Rape Myths in Two Selected American Rape Trials: A Thematic-Linguistic Analysis of Strategy-Based Questions of Cross-Examinations (*)

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Abstract
There is emerging research, in the American rape trials, that addresses the embedding of rape myths during the cross-examination of rape complainants by opposing lawyer. Therefore, the current study aims to investigate whether the American cross-examination of rape complainant are embedded with rape myths. A total of 607 cross-examination questions were extracted and analyzed from two well-publicized American rape cases. The study utilized Zydervelt's et al. (2016) thematic analysis to explore the types of broad strategies and specific tactics opposing lawyers used when cross-examining rape complainants. After the identification of strategy-based questions, a follow up Discourse Analysis (DA) was performed to linguistically analyze the embedding of rape myths into cross-examination questions. Findings confirm that questions in the American cross-examinations were loaded with rape myths, and that opposing lawyers relied heavily on the use of strategy-based questions. Finally, based on the findings, the study provides future recommendations and further areas of research.

Keywords: American rape trials, rape complainant, cross-examination, rape myths, Discourse Analysis

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الملخص:

هناك بحث ناشئ، في المرافعات الأمريكية، يعالج ترسيخ أساطير الاغتصاب Rape Myths (مفاهيم مغلوطة عن الاغتصاب) أثناء استجواب المشتكيات من الاغتصاب من قبل محاميّ المتهم. لذلك، تهدف الدراسة الحالية إلى التحقق من وجود أساطير الاغتصاب في الأسئلة الموجهة لمشتكيات الاغتصاب من قبل محاميّ الخصم. تم استخراج ٦٠٧ من أسئلة الاستجواب من قبل محاميّ الخصم وتحليلها من قضيتي اغتصاب أمريكيتين تم تداولهما إعلاميًا بشكلٍ جيد. استخدمت الدراسة تحليلا موضوعيًّا (Zydervelt et al., 2016) لاستكشاف أنواع الاستراتيجيات الواسعة والتكتيكات المحددة التي يستخدمها المحامون عند استجواب المشتكيات من الاغتصاب. تتبع ذلك إجراء تحليل خطاب (Discourse Analysis) لغوي للكشف عن تضمين أساطير الاغتصاب في أسئلة الاستجواب من قبل محامين الخصم. تؤكد النتائج أن الأسئلة في الاستجوابات الأمريكية كانت مليئة بأساطير الاغتصاب، وأن المحامين اعتمدوا بشكل كبير على استخدام الأسئلة القائمة على الاستراتيجيات. أخيرًا، بناءً على النتائج، تقدم الدراسة توصيات مستقبلية ومجالات أخرى للبحث.

الكلمات المفتاحية: مرافعات اغتصاب أمريكية- استجواب شهود- محاميّ الخصم- تحليل الخطاب

1. Introduction

The viral force of the hashtag #MeToo in October 2017 took most people in the US by surprise bringing back a long heated-debate about women's sexual harassment, rape, and sexuality. The #MeToo hashtag then turned into a global phenomenon across numerous internet platforms and the media to voice female rape and sexual assault survivors' stories. The stories were shared by those women in an attempt to change the default response to rape to belief, rather than suspicion (Tambe, 2018). Rape myths have been commonly propagated to downplay or justify the sexually aggressive behavior committed against women (Lonsway & Fitzgerald, 1994). Some of these rape myths, such as that women are assaulted because of the way they dress or their consumption of alcohol, are also implied or referred to in the legal settings of rape trials (Zydervelt et al., 2016).

According to Pether (1999), the way in which a society defines and frames rape is central in describing the cultural stories about women's bodies both inside and outside the legal settings. Rape law, as Iglesias (1996) argues, is infused with "'dominant cultural narratives' about sex and gender, and the extralegal structures and institutions that sustain them (i.e., police, prosecutors, jurors, judges). These cultural narratives of rape have been commonly perceived as *rape myths*, which as Lonsway and Fitzgerald (1994) explain, are widely accepted false perceptions about rape and rape victims. Victim-blaming and

characterizing women's behavior as risky are examples of how rape myths can normalize or downplay rape as a sexual crime (Burt, 1991). Fairclough (1995) has given a powerful linguistic example in this regard, by discussing the case of two police officers interviewing a female rape victim. In the interview, one of the interrogators tells the victim "you are a female and you've probably got a hell of a temper". Fairclough in his analysis noted that such a statement was said by the interrogator to imply that the woman could have done more effort to signal her lack of consent. Such observations shed light on how women's stories are devalued and discredited by institutional discourses and more specifically in legal settings.

