Searle (1979).

The act of performing an action in accordance to what someone said is called an illocutionary act. The meant, implicated, or indirect speech act is the primary illocutionary act. This is the act that the speaker is meaning to say to reach his conversational goal. The literal, direct speech act, is the secondary illocutionary act. This one is of less importance, although Searle (1979) is of the opinion that it is still part of the indirect speech act performed (that is, in example [2], B does not only perform the primary speech act of 'warning' by means of their question about the weather, but still also performs this secondary speech act of 'asking a question'). The act of following up on the warning (e.g. by changing one's behaviour, has to be carried out in order for the conversation to be successful. This is referred to as a perlocutionary act, as performing the action is a consequence of the speaker's primary illocutionary act.

The explanation of what a speech act has to adhere to is described by Searle (1969) by certain felicity conditions. Searle (1969), with inspiration from Austin's (1962) distinctions of five speech acts, distinguishes the following speech acts: declarations, representatives, expressives, directives, and commissives.

To work out the type of speech act that is performed and, therefore, the primary illocution from the literal utterance, Searle (1979) describes the following steps someone needs and, unconsciously, undergoes in a conversation: (1) facts about the conversation; (2) Grice's Cooperative Principle; (3) the theory of speech acts; (4) the inference of step (1), (2), and (3), followed by the hearer's conclusion that the literal response does not adhere to all these; (5) thus, the hearer knows there must be another intended meaning; (6) factual background information; (7) making a logical conclusion from the information derived from step (6); (8) theory of speech acts; (9) making a logical conclusion from step (1), (7) and (8);

(10) adding the logical conclusion made in (9) to the concluded indirect speech act in step (5).

Going through Searle's (1979) steps, the indirect illocutionary act (3') can be concluded from A's question, the literal illocutionary act.

[3] Context: *A and B are sisters. A is getting ready for a job interview. A already knows B has gotten the jacket back from the cleaners.*

A: Did you get your velvet jacket back from the cleaners?

[3'] A wants to wear B's jacket to her job interview.

The facts of this conversation (1) is that A asks B a question. It is also known that A has a job interview. According to the CP (2) A violates the maxim of Quantity; A asks a question she already knows the answer to. At step (3) the question should adhere to felicity conditions of a question:

Figure 1. Felicity conditions of questions (S is speaker, H is hearer, A is action)

- (a) S does not know the answer
- (b) It is not obvious to both S and H that H will provide the information at the time without being asked
- (c) S wants this information
- (d) Counts as an attempt to elicit this information from H

(Searle, 1969, p. 66)

Searle (1969) described the conditions a question has to adhere to in order to be a true question. In example [3], due to the context, A, the speaker in this case, already does not adhere to the first condition (a). Additionally, most likely A also does not solely want this information (c), since it would not be relevant to A if she did not want to do anything with the jacket.

Following the steps, B concludes (4) that the literal meaning of the question is not sufficient, thus there must be another intended meaning (5). Due to background knowledge of how the world works (6), it could be said that it is expected behaviour to dress up for an interview. Wearing a velvet jacket would meet that requirement of being well dressed. Logically (7), the intended meaning of A's question is [3']. The indirect speech act is a request; therefore, it has to meet the felicity conditions of a request over those of a question (8). Searle (1979), whilst revisiting his earlier paper (Searle, 1969), categorizes a request as part of the directives speech act category.

Figure 2. Felicity conditions of directives (S is speaker, H is hearer, A is action)

- (a) *H* is able to perform *A*
- (b) *S* wants *H* to do *A*
- (c) *S* predicates a future act *A* of *H*
- (d) Counts as an attempt by *S* to get *H* to do *A*

(Searle, 1979, p. 44)

In [3], A performs the speech act of directives, e.g. requests, ordering, recommending, advising. This seems to be correct, as (a) B is able to lend A her jacket; (b) A wants B to do so; (c) A predicates that B is going to give her the jacket; and (d) A attempts to get B to give her the jacket. B figured out that A is making a request (8). Adding the context and world knowledge to the equation, B understands that A would like to borrow her jacket (9). Lastly, if B decides to be cooperative, B gives A the velvet jacket (10).

Hence, the CP and the speech act theory can give an insight into how the intended meaning of an utterance is analysed in conversations. As stated, a lie has to be covert in order to be successful. Lies are often realised as if they are sincere assertions, although in the case of a lie the speaker does not hold the sincerity condition of an assertion, i.e. (c) *S* believes *p* (figure 4). The felicity conditions of an assertion and its relation to lying will be further discussed in section 2.4. Previous to that discussion, whether or not lying can be characterized by felicity conditions or if it is solely uncooperative behaviour will be further explained in the next section.

2.3 Misleading, deceiving and manipulation

Covertly violating Grice's (1975) maxims can, besides lying, also lead to misleading, deceiving and manipulation (Oswald, 2010). These concepts seem to share various similar features and, to be able to clearly direct this research towards the definition of a lie, the other concepts need to be distinguished from lying. An important common feature of these concepts is that they are all covertly non-cooperative with respect to Grice's (1975) maxims. The condition of covertness automatically takes honest mistakes, irony, jokes, metaphors and other overt ways of playing with language out of the equation of lying. Another common characteristic of misleading, deceiving, and manipulation is that, just as lying, they lead the hearer to believe something that violates the actual truth.

To clearly distinguish misleading from lying, Saul (2012) distinguishes two main characteristics. Firstly, in order to mislead, the hearer (*H*) has to be duped by the speaker (*S*). If *S* fails to mislead *H*, *H* was not misled. However, in the case that *H* does not believe *S*'s lie, meaning that *S* fails to lie to *H*, *H* was nevertheless lied to (Saul, 2012). Secondly, in the case of misleading, the direct speech act does not have to violate the actual truth conditions (Oswald, 2010). Truth conditions determine the conditions to which a proposition has to adhere to in order to be true in the world as we know it (Oswald, 2010). Misleading, in contrast to the verbal act that lying requires, can be done indirectly, for example by using conversational implicature (Stokke, 2016). Consider the following example:

[4] Context: *B is putting on his jacket, as he is about to go to get a present to surprise A.*

A: Where are you going?

B: There is no more milk.

[4'] I am going to get milk.

In example [4] the intention of B is to get A to believe he is going to the shop to get more milk. By using, for example, the Speech Act theory, A is able to work out this implicature. B does not want A to know he is going to get her a present, although in the case that there is actually no more milk, B has not really told a lie. Still, B's statement was misleading. Another example, as introduced by Oswald (2010, p. 106), is the following:

[5] Ann has 4 children

[5'] Ann has *exactly* 4 children

This particular example concerns scalar implicature. In reality, Ann has five children, however, by stating she has four, the hearer will understand [5']. The hearer expects the speaker to observe the maxim of Quantity (be as informative as possible). Thus, if the speaker deliberately chooses to say [5], the speaker is uncooperative and misleading. However, it is not exactly a false statement either, as truth conditionally, the speaker is not wrong, Ann does have four children (Oswald, 2010). Thus, the difference between lying and misleading is the difference between an actual assertion that the speaker believes to be false (lying) and one that the speaker believes to be true, but for which s/he uses implicature to state something s/he believes to be false (misleading) (Stokke, 2016)

Meibauer (2015) states that if these misleading illocutionary acts “are conveyed in an insincere way in order to mislead the hearer, we may handle them as deceptive acts” (p.76). In contrast to lying, deceptive acts can be non-verbal (Chisholm & Feehan, 1977). To explain, Chisholm & Feehan (1977) recall Immanuel Kant’s famous example, where someone could pack their suitcase, making bystanders believe s/he is going away for a longer period of time, whilst not planning on doing so. The interpretation of the deceptive act is a conclusion made by the bystanders themselves and not the person with the suitcase (Chisholm & Feehan, 1977). For that reason, this act cannot be categorized as a lie.

The concept of manipulation has been explained by Oswald (2010). Manipulation is non-observant to Grice’s maxim of Quality (do not say anything you believe to be false) and violates this maxim in a covert manner. When someone is manipulated, the speaker might even change a current legitimate belief. However, this could all be done without actually telling a lie (Oswald, 2010). According to Oswald (2010), manipulation is not bound to the truth or falsity, even if the intention changes. Oswald (2010) has defined the definition of manipulation as follows:

Figure 3. Definition of Manipulation by Oswald

A manipulative attempt (through communication) is successful when the addressee gives his consent to whatever is encoded in the content of the utterance while at the same time being prevented from spotting that such content is inconsistent with some of his assumptions.

(Oswald, 2010, p. 125)

From figure 3 it becomes clear that in order to manipulate the addressee covertly states, or implicates, something that is not coherent with the hearer’s own ideas or opinions. Slightly insinuating that that person is wrong or should think or do something differently.

Manipulation requires an action of the recipient in order to be successful (Oswald, 2010). Either a change of mind or an action based on the stated assertion or implicature. This is

different from telling lies, as when the hearer does not believe the speaker, or changes his mind after hearing a lie, they are still lied to (Oswald, 2010). The speaker told a lie, no matter the perlocutionary effect. To add, similarly to deception, manipulation does not have to be verbal and contains a broader field than the verbal act of telling a lie (Oswald, 2010).

In conclusion, lying is a concept that is more specific than misleading, deceiving and manipulating. Since a lie can be all of the above, not all of the above have to be lies. The described differences are taken into account when creating the definition of lying, which will be tried to achieve in the next section.

2.4 Formulas of lying

According to the maxim of Quality, lying is an act of uncooperativeness. As you must not say anything that you believe to be false, or for which you lack adequate evidence (Grice, 1975). In order to be successful, this has to be done covertly. In the previous sections, it has been established that the elements named above are essential for a definition of lying.

