

## DISCOURSE AND RAPE: AN ANALYSIS OF A TRIAL PROCEEDING

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### Abstract

This essay offers a linguistic perspective to understanding secondary victimization in a rape trial by adopting Gricean principles, speech act theory, and Hymes' theory of context as key concepts of pragmatics to rape discourse and attempt to locate power and gender relations in socially-situated courtroom interactions. The first section discusses rape myths as forms of secondary victimization of women rape complainants in the courtroom while the second section includes foreign studies that deal with issues of reproducing and representing rape through language use. The last section presents an analysis of extracts of courtroom interaction to serve as an illustration of the viability of analyzing discourse in understanding secondary victimization of women rape complainants.

### INTRODUCTION

ACCORDING TO EHRlich (2001, 1), "THE 'TURN TO LANGUAGE' that has characterized much recent scholarship in the social sciences and humanities identifies 'discourse' as an important site in the construction of social relations." In this view, language becomes central to the construction and reproduction of gendered selves, social structures, and relations; that is, it is through language that gender is enacted or constituted. In the Philippines, previous studies (Feliciano et al. 2002; 2005 and Women Legal Bureau, Inc. 1995; 2001; 2005) on gender sensitivity in the courtroom did not attend to the linguistic details of verbal interaction in order to show the biases that result in secondary victimization of women during rape trial proceedings. In this article, I offer a linguistic perspective to

understanding secondary victimization in a rape trial, adopt Gricean principles, speech act theory, and Hymes' theory of context as key concepts of pragmatics to rape discourse, and attempt to locate power and gender relations in socially-situated courtroom interactions. The first section tackles rape myths as forms of secondary victimization of women rape complainants in the courtroom while the second section includes foreign studies that deal with issues of reproducing and representing rape through language use. In the last section, an analysis of extracts of courtroom interaction serves as an illustration to the viability of analyzing discourse in understanding secondary victimization of women rape complainants. These extracts come from one of the seventy-four (74) transcripts of the seven (7) rape cases used as data source of an on-going research.

#### RAPE MYTHS: FORMS OF SECONDARY VICTIMIZATION OF RAPE VICTIMS

Myths are certain ideas and notions that get passed on as truths and become embedded in tradition and customs (WLB Inc. 2005b, 27). They develop into doctrines that govern, rule, and establish social roles and practices. According to Ward (1995, 98), Brownmiller (1975) is one of the first to identify male myths of rape which distort and govern female sexuality. Brownmiller works with survivors of rape and surveys the representation of sexual violence in historical writings, popular press, and in legal circles. She identifies four fundamental misconceptions: a) all women want to be raped; b) no woman can be raped against her will; c) she was asking for it; and d) if you are going to be raped you might as well enjoy it. Similar myths are also identified by other scholars in their own research. Aside from those mentioned by Brownmiller (1975), Schwendinger (1974 in Ward 1995, 24) identify other myths such as a) rape is impossible; b) men rape because of uncontrollable passions; c) an imbalance in the sex ratio causes rape; and d) legalizing prostitution will reduce rape. Burt and Estep (1977 in Ward 1995, 25) also identifies other myths such as a) victims are lying; b) victims are malicious; c) sex was consensual; and, d) rape is not damaging. Hilberman (1977 in Ward 1995, 25) also identifies the same set of

rape myths in the medical settings while Wood (1973 in Ward 1995, 25) includes other rape myths in the criminal justice system such as “women make false accusations of rape because they have consented to sex and have changed their minds, because they are mentally sick, pregnant, malicious or fantasizing.” According to Ward (1995, 33), one of the most powerful myths in the legal system is that women fabricate rape accusations. Thus, the widely used tactic of the defense is to undermine the credibility of the complainant.

In the Philippines, similar myths are also very much observable. A survey of 478 Supreme Court decisions on rape from 1961 to 1992 was conducted by WLB Inc. (2005, 209-19). These are the following: (a) rape is easily fabricated; (b) Filipina of decent repute; (c) assault on chastity, virtue or honor; (d) tenacious resistance; (e) normal conduct; (f) crime of lust or passion; and, (g) relationship theory.