As constituted by and constitutive of cultural ideologies of gender, rape trials as a form of institutional discourse are a fertile ground for the circulation of such discourses that disadvantage and discriminate against women (Ehrlich, 2001). In adversarial legal settings (e.g., American), a number of feminist scholars and theorists have contended that rape trials‒rather than protecting the sexual autonomy of women‒ are seen "as a public mechanism for the control of female sexuality" (Lees, 1997, p. 88) and an environment in which men's sexual prerogatives are protected (Crenshaw, 1992).

Adopting a Forensic Linguistics (FL) framework, there is a considerable number of scholars, in adversarial legal contexts (e.g., American), who focused on the legal practices of lawyers and prosecutors and how they use certain coercive questioning strategies in the cross-examination of witnesses to shape a legal argument that serves their goals (Archer, 2005; Gibbons, 2003; Harris, 1984). A number of FL studies have focused on vulnerable witnesses and rape victims in particular, and through linguistic analyses, it was majorly concluded that the cross-examination of rape victims is a traumatic experience that greatly utilizes manipulative "strategic" questioning techniques that reconstitute and recirculate rape myths (Matoesian, 1993, 2001; Ehrlich, 2001, 2010). Therefore, it is the aim of the current paper to investigate the embedding of rape myths in the American legal settings of rape trials by primarily focusing on the strategies used by cross-examiners when questioning rape complainants.

2. Literature Review and Background Information

2.1. American Legal Proceedings

The American justice system follows an adversarial mode of adjudication. That is, adversarial proceedings are typically structured as a dispute; where there is a conflict between two sides (e.g., defense and prosecution). The role of the judge in adversarial proceedings is that of an impartial moderator. It is the parties/counsels who dominate proceedings, and the court largely depends on the evidence presented by the two parties. The adversarial trial is perceived as a

contest to see if counselors can discredit the other opposing party in front of members of the jury (Ellison, 1997; Coulthard et al., 2017).

Feminist critiques have often cited rape trials as the emblem of what is problematic about the adversarial legal system for women. Many legal theorists have criticized rape trials and created terms such as "judicial rape" (Lees, 1996, p.36) and "rape of the second kind" (Matoesian, 1995, p. 676). Such terms originated to criticize the "re-victimization" that many women can undergo once their complaints of rape enter the legal system (Ehrlich, 2010, p. 265). These legal practices–often in adversarial adjudication–are largely criticized in the cross-examinations of rape complainants, where complainants are subjected to a strategic line of questioning, by opposing lawyers, that is both controlling and demeaning such as asking the witness questions about their sexual history or engage in questions that negatively depict their characters or behavior. The main goal of the cross-examination by opposing lawyers is to discredit the female rape complainant by any means possible; therefore, many studies reported this line of questioning, besides its controlling and leading nature, is often embedded with rape myths such as: women can always prevent rape, women often lie about rape, rape is only a crime if it is done by a stranger, and women are always to blame due to their drinking habits or risky behavior (Temkin, 2010). These aspects of the rape trial leave many female rape complainants with a sense of re-reiterated abuse during giving their testimony. Some scholars have even furthered their criticism of adversarial proceedings to point out that when it comes to examining vulnerable witnesses such as rape complainants, adversarial trials can benefit from the infusion from inquisitorial-like procedures; for examples, abolishing the jury trial in favor of judge-only trials (e.g., Krahé & Temkin, 2013).

2.2. Cross-Examination of Rape Complainants

In adversarial legal settings, after a selection of the jury and other legal preliminaries, the defense and prosecutor counsel make an opening statement in which the lawyers outline the evidence and account of the events according to each of the party's narrative. This stage is followed by a process of questioning of the primary witnesses; they are classified into examination-in-chief (e.g., questioned by friendly counsel) and cross-examination (e.g., questioned by opposing counsel).

Cross-examination of witnesses is a primary procedure conducted by opposing lawyers /counsels in adversarial trials in an attempt to question the credibility of the witness's version of events of the presumed incident (Coulthard et al., 2017). Cross-examinations are executed in question-answer sequences between the cross-examiner and witness and these questions may be

designed to accuse the witness or to challenge and contest the truth of what they are saying (Atkinson & Drew, 1979).