Solely using the CP has proven to not be sufficient enough to capture just the concept of lying, as violating the maxim of Quality (do not say anything you believe to be false) can also lead to deception or manipulation. Based on the speech act theory, one can figure out what the speaker meant from what-is-said. In the case of a lie, the speaker makes as if to assert according to the felicity conditions of an assertion (Meibauer, 2015). To add, as Meibauer (2005) stated: "lies do not constitute a separate type of speech act like promises or questions; they are always assertions" (p. 1375). Consequently, the relevant felicity conditions are:

Figure 4. Felicity conditions of assertives (S is speaker, H is hearer, A is action)

- (a) Any proposition p .
- (b) (1) S has evidence (reasons, etc.) for the truth of p , and (2) it is not obvious to both S and H that H knows (does not need to be reminded of, etc.) p .
- (c) S believes p .
- (d) Counts as an undertaking to the effect that p represents an actual state of affairs.

(Searle, 1969, p. 66)

The felicity conditions of assertives require the speaker to believe p . So, based on these conditions, lying is then "an act of insincere assertion" (Meibauer, 2005, p.72). As by lying, S knows his/her assertion is not correct, but does intend to make the hearer believe the asserted proposition (p). S makes it look like s/he adheres to the felicity conditions of an assertion, whilst s/he is covertly not speaking the truth. In fact, S actively believes that not p , and S knows s/he is not representing the actual state of affairs. Consider the following example:

[6] Context: A is a close friend of B. B is being charged for having stolen a car from his grandmother (Mrs. X). A saw B drive by in Mrs. X's car. A believes B is highly trustworthy and has never done anything illegal in the past. A is being asked about this in an interrogation.

Q: Did B steal Mrs. X's car?

A: B does not do illegal things.

[6'] B did not steal Mrs. X's car.

Based on the speech act theory, the hearer can figure out the implicature, i.e. [6'], from what A said. From the context, we know that A is not observing the maxim of Quality (do not say anything you believe to be false), as A stated something for which s/he lacks adequate evidence. However, the actual statement might not be false. As far as the speech act theory is concerned, both A's statement, as well as the implicated meaning of A can be truthful. The lie has to remain covert in order to be successful, which makes the speech act theory insufficient in order to determine whether A lied. Thus, in addition to the CP and the speech act theory, a more precise definition has to be provided in order to define the act of lying.

A clear difference between the felicity conditions of an assertion and a lie is that for lying S actively believes that not p , but makes it look like s/he does believe p , i.e. s/he intends to deceive. Important to note is the fact S has to actively believe in p , as this eliminates the possibilities S was merely mistaken or if s/he actively believes something untrue to be true, e.g. due to psychological reasons or trauma (Meibauer, 2005). Based on this knowledge, Meibauer (2005) proposes to follow Falkenberg's (1982) definition:

Figure 5. Definition of lying according to Falkenberg (A is speaker)

Lie

A lied at time t , iff

- (1) A asserted at t that p ;
- (2) A actively believed at t that not p .

(1982, as in Meibauer, 2005, p. 1376)

If this was a fully accepted definition, as Falkenberg (1982, as in Meibauer, 2005) assumes, then if someone is not lying, s/he is truthful. However, this could be problematic. As Meibauer (2005) noted, A might not believe that p nor that not p , but he still asserts p . Consider the example [6] in scope of this definition. A asserted during the interrogation that [6], adhering to rule (1). However, during the interrogation, A's literal statement is not fully in contrast to what s/he actively believes (rule 2). S/he might be suspicious of B; thus, he is not stating the whole truth, but according to the definition of lying in figure 5, A did not lie.

This definition seems to bring, at least, two issues forward. Firstly, whether a speaker has to actively believe at t that not p or, similar to the maxim of Quality (do not say anything you believe to be false), did the speaker also lie when s/he lacks adequate evidence for

his/her statement? Secondly, the issue discussing whether someone can lie through an implicature and how that could be included in the definition of a lie.

To discuss the first issue, Carson (2010) proposes a definition in which the lack of adequate evidence is included:

Figure 6. Definition of lying according to Carson (S is speaker, X is proposition, S1 is hearer)

A person S tells a lie to another person S1 iff:

- (1) S makes a false statement X to S1,
- (2) S believes that X is false or probably false (or, alternatively, S does not believe that X is true, and
- (3) S intends to warrant the truth of X to S1.

(Carson, 2010, p.37)

Rule (2) includes statements that the speaker believes are probably false, or not true. This still excludes honest mistakes, or psychological reasons and trauma, as you do not actively believe your statement to be true. However, you can in fact lie whilst not actively believing you are stating something that is not true. So, the definition of Carson (2010) does not state that A should have actively believed that B has never done anything illegal. Based on the context, it can be stated that A does have reasonable doubt in B's actions. Under Carson's (2010) definition A adheres to rule (2) of lying. A has told a lie.

Additionally, Carson (2010) added a third rule to the definition of lying. This definition is based on the fact that a speaker wants their hearer to believe s/he is speaking the truth, i.e. observing the maxim of Quality (do not say anything you believe to be false) and adhering to the felicity conditions of an assertion. To do so, Carson (2010) refers back to earlier work, in which he proposes the concept of *warranting* (Carson, 2006). Carson (2006) describes warranting as: "if one warrants the truth of the statement, then one promises or guarantees, either explicitly or implicitly, that what one says is true" (p. 294). In those cases, S makes it as if to say X is the truth. Which is similar to the covertness needed when violating the maxim of Quality (do not say anything you believe to be false) in order to successfully tell lies. In reaction to the addition of this particular rule, Meibauer (2015) critically comments that the rule where A asserted as *t* that *p* (rule 1 in figure 5), automatically includes that the statement has to adhere to the felicity conditions of an assertion. However, Meibauer's (2015) critical comment is sensible, it might be worthwhile to specifically include that the speaker covertly violates the felicity conditions, as this might otherwise be overlooked.

In reaction to the discussion regarding the inclusion of the intention to deceive in the definition of lying, Carson (2010) explicitly stated that not all statements are intended to deceive, and therefore introduced his concept of warranting. Meibauer (2015) agrees that “deception should not directly be written into definitions of lying; the deception follows from the lack of truthfulness on the part of the liar” (p.104). Deception seems to automatically follow from the other rules in the definition of lying, as “if a speaker intentionally asserts p while they do not believe p , then this counts as deceptive behaviour” (Meibauer, 2015, p. 104).

Saul (2012) based her definition of lying on Carson (2010), replacing the fact of warranting the truth with finding yourself to be in a warranting context, i.e. the truth is expected from you based on the context you find yourself in (Saul, 2012). This rule excludes the possibility of actors in a play to tell lies, as s/he is not in a warranting context (Saul, 2012). Saul’s (2012) definition of lying can be found in figure 7.

Figure 7. Definition of lying according to Saul

If the speaker is not the victim of linguistic error/malapropism or using metaphor, hyperbole, or irony, then they lie iff:

- (1) they say that p ;
- (2) they believe p to be false;
- (3) they take themselves to be in a warranting context.

(Saul, 2012, p. 19)

As previously discussed, rule (1) and (2) of this definition are incomplete, however, the last one is useful for this research. In a court case, due to being under oath, you are expected to warrant the truth as you swear to be under oath. In those cases, it is important for S to understand s/he is in such a context. S/he must be actively aware that s/he are under oath and must understand what the oath means. In (7), A is asked in an interrogation, meaning he is under oath. Thus, he finds himself in a warranting context. As this research solely concerns court cases, this particular rule will be included in the working definition of lying.

The second issue of lying through an implicature has not been addressed by Carson (2006, 2010), nor by Saul (2012). Carson’s (2010) definition states S has to make a false statement (rule 1, figure 6). However, this excludes the possibility of “lying while saying the truth” (Meibauer, 2005, p. 1374). Meibauer (2005) discusses a lie can be told through conversational implicature. This discussion is based on the notion of an indirect lie, introduced by Vincent and Castelfranchi (1981). An indirect lie is a lie made through implicature (Meibauer, 2005). As discussed in section 2.1, here repeated for convenience, conversational implicature was introduced by Grice (1975) as: someone who is “saying that

p has implicated that q , may be said to have conversationally implicated that q " (p. 49). To figure out this implicature, (1) the hearer presumes the speaker observes the maxims, (2) q is required when saying p , and (3) the speaker believes the hearer is able to work out that (2) is required (Grice, 1975).

Accepting the implicature q as an additional proposition creates the possibility of this implicature to be true or false (Meibauer, 2015). Meibauer (2015) states this creates several outcomes:

Figure 8. Possibilities of truth and falsity of p and q

- a. p is true, and q is true
- b. p is true, and q is false
- c. p is false, and q is true
- d. p is false, and q is false

(Meibauer, 2015, p. 124)

The relevant p and q based on example (7) can be considered as:

p = B does not do illegal things
 q = B did not steal Mrs. X's car

In the case that both p and q are true, A has not lied. When p is true and q is false, and A knows that B did actually steal the car or lacks adequate evidence to counter his expectation that B stole the car, it could be stated A lied through his/her implicature. In the case where p is false and q is true, it could be that A is truthful as s/he makes an honest mistake about p . However, if s/he knows very well that p was false, but states differently, s/he does lie. Therefore, this conclusion is context dependent. Lastly, if both p and q are false to the knowledge of A, s/he tells a lie.

To include the possibility of (c) as described in figure 8., Meibauer (2015) proposes an extended definition of a lie:

Figure 9. Meibauer's (2015) extended definition of a lie

- S lied at t by uttering the declarative sentence σ iff
- (a) the definition of the lie holds,
 - (b) or S thereby conversationally implicated that q , but actively believed that not q .