The Supreme Court of the Philippines generalizes that groundless charges of rape have frequently been claimed by women actuated by sinister, ulterior or undisclosed motive (WLB Inc. 2005, 209). This belief, however, has no empirical basis. In the U.S., there are actually 60 percent rape cases which are unreported, 15 of 16 rapists never spend a day in jail ([www.rainn.org/statistics](http://www.rainn.org/statistics)). In the Philippines, a total of 3,159 rape cases were reported to the authorities countrywide in 2009 (Taliño-Mendoza, 2010 in [www.preda.org/main/archives/](http://www.preda.org/main/archives/) 2010). Taliño-Mendoza reports that the actual number of rape cases is of course much higher than those reported, possibly as many as 6,000, since many women and girls still opt not to complain to the authorities. It is improbable that reported cases are fabricated since the stigma and prejudices toward the victims are even harder to bear than the stigma credited to the accused.

According to the said survey of Supreme Court decisions, rape is also considered as an assault to chastity, virtue or honor. This notion reflects the presumption of chastity in women who are young, rural, conservative or uneducated (WLB Inc. 2005, 209). It shows that judges’ sensitivity in the courtroom is only for this type of Filipina, and only those of decent reputation can only be given justice. Thus, those who are not virgins, who engage in sex for a

profession, and those who are married are most likely not to get justice in the legal system. The study (WLB Inc. 2005) revealed that ninety five percent (95%) of the 490 women won their cases because they were virgins prior the incident of rape. This scenario also brings back the notion that women who are virgins are more prized than those who are not virgins (Brownmiller 1975, 19).

Moreover, the question on consent has always been an issue to complainant credibility. In the more stringent laws, there are requirements that victims prove they risk injury by resisting an assault. In anything less than sustained physical resistance, intercourse is consensual. Establishment of consent in the courtroom is often based on medical evidence that shows there are physical bodily trauma. Feminists argue that rape litigations are restricted, and rather than protect women, they reinforce traditional sexist attitudes. In the same way, the behavior of a complainant before, during, and after a rape incident most of the time serves as basis for the conviction or acquittal of an accused (WLB Inc. 2005, 215). For example, the “normal conduct” of a woman is to behave properly in public so that she is not victimized. If she is raped, she should have utmost resistance, and hematoma on parts of her body proves such resistance. She is likewise expected to report the incident of rape as soon as she can, and she must show her spontaneity in her manner of reporting to the police and in her testifying in court.

Furthermore, the belief that rape is a crime of lust or passion makes it convenient on the part of the accused to place the blame on a victim. His claim that he is driven by male sexual drive rather than conscience is perceived to be acceptable (Ehrlich 2001, 57). This is to say that men rape because of their libido. Since there is a view that rape is a product of lust, and men are controlled by this wanting to fulfil this desire, a victim is to be blamed if she has caused arousal of this desire through her behavior and physical attractiveness.

Another common defense in rape cases especially in date or acquaintance rape is the notion that there is an intimate relationship between a complainant and an accused. In this relationship theory, a claim of having an intimate relationship with a complainant is often an excuse of the accused. In the case of *People v. Salazar* (WLB Inc. 2001 in WLB Inc. 2005a, 61), the Court ruled out the possibility of

rape when the accused (a teacher) claimed that the complainant (his student) were lovers since there were love letters, which were used as evidence in court, from his student with contents that transcend the bounds of decency of a teacher-student relationship. The sexual intercourse was said to have been done not by force or intimidation but with consent.

These myths about the rape victim are persistent in courts of law (WLB Inc. 2005, 62). Many of these have been the bases for legal decisions from the lower courts to the Supreme Court. These are not only prevalent in court decisions; primarily, they are revealed as ideological frames during trial proceedings where judges, lawyers, and witnesses interact. It is not only the accused who stands to defend himself in rape case trials but also the complainant.

Since previous studies on rape myths in the Philippine courtroom have never focused on the linguistic details of interaction, this essay highlights the importance of discourse in the analysis of TSNs. Most analysts see discourse as some stretch of connected sentences or utterances. But for those who consider it from a social and critical theory perspective, discourse is language which communicates a meaning in a context that constitutes interaction between people in real social situations (Cameron 1998, 112-14). In analyzing rape trial discourse, this essay also aims to effect social transformation by mobilizing theories of pragmatics to create critical awareness among judicial authorities who may act responsibly to certain issues in trial proceedings. Likewise, women who at present take part in rape case trials as complainants may be informed of rape myths in trial proceedings since the analysis focuses on a specific experience that depicts an adversarial conduct in the courtroom.