More than any other form of trials, the rape victim's credibility as a witness (i.e., rape complainant) is crucial for a successful prosecution; not only because the victim is often the only witness but her behavior and motives during the alleged event will determine if the crime is committed or not. Therefore, opposing attorneys in rape trials have a strong incentive to discredit the credibility of the witness during cross-examination by producing contrasting impressions (McGaughey& Stiles, 1983). Perhaps, it is important to point out that much of the linguistic exploration of rape trials, in adversarial legal contexts, have singled out cross-examinations as the most problematic aspect of rape complainants' examination in court (e.g., Matoesian, 1993, 1995). Ehrlich (2001) explains this can be attributed to the fact that cross-examinations in the adversarial trial is conducted by the opposing counselors, who employ whatever discursive tools at their disposal to exonerate their client (i.e., the defendant), whereas in direct examinations, rape complainants are examined in a friendly supportive manner (i.e., prosecution). In this sense, rape trials are seen as a form of reiterated abuse for the rape complainant (Ponterotto, 2007).

Matoesian (1993) reiterated that cross-examiners have the discursive power to reproduce rape by revictimizing rape complainants in courtrooms. Ehrlich (2001) extended this argument by explaining that questions not only can effectively revictimize rape complainants, but they execute major ideological work. That is, reinforcing rape myths in the legal discourse of sexual assault.

2.3. Rape Myths

Burt (1980) was the first to define rape myths as "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists" (p. 217). Later in their (1994) article, Lonsway and Fitzgerald offered the first theory-based definition of rape myths, where they argued that Burt's definition is descriptive yet not cannot be sufficiently used to serve as a formal definition. They, later, contended that rape myths are "attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women" (1994, p.134). Lonsway and Fitzgerald provided examples of rape myths such as women always lie about rape and that most allegations of rape are false. They further explained that another common rape myth is that "certain women" are raped due to their behavior or bad reputation. Burt (1991) previously explained that the function of rape myths is to dismiss sexual assault incidents from the category of real rape by propagating faulty stereotypical cultural views of rape which victim-blame women rather than holding perpetrators accountable.

2.4. Rape Myths and the Legal Process

Temkin (1987) was one of the earliest feminist scholars to discuss the role rape myths play in the adversarial adjudication of rape cases, explaining that victims were often questioned during their cross-examinations about their sexual history and the clothes they were wearing at the time of the sexual assault. Later, Temkin (2010), extended that although there have been many legal reforms in the legal adjudication of sexual assault cases in adversarial legal systems, rape myths and false beliefs about rape and rape victims continue to influence decision-makers in the legal system, including jurors, judges, and lawyers, etc., resulting into low conviction rates in sexual assault crimes. Temkin also elaborated on some of the common rape myths propagated in the legal process which include: women can always prevent rape, true victims cannot be raped more than once, genuine victims report immediately, and only stranger rape is traumatic, etc.

Several studies have conducted thematic analyses of rape trials in adversarial systems, and they have concluded that cross-examiners and defense lawyers ask rape complainants questions that either suggest or embed rape myths, which may influence the jury's conviction decision (e.g., Temkin, Gray & Barret, 2018; Zydervelt et al., 2016).

Examining the literature, it is argued that rape myths play a major role in discrediting rape complainants in adversary legal proceedings that is why they are being used strategically by cross-examiners during the questioning of rape witnesses. Women's lifestyles, behavior and sexual history are being scrutinized by opposing counselors; hence, cross-examinations become a distressing ordeal for women complainants. It is evident through reviewing the past research that rape witnesses, in adversarial legal settings, often feel re-victimized by the legal practices of cross-examiners and the tactics they employ to discredit their testimonies including the use of rape myths. Therefore, the study at hand will utilize a thematic-linguistic analysis of American (i.e., adversarial) cross-examinations of rape complainants to further explore whether questions are embedded with rape myths.

3. Method

3.1. Data

Two American rape cases were conveniently sampled as they represent the scope of the study's analysis. The first selection criterion is that American cases contained cross-examinations of rape complainants. Another important criterion for data selection is that rape cases are contemporary, that is they are relatively recent cases (i.e., from 2016 to 2019). This criterion is very important because

time progression can be a key variable in analyzing the legal-linguistic practices.

The American cross-examinations of rape complainants were obtained from two cases of rape which were reported on extensively in US media and their court sessions were broadcasted on Law & Crime Network, a YouTube legal channel. The cross-examination data were extracted from the broadcast and later transcribed into question-answer series using the closed captioning feature, which were reviewed for accuracy by the researcher. A total of 607 cross-examination questions were analyzed in both cases.

The first case of the analysis is known publicly as the Vanderbilt rape case which refers to a rape case in Nashville, Tennessee, United States, which involves four former Vanderbilt University students, who were tried in 2016 and convicted with aggravated rape of a twenty-one-year-old student in 2013. The second rape case is known as the Kellen Winslow Jr., a former NFL player, who was tried in 2019, San Diego, California, for raping an unconscious teen back in 2003.