(Meibauer, 2015, p. 125)

By creating this possibility, a speaker can lie through implicature. He might directly state something that is truthful (p), however, indirectly state something that is false (q). In the light of this research, I include this extended definition of lying.

All previously discussed definitions have various positive attributes, therefore, a combination of proposed definitions of lying would, in my opinion, suffice best in the context of this research. Making the following definition of lying as a base for the remaining of this research:

Figure 10. Final definition of lying

Lying

Speaker (S) lied at time t , iff

(1a) S asserted at t that p , and/or

(1b) S implicated at t that q

(2) S actively believes p and/or q to be false, probably false, or lacks adequate evidence to warrant the truth of p and/or q

(3) S takes him/herself to be in a warranting context.

This definition fully applies to example (7). The context provides the information that if q is false, p is automatically false as well, as you cannot steal a car and never do anything illegal (A has lied). Although, this depends on the interpretation of 'doing', as that could be interpreted as 'on a regular basis', which is, according to A in example (7) not true. This would be analysed as p is true, but q is false. Both situations adhere to rule (1) of the definition of lying in figure 10. As A has reasonable doubt to believe B actually stole Mrs. X's car, he meets rule (2) of the definition of lying; A thinks q is probably false. As A is asked about this in a courtroom, he is expected to tell the truth, the whole truth and nothing but the truth, meaning he finds himself in a warranting context (rule 3).

Now that it has been clarified what counts as a lie, we can take a closer look at perjury. The following chapter will discuss the perjury statutes in the Dutch and American legal systems. A critical analysis will show the differences between the two, followed by a critical comparison of the statutes in relation to the definition of lying as described above.

3. The statutes of Dutch and American Perjury

Perjury is a crime of language (Solan & Tiersma, 2005). The crime is committed through lying. There are nuances used when using language, as well as indirect messages and minor inconsistencies. From research, it can be concluded that the current perjury statutes of American law do not always pick up on all these nuances (Green, 2001). Interesting issues arise whilst analysing such cases, an example is the police case discussed by Slobogin (1996). Sometimes it seems that morality is considered, and lying suddenly seems to be acceptable (Green, 2001). Other times, there seems to be no sufficient evidence to charge suspects with perjury (Meitl, 2006) or there is a political agenda that leads to acquittal (Green, 2001).

According to Solan & Tiersma (2005) it is the lawyers "duty to ensure that the questions they ask and the answers they receive produce a record that is as clear and unambiguous as possible" (p. 234). This appears to be a rather difficult task. In her research, Douglis (2017) gives rise to the concept of the courtroom game that lawyers sometimes play. Here lawyers steer the witness in specific directions by choosing to ask certain questions and trying to get the witness to say certain things. This can clearly be defined as manipulative in itself. These issues will be discussed in section 3.4. Before addressing any of these issues, the statutes of the perjury law will be briefly discussed. Starting with the Dutch law, provided in section 3.1, followed by the American statutes of perjury in section 3.2. In section 3.3 the statutes will be compared.

3.1 Perjury in Dutch law

Perjury is defined in the Dutch book of criminal law under title *IX. Meineed* (art. 207, 207a, 207b WvSr). The full statutes can be found in appendix A, these are provided in their original language for the sake of precision. The provided sections of the Dutch statutes are a personal translation.

In order to commit perjury under Dutch law, a person has to be under oath. An oath is the promise made before the testimony commences. Swearing to tell the truth, which relates to rule (4) of the definition of lying, as being under oath means finding yourself to be in a warranting context. Being under oath is explained in the *Wet vorm van Eed* (art. 1 WvdE). The witness is asked to promise he will tell the truth and nothing but the truth, to which he can answer either “Zoo waarlijk helpe mij God Almachtig”, “Dat beloof ik”, or “Ik verkaar” (art 1. WvdE). After the procedure of oath-taking, the witness commits perjury if the statement(s) adhere to the statutes as described in figure 9.

Figure 11. Art. 207 lid 1 and 2. Wetboek van Strafrecht. Title IX. Meineed (translation)

Lid 1 He who in cases where a statutory regulation requires a statement under oath, verbally or in written words, in person or by a person specifically authorized to do so, purposely utters a false statement under oath, faces legal consequences.

Lid 2 When the false statement is made in a criminal case to the detriment of the accused or suspect, the culprit faces heavier legal consequences.

Section 1 specifically states that a witness, the person under oath, has to purposely utter a false statement. In comparison to the definition of lying, both require an assertion to be made and a falsity of some sort. However, perjury seems to need literal falsity. This is in contrast to the discussed definition of lying, as the actual statement might, literally, be true, but is still considered a lie. Similar to lying, the statutes of perjury require a statement to be purposely made. Purposely stating something aligns to what the definition of lying describes as warranting the truth and intending to deceive. The need to be aware of the falsity of the statements made rules out honest mistakes, as well as, false utterances due to mental illnesses, trauma's, and other psychological issues.

Section 2 claims that when the false statement negatively affects the opponent or suspect, the consequences are larger. The discussion of this seems to be more ethical than linguistic. In comparison to lying, Green (2001) indicates there are differences in morality

when evaluating different types of lying. Green (2001) mainly distinguishes between lying, misleading and falsely denying. Additionally, Green (2001) states that morality always needs to be taken into account in cases of criminal law. As a consequence, a judge might rule a heavier sentence based on morality, as negatively impacting the opponent with perjurious statements can be perceived as morally worse. In contrast, morality could, according to Green (2001) also lead to acquittal. The case where someone falsely denies s/he did not kill someone, is by Green (2001) explained as it is either “the right of self-preservation” (p.160) or it can be stated to be seen as the suspect is “morally excused” (p. 160). Green (2001) concludes that even though a witness might show clear signs of deception, s/he is not meeting the requirements of perjury. This research is not aimed at discussing morality, however, art. 207 section 2 will be taken into account when named in the legal punishments of the cases found in the analysis of this research.

The other articles of the perjury law are mainly concerned with the occurrence of false statements in various scenarios, e.g. committing perjury against the Dutch government (Art. 207a). The article states a heavier sentence, however, is not different to the explanation of perjury as stated above. Article 207b describes the sentence when false statements are made via a video conference. Both articles seem to be irrelevant to discuss in the light of this research.

3.2. Perjury in American law

In American law there are three federal perjury statutes in 18 U.S.C §§1621-1623. Section 1621 prohibits “wilfully and contrary to the oath stating or subscribing any material matter which [S] does not believe to be true”. Under rule 603, *Oath or Affirmation to Testify Truthfully*, a witness has to swear or affirm to speak the truth, the whole truth and nothing but the truth. Section 1622 prohibits “procuring another to commit any perjury”, and, therefore, no-one can force anyone to not speak the truth under oath.

Section 1623 (full section included in Appendix B) states the meaning of perjury as:

Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

(18 U.S. Code §1623(a))

From this section, it is clear that when someone knowingly intends to not speak the truth, in a spoken or written form, s/he is committing perjury. In comparison to the definition of lying, there is a need to be aware of providing falsities. By being under oath the speaker finds him/herself in a warranting context. The statement has to be material, meaning, it has to be overly testable to be false. This is in contrast to the definition of lying, as the implicated meaning might be different from the material statement.

To deal with inconsistencies within a testimony, section 1623(c) states that someone commits perjury when “the defendant under oath has knowingly made two or more declarations which are inconsistent” (18 U.S. Code §1623(c)). These inconsistencies do have to obey certain other rules written in the section. In section 1623(e) it is stated that “proof beyond a reasonable doubt under this section is sufficient for conviction” (18 U.S. Code §1623(e)). Therefore, it could happen that, even though there is reasonable doubt to believe someone is lying, this does not have to mean s/he actually lied.

3.3 American versus Dutch Statutes

The statutes of perjury in American law differ on some aspects from Dutch law, starting with section 1622 of the American statute which prohibits that one cannot be forced into committing perjury. There seems to be no equivalent apparent in the Dutch statutes. This might be explained by the fact that in Dutch law, the legislature considers the witness to be responsible for his or her actions.

Another important difference between the statutes is the use of the word knowingly in American law (§1623(a)), and the use of the word *opzettelijk* (purposely) in Dutch law (lid. 1). These two words seem to be rather similar, however, their implication contains a slight difference. To purposely do something, indicates doing it with a certain aim. The word implies that there is an intent to manipulate what the hearer believes. In contrast, knowingly means to have knowledge of the fact. Even though the statement itself might be manipulative, the intention behind it does, in American law, not have to be the reason. In American law, the knowledge of stating something untrue is, according to the statutes, sufficient. In Dutch law, the act of knowing you are providing a false statement is not enough in itself to count as perjury; it has to be done on purpose.

Another difference between American and Dutch statutes is that the American law includes a conviction based on the occurrence of multiple statements that cannot all be true. There is no such statute in Dutch law. Based on section 1623(c) of the US law a witness could, for example, be inconsistent various times and based on that fact be convicted for perjury, even if there is no sufficient evidence to prove the false statements. It then remains unknown which of the statements are incorrect, but it is known that the person is not providing the whole truth. The proof is considered to be beyond reasonable doubt and based on section 1623(e), the witness will be convicted for perjury.

Despite some of the named differences, the overall statutes of perjury are rather similar. There is one similarity that could be important whilst analysing the cases: the right to remain silent, also called the self-incrimination clause in American law, or *verschoningsrecht* in Dutch law. Interestingly, whilst remaining silent, a person is unable to lie. S/he can be manipulative, or deceiving at most, but lying has to be verbal and, thus, that person cannot have lied. Remaining silent could enhance reasonable doubt on whether the person committed a crime. However, s/he might not be able to be convicted with perjury solely based on this doubt.