#### PROBING SECONDARY VICTIMIZATION THROUGH DISCOURSE

Secondary victimization in the courtroom (i.e., women rape complainants are said to be victimized twice – first by the physical-sexual abuse and then by the blame that accompanies it) has been tackled by several language scholars. Drew (1992) emphasizes the role of talk-in-interaction in the strategies of the defense lawyer in presenting his version of events vis-à-vis the complainant's version.

In Drew's study, the complainant's version is contested by the defense lawyer's, and the latter proffers his own version which damages the complainant's claim of truth. Matoesian (1993, 1995), on the other hand, strongly argues that rape as a domination is reproduced for the second time in the courtroom. This domination happens when defense lawyers cross examine complainants using linguistic strategies that are embedded with patriarchal values. According to Matoesian, the male standard of interpreting the crime of rape is "the standard" observed in the courtroom, and because of this, victim blaming is rampant during the cross examination of defense lawyers. Likewise, Ehrlich (2001) demonstrates the many facets of secondary victimization in her analyses by providing specific instances of discourse in constructing and constituting social realities in rape case trials. Gendered ideological frames such as "utmost physical resistance," "asymmetry in interaction," and victim blaming are brought about by the strategic use of grammar of non-agency, questions, and silence by the accused and by the defense lawyer, and by the use of misconstrued communicative signals by the complainants prior to and during the rape incident. The victims of these ideological frames are always the complainants, and the accused is advantaged and goes free of rape charges.

These studies (Drew 1992, Matoesian 1993, Ehrlich 2001) draw from varied approaches to discourse such as Conversation Analysis (CA) and Critical Discourse Analysis (CDA) to present substantial analyses of extracts from rape trials. Drew focuses on general properties of verbal interaction in courtroom settings while Matoesian also draws on the methods of CA combined with the theory of structuration and power. Ehrlich on the other hand draws upon concepts from pragmatics, speech act theory, and feminist legal theory using CDA. Like Ehrlich (2001), the analysis presented here uses theories of pragmatics such as Gricean implicatures and Austin's and Searle's speech act theory.

According to Cruse (2000 in Cummings 2005, 2), "pragmatics is concerned with aspects of information conveyed through language which are based on the meanings conventionally encoded in the linguistic forms used, taken in conjunction with the context in which the forms are used." Context and language

use are foregrounded because only through them can the linguistic forms and meanings be realized. The analysis in this essay aims to contextualize linguistic features and their functions in order to tackle speaker meanings and intentions, and hearer's inferences. In order to address this aim, Grice's (1975) conversational implicatures, Austin's (1962) and Searle's (1969, 1975) Speech Act Theory, and Hymes' (1962, 1984) theory of context serve to guide the analysis.

According to Grice (1975, 44), an implicature is a term used to account for what a speaker can imply, mean, or suggest that is distinct from what the speaker literally says. It is a part of speaker meaning that constitutes an aspect of what is meant in a speaker's utterance without being part of what is said (in Horn 2004, 3). What a speaker intends to communicate is far richer than what s/he directly expresses. That is why, a speaker implicitly conveys her/his message, uses pragmatic principles, and counts on a hearer to use the same principles in order to interpret the utterance. In the Gricean model, the bridge from what is said to what is interpreted is built through implicature.

Implicatures which are conversational are built on the premise that speech exchanges are connected to each other. These speech exchanges are characteristically cooperative efforts; and each participant recognizes a common purpose or sets of purposes in a mutually accepted direction. The purpose or direction may be fixed from the start or may evolve in due course (Grice 1975, 45). Speaker-hearer meaning, according to Grice (1975, 45), is governed by the Cooperative Principle (CP) which states: "Make your conversation contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange." Specifically, this general principle is categorized into four maxims and their submaxims: (1) Quality: Try to make your contribution one that is true, (1a) Do not say what you believe to be false, (1b) Do not say that for which you lack evidence; (2) Quantity, (2a) Make your contribution as informative as is required, (2b) Do not make your contribution more informative than is required; (3) Relation: Be relevant; (4) Manner: Be perspicuous, (4a) Avoid obscurity of expression, (4b) Avoid ambiguity, (4c) Be brief: Avoid unnecessary prolixity, (4d) Be orderly.