3.2. Analytical Framework and Data Analysis

A two-tier quantitative and qualitative analysis of American cross-examinations of rape complainants was performed to stand upon any rape myths embedded in the questioning of rape complainants; a thematic analysis of broad strategies, and a Discourse Analysis (DA) of selected excerpts after they are thematically identified.

The study used Zydrvelt's et al. (2016) thematic analysis (see Figure 1). This thematic analysis identified four broad strategies, namely plausibility, reliability, and credibility, and consistency. The thematic analysis also identified a range of tactics that were employed within each broad strategy, while noting that some of these tactics may leverage rape myths. In coding the strategies and tactics, the raters followed the same examples in the original thematic analysis of Zydervelt's et al. (2016). For examples, determining plausibility tactics meant that raters would identify the questions that challenge the complainants on the defendant's good character, her lack of resistance, her delayed report, etc. While in determining credibility challenges, raters had to locate questions that challenge the complainants about the previous sexual assault between her and the defendant, having ulterior motives, and her personal traits. Coding reliability tactics was performed by locating questions that challenges the complainants on her sobriety and drug use on the day of the sexual assault. Finally, consistency challenges were coded by identifying questions that contained previous comments or testimonies either by the complainant herself or other witnesses or

the defendant. The analysis will be reported by tabulating the frequency and percentages of broad strategies and tactics in the two analyzed cases.

Figure 1

Strategies for Cross-Examining Rape Complainants

Strategy	Tactics
Plausibility	Defendant's good character
	Lack of injury or clothing damage
	Complainant's behavior immediately before and after offence
	Lack of resistance
	Delayed report
	Continued relationship
	Other
Credibility	Prior relationship with the defendant
	Personal traits
	Previous sexual assault complaint
	Ulterior motive
Reliability	Alcohol/drug intoxication
	Barriers to perception
	Memory fallibility
Consistency	With complainant's own account
	With defendant's account
	With another witness's account
	With physical evidence

Note. Taken from Zydervelt, S., Zajac, R., Kaladelfos, A., &Westera, N. (2016). Lawyers' strategies for cross-examining rape complainants: Have we moved beyond the 1950s?. *British Journal of Criminology*, *57*(3), 551-569.

After identification of these strategies and tactics in both datasets, a thorough linguistic Discourse Analysis was performed, which incorporated all relevant lexico-grammatical features of the questioning techniques in the cross-examination of the rape complainants.

4. Findings

An initial quantitative analysis of questions revealed that cross-examiners in the two American adversarial rape cases heavily used strategy-based questions (88%), as reported in Table 1.

Table 1

Overall Means of Strategy-Based Questions

	(n=2)
Total cross-examination questions	607
Strategy-based questions	535
Percent strategy-based questions	88%

As reported in Table 2, the most used tactics were consistency challenges (44%), followed by reliability challenges (24%), plausibility (21%), then the least scored was credibility (11%).

Table 2

Frequency and Percentages of Broad Strategies

Strategy	Frequency	Percentage
Plausibility	114	21%
Credibility	62	11%
Reliability	124	24%
Consistency	235	44%

4.1. Plausibility Tactics

Plausibility tactics ranked third in their frequency in the analyzed American cross-examination transcripts (See Table 2). Plausibility tactics, as shown in the following examples, included defendant's good character, delayed report, complainant's Behavior before, during, and after the Offence continued relationship, and lacking injury/clothing damage.

Defendant's Good Character

(1) Vanderbilt

Q: All right. Now, we were talking about Tin Roof. So while at Tin Roof Mr. Vanderburg was you believe he was just being **normal** and socializing?

A: **Yes. Ma'am**.

Q: Okay. And when you say **normal** that's just within the two weeks that you knew him, right? What was **normal** for you?

A: **Normal** as in not [unintelligible] impaired.

Q: I'm sorry. I can't hear you.

A: **Normal** as in like acting like a normal person.

Q: Oh. But you don't necessarily mean **normal** for him. Just normal like a **normal person**. Is

what you're saying?

A: **Both.**

In the Vanderbilt's case, Example (1), the defense lawyer uses the defendant's good character tactic to challenge the plausibility of the complainant's testimony. The lawyer repeated the word "*normal"* five times in her questioning to describe the defendant's behavior before the alleged rape. In all of these questions, the lawyer uses restrictive question types (e.g., declaratives and tagged declaratives) to elicit a confirmation from the complainant that the defendant was acting *"normally"* on the day of her assault. By getting the witness to ultimately agree with the characterization of the defendant's behavior and personality as *"both"* normal (line 11), it may challenge her testimony as plausible. Such challenge (i.e., describing the defendant's as normal before the alleged rape) may put forth the stereotypical view of rape that it has to convey threats of violence.