The fifth amendment to the United States Constitution, as part of the bill of rights, contains the self-incrimination clause. Stating that “no person [...] shall be compelled in any criminal case to be a witness against himself” (U.S. Const. amend. V). Anyone is therefore, under this clause, allowed to remain silent. Solely remaining silent itself can be taken in an

incriminating way, it is necessary under this amendment to clearly state you are remaining silent under the right of the fifth amendment. This clause does not state you are allowed to tell lies.

In Dutch law this is called *verschoningsrecht*, which states the exact same. If a police officer forgets to inform the suspect of his fifth amendment right, or *verschoningsrecht*, the whole statement cannot be used as evidence against them. This is the same right that partners, or children, or those working with professional secrecy can use in a hearing. However, sometimes the judge could overrule this when he believes the information is of high importance.

In his research, Green (2001) argues that if this right, through remaining silent or even falsely denying s/he did not kill someone is accepted, the falsity is considered to be “morally excused” (p.160) as the person has “the right of self-preservation” (p.160). Additionally, Green (2001) argues that morality always needs to be taken into account in cases of criminal law. The next section critically analyses perjury versus the theories on lying, some relevant previously done research will be used to support the noted differences.

3.4 Lying and Perjury

Perjury aims to prevent lying in a courtroom. As Solan & Tiersma (2005) state, the concepts of perjury and lying cannot be separated. Previously done academic research discussed the relationship between lying and perjury in American law (Slobogin, 1996; Solan & Tiersma, 2005; Keiser, 2016; Douglis, 2017). Based on the definition of lying (as in figure 10), this section aims to describe notable differences between lying and the statutes of perjury, mainly focussed on the Dutch legal system.

Distinctly different is the fact perjury requires a false statement (Art. 207 lid 1 WvSr; 18 U.S. Code §1623(a)) and, as discussed in section 2.4, lying does not. The statutes are, therefore, in contrast to rule 2 of the definition of lying (as in figure 10). This particular requirement of falsity is not completely in line with the taken oath, which describes one cannot speak anything but the truth, the whole truth and nothing but the truth. This includes that the speaker is not allowed to assert anything s/he is not sure about or to which s/he lacks adequate evidence. To add, as noted in section 3.3, the American and the Dutch legal system included either the word knowingly (18 U.S. Code §1623(a)) or purposely (Art. 207 lid 1 WvSr) in their statutes of perjury and, even though, the words can be considered as slightly different in meaning, in comparison to the definition of lying they can both be compared to rule (2) of the definition of lying (as in figure 10). The words knowingly and purposely require a person to be fully aware of his/her statements, i.e. s/he has to actively believe to state something that is either false, probably false, or to which s/he lacks adequate evidence. This is rather a similarity than a difference between the statutes and the definition of lying.

The requirement of a false statement includes another issue in comparison with the definition of lying, as it excludes the possibility of committing perjury through implicature. Douglis (2017) drew a similar conclusion in her research based on the question if perjury should be understood essentially as the practice of lying. Based on the distinction Douglis (2017) made between assertions and implicatures, she notes they are conceptually distinct. However, Douglis' (2017) explanation is based on a moral difference rather than a linguistic one. According to Douglis (2017), implicature is filled in by the hearer and could be seen as morally accepted, as it was not the speaker who was factually wrong. Even though it might be true that the hearer worked out the implicature, this research considered various situations where the conversational implicature is obviously implied with certainty, and clearly false. As previously stated, this research does consider those cases as lying. In everyday life it might be morally accepted (Douglis, 2017), but in a courtroom it cannot, as the speaker is expected to tell the nothing but the truth.

Lastly, what is explicitly exemplified in American law is that in the case of enough reasonable doubt, conviction with perjury is possible (18 U.S. Code §1623(e)). Even though

a conviction based on enough reasonable doubt is not included in the Dutch statutes of perjury, as noted in section 3.3, this addition is relatively closer to the definition of lying (figure 10). This particular rule could make up for the requirement of a false statement, as then if you repeatedly make some statements for which you lack adequate evidence, you can be convicted for perjury as well.

In contrast, this reasonable doubt might be created by a concept called the “courtroom game” (Keiser, 2016). This courtroom game includes perjury as “a manifestation of the rules” (Douglis, 2017, p. 374), meaning that a testimony is not an illocutionary act of genuine conversation. Therefore, the witness is navigated in a certain direction by the questioner and does not get the chance to utter his absolute truth (Keiser, 2016). If this would be the case, it would be unfair to convict a witness based on the game an attorney plays. However, legally attorneys are required to “have a good faith basis for the questions they ask” (Douglis, 2017, p. 373). A linguistic analysis would tell whether the witness is the one responsible for the reasonable doubt or whether an attorney playing the courtroom game creates it.

In conclusion, this section showed that based on a theoretical analysis perjury and lying cannot be treated as perfectly equivalent. Which is similar to Douglis’ (2017) argument. However, Douglis (2017) takes it one step further by additionally stating that the two cannot be equivalent, “especially when it comes to borrowing lessons from one to draw conclusions about the other” (p. 374). Contrastingly, Solan & Tiersma (2005) argue that linguists are especially good at recognizing what we “communicate indirectly, and why” (p. 243). A linguistic analysis can provide the information needed to decide whether an assertion corresponds to reality, directly and indirectly. Especially considering if people are “engaged in criminal activity, they speak even more obliquely and obscurely” (p. 213). In the remainder of this thesis, such an analysis will be provided.

The methodology of this analysis will be discussed in the next chapter. The linguistic analysis itself aims to provide the answer to whether the theories of lying characterize the Dutch perjury statutes.

4. Methodology

For the analysis four court cases are examined. Each is different in conviction, which will show the various ways in which the Dutch perjury law can be applied. The analysis will give insights in the examination of perjury exemplified by the court and whether that is done consistently and based on actual lying, or if it is done inconsistently as was seen in the examination of perjury and lying in American law as described in paragraph 3.4.

The selection of the cases is, first of all, based on the requirement that they contain verbal (either oral or written) statements on which a conviction of perjury was based. A second requirement is that the provided information of the case must be elaborate enough that the definition of lying can be actually tested towards factual knowledge. This research considers those cases in which the conviction is clearly explained based on facts and the defendant's counter evidence is taken into account.

After eliminating those cases that did not meet the requirements, either the most recent case was selected or the case that clearly corresponds with previously done research on the American law of perjury. The relevant research will be explicitly named when a case is selected based on that research. All provided statements will be tested on the definition of lying, which will then be compared to the conviction. This shares insights in the comparison between the theories of lying and the statutes of perjury.

The first case seems to be a clear-cut case of lying and perjury (Rechtbank 's-Gravenhage, 2010). This case concerns statements made by a girl, who, in a later police hearing, admits she did not speak the truth. Therefore, her former statements seemed to be untrue, and she was accused (and eventually convicted) of perjury. This case was specifically selected based on the available counter evidence.

The second case is a case where the defendant, a police officer, was pursued for perjury, however, the judge acquitted the defendant (Rechtbank Den Haag, 2019). This case is particularly interesting due to the consequences to the entire police force when a police officer commits perjury (Slobogin, 1996). Slobogin (1996) investigated similar cases where police lied under oath in order for a guilty person to be convicted. This happens in cases where there is insufficient evidence in the first place to convict the guilty (Slobogin, 1996). This is sometimes called "testilying" (p.1040) and is injurious for the credibility of all authority (Slobogin, 1996). Concluding his paper, Slobogin (1996) states changes have to be made against testilying, as there is strong evidence this occurs much more often than is wanted. In some cases, the prosecutor and judges even accomplices with the police (Slobogin, 1996). Perjury seems to be evaluated differently when it includes authorities, which is problematic for the justice system as a whole. The analysis will determine how the acquittal could be

explained using the statutes of perjury, whilst deciding if the police officer did actually tell a lie.

The third case is a case that has gone to a higher court (Gerechtshof Den Haag, 2017). The statements in this case are made by someone who killed someone but stated that he did not. The defence attorney uses the self-incriminating law as a defence strategy. Additionally, she stated there is not enough evidence against the suspect. The court rejected her plea and convicted the defendant for perjury.

The fourth case is possibly the most interesting regarding this research (Gerechtshof Amsterdam, 2018), as this case did also go to the higher court. Here the case was not as clear-cut. Interestingly, the defendant was acquitted for perjury in appeal after being convicted the first time. This shift in conviction is highly interesting for the comparison of the theories of lying on the one hand and perjury on the other.

4.1 Linguistic Analysis

For every case solely the statements on which the conviction is based are stated and analysed. These statements are provided in Dutch, as well as in English (personal translation). For the analysis the original statements in Dutch are the main focus. The reason for doing so is the prevention of possible translation errors that might influence the analysis. For all cases the basic context is provided that is necessary for the analysis. Both the context and the statements themselves and other possible interpretations are taken into account in the analysis.

The analysis will be based on various analytic tools provided by Shuy (2011). In his book, *The Language of Perjury Cases*, Shuy (2011) presents his method for analysing court cases on perjury. This method will be used as a guide to analyse each court case used in the analysis of this research. The chronology of the analysis is based on the information provided by the court case document. The following analytic tools will be taken into account when analysing the data:

The (1) Cooperative Principle, and the (2) Speech act theory. Both explained in chapter 1 of this research. In order to evaluate possible intentions, the tools called (3) Speech events, (4) Schemas and (5) Agendas will be used.