A participant in a conversation may fail to fulfil a maxim in various ways (Grice 1975, 49). S/He may violate a maxim that s/he may be liable to mislead, s/he or opt out from the operation both of the maxim and the CP. S/He may be faced by a clash (fulfil one maxim and violate the other), or s/he may flout or blatantly fail to fulfil a maxim. Flouting a maxim means the maxim is being exploited. The CP and its maxims are not designed for ethnographic observations; instead, they serve as default settings or presumptions (Bach and Harnish 1979 in Horn 2004, 8). A speaker, who observes CP and its maxims as default and also expects her/his hearer to observe them, can expect the hearer to recognize the apparent violation of the maxims as a source of contextual inference. The hearer is thus expected to perform the appropriate contextual adjustment. However, it is not just the presumption of cooperation that gives rise to implicatures or inferences, for the inferences drawn depend on assumed knowledge within the local context or within the culture or world knowledge. Thus, the cooperative principle must be supplemented by contextual information and background knowledge in the process of calculating conversational implicatures.

According to Sadock (2004, 58), Grice's articles on implicatures have a profound influence on speech act theory. Grice posited that ordinary communication happens not directly by means of convention, but in the speaker's manifesting of certain intentions and having her/his hearer recognize these intentions. Grice's framework also emphasizes how various maxims of cooperative behaviour are exploited by speakers to make sure that the speaker's intentions in uttering words under particular circumstances are recognized. The speaker's intention in making the utterance and recognition by the hearer of that intention plays an important role in speech act theory.

The basic notion provided by speech act theory, developed by John Austin (1962,) in "How to Do Things with Words" concerns the performative nature of linguistic expressions. Austin posits that certain types of verbs (performative verbs) have the capacity to perform actions when uttered under appropriate circumstances. For example, "I now pronounce you man and wife," seems designed to "do" something – "to wed," rather than merely "to say" something.



Such a sentence is called performative in contrast to constative which is used mainly for saying something rather than doing something. Austin (1962) labels the act of doing while speaking as speech acts. Austin (1962) posits three types of acts that speakers simultaneously perform while speaking: (1) locutionary act – act of speaking which involves construction of sequences of sounds that can be interpreted according to grammatical conventions; (2) illocutionary act (Austin's central innovation) – act done in speaking by means of the conventional force of the locutionary act; and, (3) perlocutionary act – act produced by the uttering of a particular locution, the consequences or effects of such locution regardless of its conventional force. Within speech act, the act performed by an utterance is referred to as its illocutionary force, and the effect this act has on the hearer is referred to as its perlocutionary effect. Austin (1962) likewise presents five basic types of illocutionary acts, which have been reclassified by Searle (1976), and Searle and Vanderveken (1985): (1) assertives (tell people how things are): assert, claim, affirm, state, deny, disclaim, etc.; (2) directives (try to get people to do things): direct, request, ask, urge, tell, require, demand, command, etc.; (3) expressives (express feelings and attitudes): apologize, think, condole, congratulate, etc.; (4) declaratives (bring about changes through utterances): declare, resign, adjourn, appoint, nominate, etc.; and (5) commissives (commit to some future actions): commit, promise threaten, vow, pledge, swear, accept, consent, etc.

To account for how illocutionary acts do their work, Austin (1962, 14-5) introduces a number of criteria which he calls felicity conditions. For a speech act to be “happily” or successfully performed, these are the conditions that must be observed: (1) conventionality of procedure; (2) appropriate number and types of participants and circumstances; (3) complete execution of procedure; (4) complete participation; (5) sincerity conditions; and, (6) consequent behaviour. Searle (1969) further distinguishes between the effects achieved using Illocutionary Force Indicating Device (IFID; literal illocutionary force) and the effects achieved indirectly as products of the speech act. A classic example is in the utterance, “Could you pass the salt?” which appears to be a question but when uttered in a dining table, a common achieved effect is to make the addressee be

obliged to pass the salt. These types of acts are labelled as Indirect Speech Acts. They have the grammatical shape of questions that may be classified as requests for information, but they may be assertions. Without having the grammatical forms of imperatives or commands, they have a force of a directive.