Lack of injury or clothing damage

(2) Vanderbilt

Q: Now, you said that you woke up you were in a lot of pain, right? You said your

left shoulder hurt.

A: That's correct.

Q: left wrest hurt.

A: That's correct.

Q: **But you didn't feel you had been sexually assaulted?**

A: My whole body really hurt.

Q: Okay.

A: But I mean but the shoulder was what my focus was mostly on, and also the injury on my knee just cuz I had you know blood and that stuff. So I didn't…I

didn't have a reason to pay attention to specifics of other areas as much at that instance.

Lack of injury or clothing damage was the least occurring plausibility tactic in the transcripts, yet in the analyzed transcript it was used strategically by the defense lawyer. As shown in Example (2), the lawyer is questioning the complainant's testimony of rape by challenging her of not reporting any injury which is the result of a sexual assault (line 6). While the complainant explained that she suffered from other physical injuries in her body; however, the defense lawyer through her questioning subtly implies that the complainant failed to report a sexual assault related injury, which could undermine the overall plausibility of the witness's testimony. This may be seen as another tactic which holds a stereotypical view of rape since the rape complainants are expected to sustain an injury whether physical or sexual after their rape.

Continued Relationship

(3) Winslow

Q: Okay **did you say, hey, Nicky, don't wave that guy down because he did some weird stuff to me last time?**

A: No. We were waving down to Chris and then [few unintelligible words].

Q: You saw the guy that you're with two weeks earlier, right?

A: Yes.

Q: I mean was your…it was your… **what you wanted to do was be with that person, that you're with two weeks earlier, isn't that fair to say?**

A: No.

Q: No?

A: What do you mean by be with him?

Q: Well, I mean, make contact with them and party do whatever. Socialize?

A: Yes.

Q: So, I guess, the point is from the first incident to the second incident, there was nothing about Mr. Winslow that caused you any concern or any fear, correct?

A: Right.

Q: Because otherwise you wouldn't have waved him down?

A: Yes.

Q: Right. **So you see the guy you were attracted to him, at least attracted to him enough the first time to have sex with him, you see him again and you wave them down, correct?**

A: Yes.

In the exchange above (Example3) from the Winslow case, the defense lawyer strategically uses the continued relationship tactic to question the witness's version of events. In this case, the lawyer challenges the witness on her approval to go out with the defendant for a second time despite her claims of a *"weird"* first sexual encounter (lines 1-7). When the witness responds negatively (line 8) to the lawyer's question of whether she wanted to be with defendant after their first encounter two weeks ago, the lawyer then rephrases the question by using a so-prefaced tagged declarative question to which the witness's answer ultimately becomes yes (lines 18-20). Through this reformulation, the lawyer was able to highlight the witness's willingness to carry on a relationship with the accused which may dispute the complainant's own narrative of a sexual assault.

Complainant's Behavior before, during, and after the Offence

(4) Winslow

Q: Right. But, it's fair for me to say, that you were basically a teenager, you were attracted to Mr. Winslow, **you went willingly upstairs with him**, and, you know, you didn't, **you were gonna engage in some type of or foreplay, to say the least?**

A: Yes.

Q: Okay. **And the foreplay then would lead to sex?**

A: Yes.

Q: And so Mr. Winslow **did not force you to go upstairs?**

A: No.

Q: Mr. Winslow **did not threaten you to go upstairs?**

A: No.

Q: Mr. Winslow did not say, hey, you should be passing some of this drink alcohol or drugs before you went upstairs either, did he?

A: No.

Q: So you go upstairs, you guys, and by the way before this time, **you were flirting with him?**

A: Yes.

Q: **I mean you were making it clear that you were interested in him?**

A: Yes.

Q: Right. **You go upstairs, and, you know, the foreplay goes to sex, yes?**

A: Yes.

Defense lawyers often use the complainant's behavior before, during and after the offence as means to discredit the complainant's testimony. In the Winslow

case, the lawyer relied heavily on this tactic to present an image of the witness not as a rape victim but a consenting adult who willingly wanted to have a sexual relationship with the defendant. In Extract (4), the lawyer through a series of declarative and tagged declarative questions, seeks a confirmation from the complainant rather than a response that she *"went willingly upstairs"* (line 2) and that she was *"interested in"* the accused (line 16). The use of such lexical items may suggest that the complainant's exchange with defendant with a consensual one rather than a sexual offence. It is clear that questioning the complainant's behavior before the alleged incident can undermine the plausibility of her testimony.

Delayed Report

(5) Winslow

Q: Okay. So after the incident and before you found out about Mr. Winslow, just, he was this guy who went too far with you, and you told that to Nicky?