These analytic tools have not been discussed in this research so far, therefore they will now be briefly explained. Speech events are described by Gumperz (1990) as “tacitly understood rules of preference, unspoken conventions as to what counts as valid and what information may or may not be introduced” (p.9). Speech events can be a certain type of conversations, such as interviews, courtroom interrogations, hearings, debates, etc. All these speech events carry a certain expectation of what this type of conversation looks like. The speech event that is mostly discussed in this paper is the courtroom interrogations or the police hearings. What is interesting about courtroom interrogations is that the prosecutor has the power to choose the topics and questions, and by doing so steer the ‘conversation’ in a certain direction. The defendant does not have the power to explain or give topics themselves. This is relatable to the previously discussed courtroom game (see section 3.4). In a police hearing the defendant can introduce topics and explain him/herself in more detail. However, there is still a difference in power distribution (Slobogin, 1996). Also, the police or detectives can influence, steer and manipulate the person that is being questioned in a certain direction. This can all influence the statements of a person and reasons behind their actions. It could explain why a person chose to say certain things at a certain moment. This knowledge can serve as a background for the possible intentions of the defendant.

Schemas can be defined as “mental representations of some aspect of experience, based on prior experience and memory, structured in such a way as to facilitate [...] and to draw inferences or to interpret new information in terms of existing knowledge” (Coleman

and Kay, 1981, as in Shuy, 2011, p. 24). Schemas are close to the representation a person has about how the world works. Their perception of how the world has to work in order for certain things to happen. This can be related to the truth conditions, as truth conditions determine whether something could have actually happened in a world as we know it. For example, when stating *it is raining*, the truth conditions are that in the world as we know it, earth, and in the area we are in, the Netherlands, rain is possible. If we were to say on a different planet where rain is absolutely impossible, then the sentence *it is raining* does not adhere to the truth conditions and can therefore not be true.

Apart from schemas, there are also two types of agendas that can be distinguished. First, the agenda's that are revealed by the topic that is discussed. For example, a person's political colour can distinguish in his/her response. This could give information on someone's intention and could possibly explain why someone would not speak the truth. Second, agendas revealed by the response to topics of others. This one specifically reveals anyone's agenda when responding, or a lack of it, to certain subjects. Think about a strong reaction to someone's use of racist phrasing, this could lead to understanding some intentions in the complete conversation.

Lastly, possible problems on meaning and word-level will be discussed when applicable. Henceforth, the analysis will focus on (5) Ambiguity, and (6) Word Semantics. In all cases the application of these tools will be closed with their connection to the chosen definition of lying. Resulting in enough evidence to answer the research question if perjury could be affirmed using the theory of lying. Clearly showing the relation between the two. Not all tools are effective for all cases that will be discussed, due to limited data available for this research. Only the tools that are applicable in that part of the analysis will be used, if not, they will be excluded from the analysis.

By using these analytic tools, the evaluated data can be accurately tested to the definition of lying (figure 10), which is the main goal of this analysis. The conclusion based on the definition of lying will be briefly compared to the actual charge. This comparison will provide the answer to the question whether perjury in Dutch law can be characterized by the theories of lying.

5. Analysis

5.1 Case 1: Convicted

The analysis starts with a case concerning a girl (X), who got pregnant (Rechtbank 's-Gravenhage, 2010). This pregnancy led the mother of X to sue X's ex-boyfriend (Y) with rape on the 29th of July 2009. On the 3rd of September, Y is arrested for raping X. On the 9th of October, X is heard by the examining magistrate about Y's case of rape.

5.1.1 Schema

Before the testimony commenced, the examining magistrate made sure X understood she will be under oath, and what is meant by this fact. Therefore, X finds herself in the courtroom schema. In other words, X finds herself in a warranting context, adhering to rule (3) of the definition of lying: S takes him/herself to be in a warranting context.

5.1.2 Statements

In the testimony on the 9th of October, X made the following statements:

Figure 12. Statements made on the 9th of October

- S1: Ik heb nooit eerder sex gehad met [Y].
- S2: [Y] heeft mij niet gevingerd.
- S3: Het zou kunnen dat hij GHB of hele sterke drank in mijn drinken heeft gedaan. Misschien wel andere drugs, een pilletje ofzo.

Translation:

- S1: I have never had sex with [Y].
- S2: [Y] has never fingered me.
- S3: It could have been that he added GHB or some very strong liquor to my drink. Maybe a different drug, a pill or something.

(Rechtbank 's-Gravenhage, 2010)

Based on the statements in figure 12, X is charged with perjury. The first two statements (S1 and S2) carry a clear direct message and there is no reason to believe X has implicated anything different than the direct speech act. It could be argued that S3 flouts the maxim of Quantity (do not be more informative than is required) with which X is implicating something different from what-is-said literally. The overt identifiers resulting in the understanding an implicature is used, are "it could have been", "maybe", and "or something". With these

identifiers, X provides a possible explanation for her to have had sex with X, whilst not being conscious. So, the relevant direct and indirect propositions of S3 are the following:

- $p =$ It could have been that he added GHB or some very strong liquor to my drink. Maybe a different drug, a pill or something.
- $q =$ If I had sexual intercourse, I was not conscious.

This implicature (q) results in a contradiction between S1 and S3. X never *consciously* had sex with Y, but she does give an option for her to have had sex with Y *unconsciously*. The question arises whether S meant *never* with the most commonly adopted meaning: it has not occurred at any point in the past, or like the implicature of S3: X was not conscious during the event. If the first option is true, X violates the maxim of Manner (do not be ambiguous), as she creates ambiguity by stating both S1 and S3. As well as the maxim of Quality (do not say anything you believe to be false), as X apparently knows she does not have adequate evidence to state S1.

If the latter is true, X does actively believe she never had sex with Y. However, X is clearly pregnant, thus she must have had sex at some point. By stating S3, X does imply there is a possibility this was done by Y and not by someone else. Asserting S3 then becomes relevant, as it explains how X could have had sex with Y without having any recollection of that event.

5.1.3 Counter evidence

In the hearing on the 21st of October 2010 concerning X's perjury, her defence attorney stated that, due to her psychological state, X is not liable for the statements made in the hearing on the 9th of October. Evidence for this is based on an expert's diagnosis of X on post-traumatic disorder and avoidant personality disorder. The expert stated at that point that X does not remember, nor want to remember, what actually happened. Additionally, X could have been psychologically influenced by the fact she nearly went into labour at the time of the hearing. To add, she might have felt intimidated as her parents were not allowed to be present during the hearing.

If this evidence appears to be true, X was not liable due to her psychological state and cannot be held accountable for what she said. Consequently, she cannot be held accountable to rule (2) of the definition of lying: S actively believes p to be false, probably false, or lacks adequate evidence to warrant the truth of X. Leading to the conclusion that even though her statements might have been factually false, X has not actually lied.

However, the court has concluded that they found the arguments made by the defence attorney highly unlikely. This conclusion is based on the police interrogation on the

19th of April 2010. This police interrogation is carried out based on the indication that X might have committed perjury in her testimony on the 9th of October 2009. During this interrogation X made the following statements:

Figure 13. Statements made on the 19th of April 2010

- S4: X heeft eerder sex gehad met Y.
- S5: Y heeft X eerder gevingerd.
- S6: X heeft nooit iets in haar drankje gehad.

Translation:

- S4: X has had sex with Y.
- S5: Y has fingered X before.
- S6: X has never had anything in her drink before.

(Rechtbank 's-Gravenhage, 2010)

What these statements make explicit is that X did not speak the truth before. In the police interrogation, X was asked if she understood she had been under oath and what being under oath meant, to which X stated she understood. As a reason to answer the question of why she had lied during the first hearing, X stated she was ashamed and scared that others would get mad if she would have told the truth. In the light that her mother sued the ex-boyfriend, this explanation is credible. To not let her mother down, X decided to lie instead of telling the truth. Due to the age of this teenaged girl, it seems possible she is highly influenced by these opinions.

This information clarifies X actively believed during the hearing (*t*) that she asserted something was not true. By presenting this as a truthful assertion, X intended to deceive her audience. X satisfies rule (1a) of lying. As for S3, the direct proposition (*p*) was, in fact, a false statement and the implicature (*q*) was also false. Thus, for all statements in figure 12, X adheres to rule (2) of lying (as in figure 10). As X stated she understood she had been under oath, she knows she was expected to tell the truth, the whole truth and nothing but the truth, which satisfies rule (3) of lying (as in figure 10).

5.1.4 Discussion

Especially due to the statements made in the police interrogation (figure 13), the statements in figure 12 can also be identified as a lie according to this research' working definition of lying (figure 10). It has made clear, X would not be excused due to psychological reasons, and thus she is accountable for the statements she made. Additionally, the reason why X

lied she explained in the police interrogation as well. Which provides the possible agenda of X, as she stated she was ashamed and scared.

Due to the police interrogation, this case is rather clear-cut, making it fairly simple to judge whether this is a case of perjury. The court ruled X to be guilty of the perjury charge. They did take the difficulty of stating the truth at time t into account when formulating X's sentence. However, it cannot serve as an excuse to not observe the law. On the basis of Art. 77 (WvSr), the age of X was taken into account. Under the suspicion of a slim chance of repetition of similar events, X is charged with 60 hours of community service.

Thus, in this particular case, the conclusion the court made that X committed perjury corresponds to the conclusion made based on the theories of lying, which is that X lied.

5.2 Case 2: Acquitted

The second case concerns a police officer (X) that was thought to have committed perjury (Rechtbank Den Haag, 2019). After several investigations and the final hearing, the police officer was acquitted. This analysis will analyse whether X also did not tell any lies.

5.2.1 Context and statements

On January 21st, 2018 the emergency call centre received a notification from a woman, hidden in the kitchen of a cafe, telling the police there was an armed man, hitting and threatening others who were still in the cafe. The woman was asked multiple times if the man was armed with a gun, or something else. Later in the conversation the woman said she was not perfectly sure if the man was actually armed at all.

Twenty minutes after the call, a colleague of X (Y) entered the cafe. He asked the victim (V) to show his hands and kneel down. When V did not respond, Y approached V aiming to disarm V. Both the man and Y fell down during this action. This is when X came in. X ordered a police dog to bite V. He was trained and qualified in making such orders.