According to Ehrlich (2001, 140), there is a possibility of a disjunction between the intentional illocutionary force of an utterance and its perlocutionary effects. In her example, a woman feels threatened by the sexual banter of a male co-worker could be construed as an unintended effect of the illocutionary act. While the male co-worker may be intending to perform the act of “teasing” in making a sexually explicit comment, the woman may draw inferences or conversational implicatures based on her cultural knowledge about women’s vulnerability to sexual harassment. Ehrlich’s example shows a mismatch between the speaker’s intention and the hearer’s interpretation. The illocutionary force of “teasing” may be very clear, but the perlocutionary effects may be varied and unpredictable. The woman may give in to the notion of “teasing,” or in contrast, she may consider the illocutionary force as “insulting” or “demeaning.” Ehrlich further comments that since the tradition of speech act theory has focused on intentional illocutions of speakers, the contribution of perlocutionary effects to determine what an utterance means has been ignored.

Speaker intentions, especially those of the lawyers’ and the judges’, may reveal attempts to impose gendered ideological frames or rape myths on women complainants, and these discursive practices (everyday-reality expressions/actions and dynamics of the interaction) may lead to the secondary victimization of these complainants during the rape trial proceedings. On the other hand, intended or unintended perlocutionary effects on the part of the witnesses (including the complainant and the accused) may be unlimited in kind and number and may not be very predictable (Levinson 1983, 192). The witnesses may adhere to the speaker’s intentions, or mitigate, contest, challenge and resist the speaker’s proffered illocutionary act. Thus, a witness may either refuse to be revictimized in the courtroom or s/he may reinforce gendered ideological frames prescribed by the speakers in particular speech

events. Thus, the significant role of context in these discursive practices must be emphasized.

The study of speech acts and implicatures does not only emphasize the role of social action in language use but also the contextual conditions of the appropriateness of utterances; that is why, the notion of context receives focus and analysis in its own right (van Dijk 2008, 6). According to Van Dijk (2008, 18), the fundamental function of a theory of context is to make sure that participants are able to produce text or talk appropriate to the communicative situation and understand the appropriateness of the text or talk of others. Likewise, a theory of context may explain how participants adapt their discursive interaction to the cognitive and sociocultural environments. It may also make explicit the felicity conditions of illocutionary acts and other dimensions of interaction. Contexts control the processes of discourse production and comprehension which are embedded in broader social conditions. Thus, a theory of context may provide a solid basis for various aspects and approaches in pragmatics.

Hymes (in Brown and Yule 1983, 37) views the role of context in the interpretation of speaker's meaning by limiting the range of possible interpretation and by supporting the intended interpretation. He specifies the features of context which may be relevant to the type of identification of speech event. A summary of these features is discussed in his rules of speaking (in Gumperz and Hymes 1986). Rules of speaking are the ways in which speakers associate particular modes of speaking, topics or message forms, with particular settings and activities. The components of speech can be grouped together mnemonically as SPEAKING: setting (time, place, physical circumstances), participants, ends (goals, outcomes), act sequences (means of expression, topic), key (tone, manner), instrumentalities (channels of speech), norms (specific behaviors and properties attached to speaking, belief system of a community), and genres (categories identified by formal characteristics). According to Hymes, a discourse analyst may choose from the contextual features those which are necessary to characterize a particular communicative event, and these features may be characterized in detail. According to Brown and Yule (1983, 40), the more the analyst knows about the

features of context, the more likely s/he is to be able to predict what is likely to be said.