A: Yes.

Q: That's what you said to Nicky, right?

A: Yes.

Q: **You didn't relate any of the details of what happened inside the room?**

A: No.

Q: **Didn't tell her about the video, correct?**

A: I did not.

Q: **Didn't tell her about Matt being involved?**

A: No.

Finally, the delayed report tactic was not commonly used in the analyzed cases. However, in the Extract above (5), the lawyer in the Winslow case used the delayed report as a tactic to challenge the witness's plausibility. In the exchange, the defense lawyer, through the use of declarative and tagged declarative questions (lines 6-10), proposes the complainant's unwillingness to report the incident to authorities or her friends at the time. One reason this could influence the jury's decision is the stereotypical view that true victims of rape report their incidents immediately, thus using this line of questioning might discredit the witness testimony.

4.2. Credibility Tactics

Credibility was the least used tactic across the analyzed adversarial cases as reported in Table 2. Nonetheless, it was strategically used by the defense lawyers to discredit the witness using several tactics such as prior relationship with the defendant, the complainant's personal traits, and the complainant's ulterior motives as exemplified in the following excerpts.

Prior Relationship with the Defendant

(6) Vanderbilt

Q: Oh! In a Ph.D. I apologize. Now, I'm gonna talk about your relationship with Mr. Vanderburg. **Well, back during a time range in 2013, you have known him about two weeks?**

A: Yes. Ma'am.

Q: Okay. **And during that timeframe you all were considered casually dating?**

A: Yes.

Q: Okay. **And during that timeframe do you believe you became really close?**

A: No.

Q. No. **You don't believe you were close to him?**

A: In those two weeks.

Q: Okay. And so you didn't trust him?

A: I trusted that he wouldn't do something like this.

Q: **So you have trusted him to an extent, right?**

A: Yes.

In the Extract (6) above, the defense lawyer is questioning the complainant of her two-week relationship with the defendant before her alleged sexual assault. The lawyer through a series of declarative questions (lines 1-8) is establishing that the complainant and the accused *"were casually dating"* and thus they had a probable consensual relationship at least until the sexual assault. Foregrounding a prior relationship in the cross-examination questions could be seen as embedding rape myths since it may cast doubt on the complainant's credibility. The lawyer gets the witnesses to ultimately agree with the lawyer's proposition that she trusted the defendant to some extent by asking a tagged declarative question.

Personal Traits

(7) Winslow

Q: **Prior to this evening, the night you were assaulted, had you ever blacked out before?**

Prosecution**:** Objection. Relevance.

Judge: Overruled. You can answer.

A: Not that I know of. No.

Q: **So you never experienced any type of loss of consciousness or anything like that?**

A: No.

Similar to the Vanderbilt case, the defense lawyer in the Winslow case, as illustrated in Extract (7), also questions the complainant's drinking habits and whether it led to a loss of consciousness to which the prosecution objects to the relevance of the question. One good reason of this objection is that painting the complainant as irresponsible when it comes to drinking could leverage another rape myth, which is women are to blame due to their risky behavior or drinking habits.

Ulterior Motive

(8) Winslow

Q: But you also read a Sports Illustrated article, didn't you?

A: Yes.

Q: **<u>And, in that Sports Illustrated article, there was some opinion by somebody writing there that Mr. Winslow might use some type of CTE or concussion defense. Do you recall that?</u>**

A: Yes.

Q: And that upset you?

A: Yes.

Q: And then you told friend Nicky, in fact, you know, they're gonna try to use this defense

about CTE concussion. Remember that?

A: Yes.

Q: And it goes that's not…you said something about that something to the effect of you know that's bunch of crap. Because you know he did this to me back in 2003. You recall that?

A: Yes.

Q: **<u>Is it upsetting to you that, you know, this professional football player might use some type of mental defense to get, I guess, to get off of the charges? Is that what you're thinking?</u>**

A: That article is what that was saying.

Q: I know but that's what you were thinking because of the article, right?

A: Correct.

Q: And so you were telling Nicky that also, right?

A: Yes.

Q: And Nicky told you that she's one million percent behind you?

A: Yes.

Q: **Some of that effect. And you recall Nicky telling you also that, you know, you got to take this guy down? Remember that?**

A: [Pause]. Not so. Where she says take him down.

Q: Okay. You don't recall that?

A: Okay.