Based on two statements (figure 14) in the police report on the arrest of V, it has been researched whether X committed perjury. Even though V is the person who used violence and threatened people in the cafe, he is addressed in the report on this case as the victim as he was the one who was bitten by the police dog.

Figure 14. Statements made on the 21st of January 2018

- S1: Ook zag ik dat V zijn handen niet liet zien en deze in zijn jas hield.
- S2: Ook toen V met Y op de grond was beland zag ik dat V zijn handen niet liet zien.

Translation:

- S1: Also, I saw that V did not show his hands and kept them in the pockets of his jacket.
- S2: Also, when V fell on the ground with Y, I saw that V still did not show his hands.

(Rechtbank Den Haag, 2019)

Statements S1 and S2 in figure 14, are the ones that aroused the suspicion of perjury. The prosecutor stated that X could never have seen whether V had his hands in his jacket, as he entered the cafe after both V and Y fell to the ground. Additionally, the prosecutor notes that

V most likely lowered his hands as a reflex due to falling to the ground. These arguments are based on camera footage obtained from the security cameras available in the cafe.

These statements have been asserted as an explanation of what happened during the arrest of V. Based on that information, S1 and S2 can be analysed as literal statements. For these statements to be considered a lie, X has to have actively believed they were false, probably false, or he lacked adequate evidence to warrant the truth of S1 and S2. As a starting point to examine whether X lied or not, we will discuss possible reasons explaining why X might have wanted to deceive.

5.2.2 *Intention*

Possibly, X asserted false statements as he knew he did something wrong during the arrest of V. If S1 and S2 are in contrast to the actual state of affairs, X violated the maxim of Quality (do not say anything you believe to be false). His reason to violate this maxim could be explained by the intention to deceive others into believing he rightfully ordered the police dog to attack. Such an attack can only be ordered if a person remains a danger to a police officer or others present at the time. If the court would conclude V was no longer a danger, then X would have made a mistake by ordering the dog to bite V. Possibly to cover this mistake, X asserts S1 and S2. Following this argument, X adhered to rule (1a) and rule (2) of the definition of lying (as in figure 10).

5.2.3 *Counter evidence*

In contrast to the minister of justice, the defence attorney claims X should be acquitted, as the truth was never violated. About the first claim that X could have never seen V before he fell, she states that from the camera footage it can be seen that there is a glass window in the door. Behind that door can be seen that X is about to enter the cafe, and, therefore, he could clearly see V. His statements are then possibly the truth. If they are in fact truthful, X did not violate the maxim of Quality (do not say anything you believe to be false). He has the evidence to warrant the truth of S1 and S2. Additionally, X adheres to the maxim of Quantity (be as informative as possible), as it is required and valuable information for the arrest.

Specifically, for S2, the defence attorney noted that V's hands were around his chest and it was therefore not clear for X that V would not still pull out his weapon. Thus, he would have had the right to let the dog attack, to protect both himself as well as Y. Following Searle's speech act theory, a similar conclusion can be made. Although these statements have to this point been analysed based on its literal meaning, X might have implicated that *q*: V did not surrender in an obvious manner. For this to be sensible, the linguistic meaning of *showing your hands* has to be examined. Within the jargon of the police, the meaning of showing your hands is related to the clear sign of surrender. Your hands have to be open,

showing there is no weapon in them. If X intended this meaning, instead of the meaning that the hands were not in sight, S2 is not in contrast with the truth. X is not trying to deceive; he only wrote his statement in the jargon he knows. To add, the police report of the arrest is mostly read by other police officers, and therefore, X might have assumed they would understand. Following this argument, X did in fact accidentally violate the maxim of Manner (do not be ambiguous). However, X did not comply to rule (2) of lying.

5.2.4 Discussion

Based on the linguistic analysis of S1 and S2, X only lied iff X actively believed the statements were not true (rule (2) as in figure 10) at the time of asserting them (rule (1) as in figure 10) The intention to deceive could be explained based on X's possible agenda, which would make it plausible to believe the statements might not have been the whole truth. As for rule (3) of lying (as in figure 10), this case concerns a police officer who is trained to know the obligations he has to adhere to whilst writing a police report on an arrest. It can be assumed X was well aware of the fact he had to state the truth, the whole truth and nothing but the truth in the report. Thus, X is warranting the truth of his statements by default, therefore, he satisfies rule (3) of lying (figure 10). In contrast, the counter evidence provided by the defence attorney and the examination of the semantic ambiguity of S2 both prove the statements should be interpreted as truthful.

In comparison to the conviction, X was acquitted and all other charges were dropped. The court chose the argumentation and evidence provided by the defence attorney. Following that argumentation, it was also concluded X did not lie. Thus, in this case the acquittal corresponds to the theories of lying.

5.3 Case 3: Higher Court - Convicted

This case concerns a murder on the 20th of February 2013. On the 27th of February 2014, the suspect (X) is charged with murder (Gerechtshof Amsterdam, 2018). On the 29th of October 2015 X has to testify against his companion (Y), who at that point is charged with being an accessory to that same murder. This is the moment that X is suspected of committing perjury. On the 19th of July 2017, X's lawsuit on his perjury charge took place in the higher court. Previous to this second instance of the perjury charge, his first instance took place on the 2nd of August 2016.

5.3.1 Context

On a snowy day in February, V drove from Belgium to Rotterdam to discuss a drug deal, while not dealing at that point. It has been thought that X and companions wanted to steal the drugs, and only wanted to threaten V with the gun. In the investigation, it became clear that there was no sign that there were any drugs at the crime scene. On the 20th of February, X's companion (Y1) met V in his car, then drove to the crime scene. Here Y1 stepped out of the car, walking towards X. Together with X they went back to the car, where X wanted to step into the car and greet V. However, as X stated multiple times, his gun went off by accident, hitting V. Leaving V at the crime scene to die, V called the emergency number, stating he was shot and that he was going to die. The case was investigated soon after the accident. It was then concluded that, due to the snow that was on the car and the lack of footsteps in the snow, no drugs could have been stolen.

5.3.2 Statements

The statements made that resulted in the charge of perjury are:

Figure 15. Statements made on the 29th of October 2015

- S1: Ik ben niet de persoon die V op 20 januari 2013 te Rotterdam heeft neergeschoten.
- S2: Ik ben 20 januari 2013 niet op de plaats delict geweest, ik zat thuis.
- S3: Ik heb een wapen voor Y geregeld.
- S4: En dit op 20 januari 2013 aan hem gegeven.
- S5: Ik wist niet waarvoor dit wapen zou worden gebruikt.
- S6: Ik heb dit wapen ook weer van hem teruggekregen.
- S7: Ik heb V nooit ontmoet.

Translation:

- S1: I am not the person that shot V in Rotterdam on the 20th of January 2013.
- S2: On the 20th of January 2013, I was not at the crime scene. I was at home.
- S3: I arranged a weapon for Y.
- S4: I gave him the weapon on the 20th of January 2013.
- S5: I did not know for sure what the weapon was going to be used for.
- S6: I did get the weapon back from him.
- S7: I have never met V.

(Gerechtshof Amsterdam, 2018)

The statements in figure 15 are asserted by X in testimony against his companion Y. In contrast to the murder charge on the 24th of February 2014, X states he was not the one who killed V or was even near the crime scene when V was killed. The statements made in figure 15 are very elaborate and, as far as can be concluded without the actual question that were asked, seem to repeat the exact question that is asked. They appear to not include any implicatures, at least they do not overtly non-observed a maxim. The analysis will, therefore, be conducted based on the direct speech. To analyse whether these statements can be considered a lie, the motive of X will first be discussed.

5.3.3 *Intention*

It is a known fact that the murder charge on the 24th of February 2014 was irrevocable, i.e. it was a definitive conclusion, as X was found guilty for shooting V after an in-depth evaluation of all the evidence. Part of the evidence this conclusion was based upon include the fact that X's DNA was found on the dashboard in the car at the crime scene, as well as multiple phone recordings and chat messages that lead to believe X is guilty as charged.

Possibly, X believes this testimony is a chance of getting reduction of his sentence that was charged on the 24th of February. Another possibility is that X is not able to commit to his crimes, which could be due to psychological reasons. Lastly, the reason for X to want to deceive the audience is that, as X already got convicted and he is serving his sentence, he wants his accomplices to get a sentence similar to his. For example, because X is angry, as during the investigation of X's murder charge, Y1 testified against X. His testimony includes a conversation in which X confessed he was the one that pulled the trigger:

- Y1: Ik heb X een aantal dagen in januari een tijdje niet kunnen bereiken.
Ik kreeg hem op een gegeven moment te pakken met de telefoon. Hij

klonk toen niet zoals anders. Ik ben naar hem toe gegaan. Hij begon te vertellen dat hij per ongeluk een man had geschoten. Hij vertelde ook dat het niet de bedoeling was geweest dat het vuurwapen af was gegaan.

Translation:

Y1: I could not reach X for a couple of days in January. At one point I did reach him, via the phone. He did not sound as he usually does. I went to visit him. He started to tell me he accidentally shot a man. He also said he did not mean to actually shoot the gun.

This testimony clarifies that either X is presenting falsities in his testimony on the 29th of October, or Y1 is not telling the truth. The tapped phone call presented in figure 16 can serve as additional evidence it was X who did not speak the truth.

Figure 16. Statements based on the murder case investigation

S8 (X): Ik wist niet eens dat hij gewoon uit zijn wagi (auto) ging en zo, dat wist ik niet eens.
S9 (Y1): Ja man, wel moeilijk.
S10 (X): O ja, ja, je weet toch, ik wil er niet te veel aan denken joh.