#### ANALYSIS: RAPE TRIAL DISCOURSE

This analysis explores how phrasal self-repetitions and reformulation, embedded in a cross-examining defense lawyer's (DL's) questions, are used as discourse strategies to proffer a dominant rape myth which is "rape is easily fabricated." These repetitions and reformulation are strategically used by the cross-examining defense lawyer to emphasize his own version of an event, which is in contrast with the complainant's (NM's) version stated in her testimony during the direct examination. However, this kind of discourse strategy in question-answer sequences provides a site of resistance for the complainant. To illustrate these observations, the linguistic forms and the pragmatic functions of the phrasal self-repetitions and reformulation are described using Gricean theory of meaning (implicatures) and speech act theory in order to characterize events framed by both the lawyer and the complainant. This discourse strategy is analysed further using the features/aspects of context of situation, and evaluated in its socio-political context. The analysis attempts to substantiate the argument that through discursive practices of participants in the courtroom, a woman rape complainant experiences secondary victimization because she is said to have fabricated her testimony.

#### QUESTIONS AND QUESTIONING

Any discussion of questions and questioning needs to distinguish between questions as a linguistic form and the various social actions that are accomplished through this form (Koshik 2007). Questions are not only used to ask for new information. They are also used to initiate repair on someone else's prior talk, and they likewise perform a variety of social actions such as invitations, offers, complaints, and requests. They are utterances that may solicit confirmation and even action. According to Freed and Ehrlich (2010), questions are delivered in such a way as to create a slot for

the recipient to produce a responsive turn which may come in verbal replies or actions.

To some extent, the grammatical forms of questions put constraints on the forms of answers that are relevant and expectable. However, participants can choose to design responses to questions in ways that do not conform to the grammatical form of the question. For example, when participants disagree with a presupposition (background information shared by the participants in a conversation and their implicit understanding) embedded in a yes/no question, and providing either a yes or no answer would imply agreement with the presupposition, participants can choose to give a non-type-conforming answer that displays that the question is in some way problematic (Raymond 2010, 88). In the context of the rape trial proceedings, cross examining lawyers design their questions so as to commit cross-examined witnesses to descriptions of events compatible with those put forth by their own clients (Atkinson and Drew 1979 in Freed and Ehrlich 2010, 8). They deliver their questions that keep some aspects of the witness's version of events, while reformulating versions of other aspects of the events so that crucial features of their or their client's version of events are retained. In fact, by soliciting information from a witness, they transform versions of events to serve their own client's case (Drew and Heritage, 1992). A similar observation is prevalent in the extract that follows.

According to Gibbons (2003, 118), one of the aims of lawyers who repeat their own questions is to produce some inconsistency between replies to the same question which can be used to discredit a witness. Furthermore, repetition can also serve to put pressure on the witness and highlight the lawyer's disbelief to the answer, or a particular element in the testimony. However in Extract 1 below, repetition is not only used to emphasize elements of testimony which may promote inconsistency in a complainant's claim of truth, but it is also used to project an information of an earlier event to a later event of the alleged rape; that is, in the course of the cross examination, an aspect of information of an earlier event is retained in the defense lawyer's version of a different and ensuing event of rape. This phrasal self-repetition is strategically devised by the

lawyer through reformulating the repeated form, thereby projecting a recontextualized version of a later event.

*PHRASAL SELF-REPETITION IN QUESTIONS*

1 C4-TSN4:8-10, 13 (Case Number 4-Transcript of Stenographic Notes Number 4: Pages 8-10, 13)

DL: You testified that at about midnight of April 23, 1999 while you were going home from the house of your friend, the accused suddenly appeared in front of you, do you remember having testified that?

NM: He suddenly emerged at the foot walk.

DL: You want to tell this Court that you were already traversing the footwalk going to your house when the accused suddenly appeared in front of you?

NM: Yes, sir, that is the way in going home.

DL: How far is your house from that scene in the footwalk when the accused suddenly appeared in front of you? 15 meters?

NM: Less than that.

DL: From that place where the accused suddenly appeared in front of you, can we see your house 15 meters away?

NM: Less than that.

DL: More or less 10 meters?

NM: Maybe.

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DL: When the accused suddenly appeared in front of you, what did you do?

NM: He held me in my arm and invited me to go.

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DL: So you were totally naked when you regained consciousness?

NM: Yes, sir, I was naked.

DL: And the accused was there in front of you?

NM: He was in front of me and lying on top of me.