Another plausibility tactic that was identified in the analyzed adversarial cases was ulterior motive. In Extract (8) above from the Winslow case, the defense lawyer is questioning the complainant on her intent to come forward with the rape allegation. Through a series of declarative and tagged declarative questions, the lawyer elicits a confirmation from the complainant on her own statements that she wanted to "*take* [Kellen Winslow] *down"* when she read a magazine article claiming that the defendant may get off charges by using a concussion defense (lines 23-24). The lawyer is strategically challenging the witness's credibility by questioning her true intent of coming forward and whether she had any ulterior motive (e.g., destroying the defendant's reputation). Although this may seem like a valid way to challenge the witness's credibility by clarifying her true intent of reporting her sexual assault incident several years after its occurrence; however, this may also be seen as leveraging stereotypical views of rape, since it is widely believed that false allegations of rape are very common, and that the majority of rape allegations are made-up by women.

4.3. Reliability Tactics

Reliability tactics was the second most used strategy in the analyzed transcripts as illustrated in Table 2. There was two main tactics that lawyers relied on, alcohol/drug intoxication and memory fallibility, as shown in the following examples:

Alcohol/Drug Intoxication

(9) Vanderbilt

Q: Okay. I get what you're saying. **So with the gin and tonic** you had to turn around and you saw it and then with the **vodka and red bull** you turn around in the side, right?

A: Sort of.

Q: Okay. **So the second drink you had was the vodka and Red Bull**. You saw that one?

A: Yes. like I said, well, I mean, I saw all the drinks but if you mean I saw the bartender right for the drink from the bartender's hands to mine yes for that drink.

Q: Okay. **And the fireball was the third drink?**

A: Yes.

Q: And you see that from the bartender as well?

A: Yes.

Q: Okay. **And the last thing was the, well not the last one, but the fourth drink was the California Long Island iced tea?**

A: Yes.

In Extract (9) above, the defense lawyer is asking the complainant questions about the drinks she consumed on the night of her sexual assault. While the questions seemingly ask her about the names of the drinks she had in order, but the lawyer strategically numerates the drinks in a way that suggests that the complainant had too much to drink, and therefore was under the influence at the time of the incident. Implying such a view of the defendant can be seen as threatening to her reliability as a witness and of her ability to give an accurate account of the events that lead to her sexual assault. Alcohol or drug intoxication of the complainant of rape has been also labeled as a rape myth since it may be seen as a lee way of blaming the victim for the sexual assault.

Memory Fallibility

(10) Winslow

Q: **I mean it's, well, look, you don't remember very much of a particular segment of the evening. That's true, isn't it?**

A: Yes.

Q: **And that we don't know how long that segment is. Whether it's two minutes or two hours. We don't know, do we?**

A: No.

(11) Winslow

Q: And it's fair for me to say that this has **perplexed you**. The whole blackout thing has perplexed you over the years, **not remembering anything?**

A: I'm not too sure of what perplexed means.

Q: It's something that has been on your mind. **The fact that you can't remember that period of time?**

A: Yes.

In Extract (10), the defense lawyer in the Winslow case, using tagged declaratives, questions the witness's memory fallibility due to her alcohol use, thus casting doubt on the reliability of her testimony. In the subsequent Extract

(11), the defense lawyer extends his reliability challenge by stating that the witness is *"perplexed"* due to her inability to remember specific segments of her alleged abuse. At first, the complainant is unsure of the lawyer's proposition and asks him to explain what perplexed meant. When the lawyer rephrases the question (line 4), the complainant eventually responds with a confirmation to the declarative question that she could not remember a segment of the evening. Once more, such reliability tactics undermine the reliability of the witnesses by highlighting their inability to precisely remember all aspects of her sexual assault.

4.4. Consistency Tactics

The consistency broad strategy was the most used across the analyzed adversarial data (see Table 2). This did not come as surprising since in adversarial legal settings the aim of counselors is to challenge and discredit the complainant's testimony. Two tactics were identified, consistency with complainants' own account and consistency with physical evidence.

With Complainant's Own Account

(12) Vanderbilt

Q: Okay. **And so in direct you talked about seeing some still shots when you went to the interview 6/26/2013**?

A: Yes.

Q: **And at that time you believe in Mr. Vanderburg was trying to help you?**

A: Yes.

Q: And you thought if anything had happened it would have been the other guys and not him?

A: I mean…I…I don't…I didn't know what happened.

Q: **Okay. And if you told that in your interview then that's how you felt at that time?**

A: I mean. I remember during the interview. I mean this…. this is me talking as I was seeing them for the first time, and I was trying to make sense of what I was seeing. **So I might have been talking out loud and I'm trying to speculate about** it but…

Q: Okay.

A: I didn't know what had happened.