Translation:

S8 (X): I did not know he would just step out of his car et cetera; I did not know.
S9 (Y1): Yeah man, tough one.
S10 (X): O yeah, yeah, you know, I don't want to think about it, ay.

(Gerechtshof Amsterdam, 2018)

Notable linguistic elements of these statements are that in S8, X repeats *I did not know* at the end of his sentence. This could indicate X is either confused about what happened or he is trying to convince himself that what happened was not his fault. Additionally, S10 indicates X did something he regrets, or at least he did not plan for this to happen. Thinking about it makes him uncomfortable. These statements do lead to the suspicion something unpleasant and unwanted had happened. Therefore, we can conclude the evidence against X is remarkably large that it is likely he, in fact, was the one that shot V. This conversation does clarify that what had happened occurred by mistake and was not premeditated.

Besides the fact that the statements provided in figure 16 make X particularly suspicious, they also provide reasons to believe X knowingly made a statement he believed to be false on the 29th of October 2014, i.e. X actively believed at time t that not p , whilst still asserting p . To add, Y1 was explicitly asked if X sounded different than he usually does in the tapped phone call (figure 16). This might be important information, as even though the police probably aimed at a distressed tone of voice, the tone of voice could also make clear X would have been making a joke or if he would have been speaking sarcastically. Linguistically speaking, the tone of voice can give information about the intention and the sincerity of the asserted statements, e.g. if X asserted his statements in tears, with a breaking voice, or full of regret, it could lead to sentence reduction. Additionally, it could provide information if X overly unobserved a maxim by using these indicators. Y1 stated X did not sound any different than usually does. Therefore, based on this argumentation, X purposely and actively believed during the hearing he stated something he believed to be false, probably false or lacked adequate evidence to warrant the truth of p . By doing so, X adheres to rule (1) and (2) of the definition of lying (figure 10).

5.3.4 Counter evidence

The defendant's first argument states that X was not explicitly noted to his right of self-incrimination. This fact could make his whole testimony legally useless, and, thus, X could not be charged with perjury based on statements made in this testimony. The prosecutor states that, as the conviction of X was already irrevocable, X is not able to self-incriminate, as his charge was already definitive. The defendant's second argument claims that there is no sufficient evidence that X purposely stated the statements in figure 15. According to the defendant, X cannot be held accountable for his statements based on psychological reasons. However, she does not give sufficient evidence to support this claim. Thus, both claims are dismissed by the higher court and they respect the previous charge of perjury.

5.3.4 Discussion

There is adequate evidence to believe X did not adhere to the maxim of Quality (do not say you believe to be false). As argued, X satisfied rule (1) and (2) of the definition of lying (as in figure 10). As for rule (3), the defendant tried to argue X did not find himself in a warranting context. As his right of self-incrimination was, according to the defendant, not explained. If X would have remained silent when asked if he killed V, he could not have been perjurious. The higher court ruled this claim as insufficient. X is under oath and although it has not been stated explicitly whether he understood what that meant, it is assumed he was aware he had to state the truth, the whole truth and nothing but the truth. If this assumption is correct, X satisfies rule (3) of the definition of lying (as in figure 10).

Legally, the court had to reduce X's sentence, as various documents were not sent in on time, however, X was sentenced with an additional 3 months of jail time. As argued in the linguistic analysis, the statements X made in figure 15 can be considered as lying. So, lying and perjury seem to correspond in this case.

5.4 Case 4: Higher Court - Acquitted

This case is a financial case (Gerechtshof Amsterdam, 2018). It concerns a bankruptcy where the owner or financial employer (X) was heard on the 2nd of March 2016 by the examining magistrate. The questions were regarding the fact whether X talked to only one financier or multiple. Earlier in the conversation she states she talked to multiple financiers, later it was just one. This is where, before going to a higher court, was convicted on. In higher court, the statements are re-evaluated. The higher court came to a new conviction and the first conviction was eliminated and overruled. Due to the elimination of the first instance and no reference to the actual case where these statements occurred, there is limited background knowledge on this case.

5.4.1 Statements

In the interrogation the following statements lead to a perjury charge:

Figure 17. Statements made on the 2nd of March 2016

- S1: Ik heb met mogelijke financiers gepraat.
- S2: Ik weet wel welke partijen betrokken waren
- S3: Laten we het dan anders zeggen. [Naam] was de potentiële financier en anderen waren er niet.
- S4: Het was er maar één, meneer [naam].
- S5: Ik heb mij daarin vergist.
- S6: Ik heb met één financier gesproken. Dat was in informele setting geweest. Dat was [naam]. Er waren geen andere financiers.

Op de vraag hoe het kan dat ik eerder heb verklaard dat ik met meerdere financiers heb gesproken en telkens in die lijn antwoordde, antwoordt X:

- S7: Ik bedoelde te zeggen dat ik meerdere financiers op mijn netvlies heb gehad.

Op de vraag hoe het dan kan dat ik mij vergist heb toen ik verklaarde dat ik met meerdere financiers gesproken heb, antwoordt X:

- S8: Dat weet ik niet.

Translation:

- S1: I talked to potential financiers
- S2: I know which parties were involved

- S3: Then let's put it differently. [Name] was the potential financier and there were no others.
- S4: It was only one, [name].
- S5: I made a mistake.
- S6: I spoke to one financier. It was in an informal setting. That was [name]. There were no other financiers.

When asked how it is possible that I previously stated that I spoke with several financiers and continuously answered in that line, X replies:

- S7: I meant to say I had several financiers in mind.

When asked how it is possible that I was mistaken when I stated that I spoke with several financiers, X replies:

- S8: I don't know.

(Gerechtshof Amsterdam, 2018)

What can quickly be noticed from the statements in figure 17, is that it provides reasons to assume it would have been in X's advantage to have spoken to just one financier. As from this speech event, the courtroom interrogation is clearly steered in a certain direction by the questioner. The examining magistrate seems to believe it is important to know whether X spoke to one or to multiple possible financiers. This can be recognized from the attention the questioner pays to this fact in his questioning. If lying could be beneficial for X, this could be a reason to do so. As if having one financier would be better for X than having two, it is a plausible possibility to explain why X had the intention to deceive.

5.4.2 Intention to deceive and reasonable doubt

The statements made by X in figure 17 are all assertions and do not appear to flout or in other ways overtly violate Grice's maxims. However, S5 *I made a mistake* could be an overt way of showing X did not intentionally make a false statement. Although, there are multiple reasons to believe X did not actually make an honest mistake.

Firstly, It is known X is working for a company and is working with or is in charge of the financial activities. She could also be the owner, however, that is not confirmed. Making a mistake in having talked to one or more financiers seems rather odd. By stating S5, X explicitly and overtly asserts she made such a mistake. Which automatically makes her previous statement not liable to the definition of lying (figure 10). Although, it could be argued X purposely asserted S5, as X intended to make the audience believe she made an

honest mistake, in fact she never did. Thus, S5 actually enhances this possibility of X's intention to deceive the audience, rather than to provide a reason to believe X is truthful.

Secondly, from the context given to S7, it becomes clear that X stated there were more than one potential financier multiple times. As the examining magistrate explicitly asks why X *continuously answered in that line*. If X made a mistake by stating there were multiple financiers on multiple occasions, knowing very well there was only one, she knowingly asserted during the interrogation that *p*, while she actively believed that not *p*. Based on both arguments, X satisfies rule (1) and (2) of the definition of lying (figure 10).

Even if S1 is accepted as having been an honest mistake, X additionally provides various inconsistencies throughout the interrogation which could lead to the understanding that X was not truthful in the interrogation. In S6, X explicitly asserts *there were no other financiers*, whilst in S7 she asserts *I had several financiers in mind*. The examining magistrate gives X the option to explain why she made a mistake in S1, to which she answers S8; *I don't know*. By stating *I don't know*, X opts out of the maxim of Quantity (say as much as you can, but not more than is required) probably in order to maintain the covertness of having violated the maxim of Quality (do not say anything you believe to be false) at multiple occasions throughout the interrogation. This argument that there seems to be reasonable doubt that X is not speaking the truth, the whole truth and nothing but the truth, steers towards defining the statements in figure 17 as lies.

5.4.5 Discussion

To conclude, the possibility remains that X in fact made an honest mistake. However, this analysis stated multiple reasons to believe otherwise. From this analysis, it is assumed that X did not make a mistake, but purposely stated something she believed was not true. As discussed, X satisfies rule (1) and (2) of the definition of lying (as in figure 10). As for rule (3), X is under oath when she is making the statements. It has not been confirmed whether X is aware of the meaning of being under oath, however, this is assumed in this analysis. Therefore, X satisfies rule (3) of lying (as in figure 10).

As for the legal consequences, the higher court acquitted X. They did not have sufficient evidence that X actually spoke to more than just the one potential financier. Dutch perjury statutes require legitimate evidence against the made statements. Therefore, the previous court order was overruled. This is in contrast to the analysis made based on the theories of lying. There are reasons to believe X did not make an honest mistake and that her correcting her first statement (S1) into S6 was not truthful. It is expected that X benefits from having talked to solely one financier and that she intended to deceive her audience in believing this fact. Based on the theories of lying, it was concluded that it is highly likely that

X did in fact tell a lie. This is in contrast to the acquittal that was a result of the perjury statutes. Thus, in this case, the conviction did not correspond to the theories of lying.

6. Results

The four court cases that were analysed have shown different applications of the law of perjury. All cases have also been evaluated on their resemblance with the theories of lying. Judges and jurors appear to have an adequate feeling for language; however, some nuances were discussed to be able to conclude whether perjury could be characterized by the theories of lying. The first three cases analysed in this research seem to show a one-to-one correspondence between the statutes of perjury in Dutch law and the theories of lying.