Extract 1 illustrates the phrasal self-repetition of “the accused suddenly appeared in front of you” by the cross-examining defense lawyer. It is a phrasal repetition because actual bits of texts are remembered, and then retrieved to be reshaped to new contexts. This phrase occurred six (6) times in this selected chunk of question-answer between the defense lawyer (DL) and the rape complainant (NM) during the cross examination. The primary source of the defense lawyer’s questions comes from NM’s testimony during the direct examination with the prosecution lawyer (PL).

2 C4-TSN3: 7

PL: Please inform the Court what was that unusual incident about?

NM: I was walking towards our home when he suddenly came in front of me.

Phrasal repetitions “the accused suddenly appeared in front of you” in Extract 1 are used as DL’s discourse strategy to recontextualize information “he suddenly came in front of me” first told by NM in the direct examination as shown in Extract 2. This glossing or developing the gist of a witness’s earlier statements is called selective reformulation (Garfinkel and Sacks 1970). DL, however, reformulates and recycles “the accused suddenly appeared in front of you” several times in Extract 1, and these repetitions refer to two varying events: (1) the accused (RM) appearing in front of the witness at the foot walk when the latter was going home; and, (2) RM’s appearing in front of the witness when she regained consciousness. Obviously, these two events transpire in different manners and at different periods of time. However, an improbable witness may confuse the two events especially with the lawyer’s repetitions of the phrase and projection of information just like in DL’s questioning. In fact, DL attempts to mislead NM by recycling the same phrase, so she or the judge may think that RM just stood in front of her when she regained consciousness (i.e., while in actuality RM was doing a “pumping” motion, C4-TSN4: 15), and this attempt may eventually lead to the claim that RM did not rape her. With the use of the repeated phrases, DL wants NM to accept

his version of an event (event no. 2). However, NM is alert and on guard with this kind of trap during cross examination. She contests the lawyer's version by attesting that the accused was not only "in front of her" but on "top of her" when she regained consciousness. In fact, she is being consistent during the cross examination as she wants to stand by her testimony during the direct examination, as shown in the extract below.

3 C4-TSN3: 10 (direct examination of the complainant)

PL: When you regained consciousness was RM still there?

NM: Yes, Ma'am, in front of me.

PL: What was he doing in front of you?

NM: He was on top of me.

PL: You mean to say you were lying down?

NM: Yes, Ma'am.

Extract 4 below deserves further pragmatic description using the frameworks of implicatures and speech acts. It reveals an instance where NM seems to resist DL's version of events. NM's resistance is brought about by DL's ability to reformulate his question and proffer his own version of an event.

4 C4-TSN4: 13

DL: So you were totally naked when you regained consciousness?

NM: Yes, sir, I was naked.

DL: And the accused was there in front of you?

NM: He was in front of me and lying on top of me.

DL's meaning in this utterance - "And the accused was there in front of you?" signifies that the accused, RM, was just in front of her (i.e., in a standing position instead of a lying position) when NM regained consciousness, and not on top of her - violating her. The illocutionary act of "offering a version of event" depicts DL's intention to provide an alternative way of understanding that RM did not do anything to NM, or at least if he did have sex with her, it



was with consent. DL's phrasal self-repetition, "the accused was there in front of you," serves as illocutionary indicating device (IFID). DL's illocutionary effect or the intended effect of DL's illocutionary act to NM should have been acceptance of DL's version of event. However illustrated in Extract 4, the illocutionary and perlocutionary effects are not compatible. The perlocutionary effect of DL's illocutionary act to NM is incongruence to what DL has intended. Instead, of accepting DL's version, she flouts the maxim of quantity which states "Do not make your contribution more informative than is required." NM's utterance, "He was in front of me and lying on top of me," provides information that is more than required. Possibly, DL expects NM to answer his query with a "yes" or "no", but NM provides additional information which is more than what is required by DL's query. The reason here is obvious; NM does not admit to DL's version of an event. By providing the necessary information based on her earlier testimony, she gets involved in an interactional resistance during cross examination. DL's discourse strategy—the use of phrasal self-repetition and reformulation to proffer a contrasting version of an event—is unsuccessful. DL's question as a speech act, in this sense, is not intended to ask or elicit information; instead, it serves as an imperative that directs NM to accept his version of an event.

According to Koshik (2007), there are two different types of responses to the actions that questions initiate. Preferred responses are those that forward the action initiated by the question and promote social solidarity. On the other hand, dispreferred responses are those that block the action initiated by the question. In a segment of Extract 1, the cross-examining defense lawyer is met with dispreferred response given by the witness, "He was in front of me and lying on top of me," because it is somehow opposing the contrasting version of an event proffered by the lawyer. Instead of simply agreeing to the lawyer's version, she added her own version of the event. NM's repetition of "He was on top of me," reinforces her testimony and promotes consistency in her claim of truth. This confirms the notion that discursive control is not always maintained by the questioner—DL, but it can be seized and used to the advantage of the answerer—NM.

## RAPE AND POWER

What is worth discussing in this analysis is the notion that rape is an exercise of power (Conley and O'Barr 1998, 15) and how power is manifested through linguistic practice in the courtroom. Aside from using actual force to take sexual advantage of victims at the physical level, rape involves power in the courtroom in other ways that are less obvious but just as important since it includes broader abuses of power that society promotes (MacKinnon 1989, 176). For one, the victim is forced to relive the rape in her testimony. And most of the time, the victim is being blamed for the crime. During cross examinations, trivial inconsistencies suggest faulty memory. The victim may also be attacked of her post-rape behaviour that failed to conform to male notions of logical response to the crime. Worst of all, during the cross examination she is asked of her prior sexual experiences with people portraying her as a loose woman.

In this analysis, the exercise of power in a trial proceeding of a rape case is revealed through the strategic use of phrasal self-repetitions and reformulation embedded in questions by a cross examining defense lawyer. This kind of discourse strategy is often done by cross examining lawyers in order to advance their argument that the complainant was not a credible witness, and that she was fabricating her story of rape. According to WLB, Inc. (2005, 209), the Supreme Court even generalizes that baseless charges of rape have frequently been made by women actuated by sinister, ulterior or undisclosed motive. In this sense, rape and sexual violence against women are reproduced and legitimated by the judicial culture which justifies and excuses male violence. Furthermore, myths such as "rape is easily fabricated" are deeply engraved and widely supported by males and females in Philippine society; that is, more Filipinos believe that a large percentage of women who report rape are lying because they are angry, and they want to get back at the man they accuse. Women lie or exaggerate about rape incidents so they can extort money from a well-to-do man and when most lucky, marriage proposal may settle the case. These generalizations, however, have no empirical basis. In fact, there are rape cases which are unreported.

Mendoza (2010 in [www.preda.org/main/archives/2010](http://www.preda.org/main/archives/2010)) said that the actual number of rape cases is much higher than those reported, since many women and girls still decide not to complain to the authorities. For those who have successfully filed a complaint, most of the cases for example in RTCs in Iloilo are archived because the accused are at-large, or the prosecution and defense settled outside the court because the complainants cannot afford to further the case. Complainants who may be in school may stop attending their classes until the trials have ended. Those who are married women may beget marred reputation. Thus, it is unlikely that reported cases are fabricated since the trial proceedings are arduous, and the stigma and prejudices toward the women victims are harder to bear than the stigma credited to the accused.

However in the end, the court found the complainant NM and her testimony incredible. She was noted to have offered varied versions of events, which may not be solely based on Extract 1 alone but in other parts of the proceedings (which are beyond this analysis). The prosecution was said to have failed to prove the guilt of the accused, so he was acquitted of the crime of rape.

## CONCLUSION

Discourses have real effects; in this case, the intention of the lawyer to discredit the complainant's testimony is revealed. Based on the analysis of Extract 1, NM, the rape complainant experiences secondary victimization in court through strategic questioning - particularly, with DL's phrasal self-repetitions and reformulation that could have proven NM's lack of credibility as a witness. In a very particular way, this discourse strategy during cross examination is a method of domination and control. DL intends to offer his version of an event; and by doing this, he traps NM to accepting his version, so that she is portrayed to be a woman who fabricates her story of rape. Thus, analysis such as this affords readers awareness of the effects of discursive strategies and practices in the courtroom that may reinforce secondary victimization of the women rape complainants.

Notations:

. (points aligned vertically) – utterances are omitted

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