Case 1 clearly shows the resemblance between telling a lie and being convicted for committing perjury. There was sufficient evidence to prove X told a lie, especially because X specifically stated she asserted false statements. These statements also served as enough evidence to convict X with perjury. From the linguistic analysis, it was concluded X's statements in this case adhere to all the requirements of the definition of lying (as in figure 10).

In case 2, there is a possibility that the police officer actively believed his statements were not true and wanted to deceive the audience to think they were. His possible agenda could indicate plausible reasons why the police officer might have lied. However, the counter evidence the defence attorney provided, as well as the semantic ambiguity that possibly happened by mistake, could account for concluding the police officer did not tell a lie. This research leans more towards the second argumentation, concluding that also in this case the legal outcome corresponds to the theories of lying. To include Slobogin's (1996) research on police cases, this second argumentation might be considered favourable to the court as the police officer is an authoritative person. Although this could be problematic to the legal system as a whole, this particular analysis did not provide enough data to be able to critically discuss that topic.

As for case 3, there have been two examinations of the same perjury charge, which both had the same outcome. The analysis showed there is adequate evidence to believe X satisfied all rules of the definition of lying (figure 10). All the claims made by the defendant were dismissed by the higher court. Similarly, to the previous two cases, also the conviction in this case corresponds with the conclusion that was made based on the theories of lying, i.e. X lied.

Lastly, case 4 was the only case that showed inconsistencies in outcome between the statutes of perjury and the theories of lying. The reason the higher court had to acquit X in this case was the lack of adequate evidence against X's statements. In contrast, the linguistic analysis provided multiple reasons why the statement could be interpreted as false. Following that argument, X's statements satisfied all the requirements of the definition of lying (as in figure 10). Besides, based on various inconsistencies that occurred in X's

answers, in American law X might have been convicted based on the fact she presented enough reasonable doubt to not have spoken the whole truth (18 U.S. Code §1623(c); 18 U.S. Code §1623(e)). In Dutch law no such clauses exist, and thus, the court had no other choice than to acquit X. This acquittal did not correspond to the conclusion made based on the theories of lying.

Particularly this case, but also the previous cases, have shown that to be convicted for perjury it appears to not (only) be the discussion whether X lied or not, but rather the discussion if there is adequate evidence that shows X stated something that is contrasting to that evidence. As a solution, similar to what Solan & Tiersma (2005) concluded, a linguistic review of a court case could provide the expert analysis needed to lead to the correct legal outcome. A linguistic analysis gives a critical and detailed examination of the dubious statements, which provides insights in someone's intentions, as well as the weaknesses in someone's statement. Such an expert report could give additional confidence to a judge or juror to make the right decision that is closest to the actual truth. It could also give lawyers the opportunity to ask those questions to clarify dubious statements, or they can use it to emphasize inconsistencies in a witness' testimony.

7. Conclusion and Discussion

This research evaluated if the statutes of perjury in Dutch law show similar discrepancies as perjury seems to in the American legal system. The central question in this research aimed to answer in what ways the Dutch law of perjury can be characterized by the pragmatic approach to lying. The largest difference between the theories of lying and the statutes of perjury found in the analysis of this research is that in order to charge anyone with perjury, there has to be clear evidence that what-is-said is in contrast with the actual state of affairs.

This research provided a theoretical background on several essential theories that lead towards a working definition of lying. The maxims of Grice, Searle's speech acts, and the implicatures that describe what is implicated have been discussed. To finalize the second chapter, a working definition of lying has been provided. This definition is based on various definitions described and analysed by linguists specialised in the field of lying. In the third chapter, this research provided the statutes of Dutch and American perjury law, as well as critically comparing the two. This chapter is finalized by a theoretical comparison of the statutes of perjury versus the working definition of lying, this comparison is supported by previously done research on the topic. In the analysis of this research, as described in the methodology, four court cases were analysed to compare different perjury outcomes to the theories of lying in practice. The results clarify that if there is enough adequate evidence to support or discard the dubious statements, the statutes of perjury and the theories of lying correspond. If this is not the case, the theories of lying do not characterize the statutes of perjury, as they are then different in conclusion.

Thus, lying and perjury are neither perfectly effective, nor ineffective in comparison. They do not perfectly align, but they can also not be distinguished to a massive extent. Agreeing with Douglis (2017), the law of perjury should prevent anyone from speaking untruthfully in a courtroom. The law is not meant to pick up on every detail of lying and convict the person doing so, however, every detail should be considered in order to be able to make a sufficient conclusion whether a person committed perjury or not.

Interestingly, in America convicting someone with perjury seems not to be just a question of speaking untruthfully. Previously done research concluded other factors can explain acquittal when clearly that person stated falsities. This analysis did not show the same inconsistencies, solely the last case seemed to be slightly questionable. This contrast might be explained by the differences in the legal system. The critical analysis that was executed to compare both legal systems, showed that in American law a person can be convicted with perjury based on enough reasonable doubt (18 U.S. section §1623 (e)) or when there seem to be enough inconsistencies (18 U.S. section §1623 (c)). These rules are expected to make it easier to convict a person with perjury. The analysis of case 4 shows a

similar statute might be beneficial to the law of perjury, however, if it is actually needed within the Dutch statutes of perjury remains unconfirmed. Further research that includes more data on cases like case 4 where a person was convicted in the first instance, but acquitted in the second, could provide a proper comparison. In addition, the practical analysis clearly showed that adequate evidence against a statement is needed in order to convict someone with perjury. Further research on this matter could show if the Dutch law of perjury, especially because of the necessity of having actual material counter evidence, is insufficient in convicting the guilty.

This research has not been carried out without its limitations. Firstly, the data this research had access to was limited, due to procedures regarding anonymity. Therefore, solely the evidence the charge of perjury was based upon is publicly accessible. Despite trying to get more information from various Dutch courtrooms, the provided data was all this research had available.

Secondly, the cases analysed do not have similar topics, nor is the conviction made by the same court or judge. To provide an adequate conclusion, much more data based on a particular type of legal outcome, similar topics, and evaluated by the same judge, should be examined. In this research, the found results might have occurred due to these differences as opposed to being explained by a difference in perjury or the theories of lying. However, the limited occurrence of perjury cases did not make a sufficient methodology possible, a longitudinal study could be a solution to this limitation.

A last limitation that has to be noted, namely that considerations during a ruling in first instance might be different from that in an appeal. Although this research compared four cases which were different in outcome, analysing either solely first instances or solely appeals could result in different conclusions.

In contrast to the limitations, this research was in fact the first to provide a comparison between the theories of lying and the Dutch law of perjury. This research noted various differences between the Dutch and American statutes of perjury, as well as providing a theoretical comparison between the statutes and the definition of lying. The main goal of this research was to provide a practical linguistic analysis that could provide the ways in which the theories of lying characterize the Dutch law of perjury. The analysis has successfully been able to describe where the theories of lying, most likely, appear to be different from the statutes of perjury. This research therefore highly promotes the use of linguistic reports in perjury cases, as the analysis of the nuances of language is necessary to judge upon the correct legal outcome.

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- 18 U.S. Code § 1623 - False declarations before a grand jury or court. U.S. Code. USLaw.

9. Appendix

A.

IX. Meineed Artikel 207

1. Hij die in de gevallen waarin een wettelijk voorschrift een verklaring onder ede vordert of daaraan rechtsgevolgen verbindt, mondeling of schriftelijk, persoonlijk of door een bijzonder daartoe gemachtigde, opzettelijk een valse verklaring onder ede aflegt, wordt gestraft met gevangenisstraf van ten hoogste zes jaren of geldboete van de vierde categorie.
2. Indien de valse verklaring is afgelegd in een strafzaak ten nadele van de beklaagde of verdachte, wordt de schuldige gestraft met gevangenisstraf van ten hoogste negen jaren of geldboete van de vijfde categorie.
3. Met de eed staat gelijk de belofte of bevestiging die krachtens de wet voor de eed in de plaats treedt.
4. Ontzetting van de in artikel 28, eerste lid, onder 1e, 2e en 4e, vermelde rechten kan worden uitgesproken.

IX. Meineed Artikel 207a

1. Hij die in de gevallen waarin door of krachtens een verdrag waarbij het Koninkrijk partij is, een verklaring onder ede of onder een daarvoor in de plaats tredende bevestiging of belofte wordt gevorderd, voor een internationaal gerecht mondeling of schriftelijk, persoonlijk of door een bijzonder daartoe gemachtigde, opzettelijk een valse verklaring in die vorm aflegt, wordt gestraft met gevangenisstraf van ten hoogste zes jaren of geldboete van de vierde categorie.
2. De leden 2 en 4 van artikel 207 zijn van toepassing

IX. Meineed Artikel 207b

1. Hij die in de gevallen waarin door of krachtens een verdrag een verklaring onder ede of onder een daarvoor in de plaats tredende bevestiging of belofte wordt gevorderd, in Nederland, per videoconferentie, voor een rechterlijke autoriteit van een andere staat mondeling, persoonlijk, opzettelijk een valse verklaring aflegt, wordt gestraft met gevangenisstraf van ten hoogste zes jaren of geldboete van de vierde categorie.
2. Artikel 207, tweede en vierde lid, is van toepassing
3. Geen vervolging vindt plaats dan op klacht van de rechterlijke autoriteit voor wie de valse verklaring werd afgelegd. Artikel 66 blijft met betrekking tot de in dit lid bedoelde klacht buiten toepassing.

B. 18 U.S. Code § 1623 (a-e)

- a. Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.
- b. This section is applicable whether the conduct occurred within or without the United States.
- c. An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—
 - (1) each declaration was material to the point in question, and
 - (2) each declaration was made within the period of the statute of limitations for the offense charged under this section.
- d. In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.
- e. Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.
- f. Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.