In Extract (12) in the Vanderbilt case, the defense lawyer is challenging the complainant's own account that she provided to the police at the time of the incident. First, the lawyer establishes that the complainant gave a police

interview (lines 1-2), then the lawyer continues to challenge the witness on the account she gave to the police at the time, that the defendant was trying to help her and that he was not one of her rapists (lines 4 and 8). By challenging the witness's testimony on a prior statement she gave to the police–in which the complainant explained that she was still "trying to speculate" about what had happened to her–, her credibility is also challenged. While challenging the consistency of the complainant is the primary way of discrediting the witness in adversarial settings; however, some scholars criticize the stereotypical view that genuine victims of rape must always give a thoroughly consistent account each time they recount the incident.

With Physical Evidence

(13) Winslow

Q: **So the photo of you and Mr. Winslow** was taken in the parking lot of the gas station, correct?

A: Yes.

Q: And you said it was Nicole that took the picture of you?

A: Yes.

Q: So **did you ask Nicole to take a picture of you?**

A: **I believe so.**

Q: **Okay. Because you're having a good time?**

A: **Yes.**

Q: And Mr. Winslow there, does he appear the way he did that evening?

A: Yes.

Q: A bag of potato chips, sitting in his car, right?

A: Yes.

Q: You guys just chilling in the parking lot?

A: At the gas station.

Q: At the gas station, right?

A: Yes.

Q: **And you appear to keep pretty happy. You got a smile on your face**?

A: **It's a photo. You smile, so yes.**

Q: I mean, were you sad?

A: No.

Q: I mean, you had no reason to be, right?

A: No.

In Extract (13), the defense lawyer manages to challenge the witness's testimony by showing an old picture of both the complainant and the accused *"having a good time"* (line 7). The defense lawyer strategically uses the picture to imply that the witness and the defendant were having a good time back in 2003 when the incident allegedly happened (lines 5-8). In the provided example, the lawyer is not only seen as challenging the witness's testimony with presented physical evidence, but also the plausibility and credibility of her testimony by expressing that the witness looked happy in the picture and that she was keen on taking this picture at the time, which also upholds some stereotypical views of rape. That is, the complainant could be only raped by a stranger and that she could not be raped if she had a prior "*happy*" relationship with the defendant.

5. Discussion and practical implications

5.1. Summary of Main Findings

The main aim of the study was to investigate whether questions of cross-examinations of rape complainants were embedded with rape myths in selected American rape trials. The adopted Zydervelt's et al. (2016) thematic analysis revealed that cross-examiners in the American adversarial legal judicial system relied extensively on strategy-based questions (88%) when asking rape complainants. Additionally, the linguistic discourse analysis of these strategies revealed that cross-examiners in both cases employed tactics that largely leveraged rape myths. This finding comes in alignment with past research (e.g., Temkin et al., 2018; Zydervelt et al., 2016) that explains how in adversarial legal procedures, lawyers and barristers strategically promote stereotypical views of rape in attempt to downplay the sexual assault or influence the jury's decision.

This study has confirmed a well-established argument in the literature of legal discourse that the cross-examination of rape complainants has always been a form of reiterated victimization (e.g., Ehrlich, 2001; Matoesian 1995: 2003). While scholars have always contended that cross-examinations in adversarial legal systems is inherently combative regardless of case types largely due to how the adversarial system is constructed as a contest between two parties, so it is only plausible that opposing lawyers exert their full power to discredit the witness on the stand to vindicate their client of any wrongdoing. Therefore, it can be assumed that adversarial legal systems can benefit from incorporating inquisitorial-like features when questioning vulnerable witnesses such as rape complainants. Similar sentiments were previously expressed by Krahé and Temkin (2013) who argued that a judge only system with no jury might change

the grueling nature of cross-examining rape victims in adversarial justice systems. Therefore, it is necessary that all legal practitioners and stakeholders in the adversarial, particularly in the American legal system, should be properly informed about rape myths and how to discern and combat such faulty perceptions about rape and the rape complainants inside the courtroom.

5.2. Limitations

Whereas the study deliberately opted for the selected sample size to be able to offer an in-depth qualitative linguistic analysis of the rape cases, by employing the tools of DA, a larger sample could have provided more statistically significant findings in terms of the used strategies and tactics in cross-examinations. Another Limitation, in identifying the strategy-based questions according to Zydervelt's et al. (2016) thematic analysis, given the study's analytic approach, the coders coded the question or consecutive-questioning series for one of the tactics at a time. Meaning that, the line of questioning could not be coded for two tactics or strategies at the same time. However, in performing the analysis, it was clear that some of the questions or question series can be coded for more than one tactic or strategy. In other words, the tactics used by cross-examiners can overlap with other tactics/strategies. A notable example of this would be how cross-examiners in the American cases strategically employed consistency questions to challenge rape complainants on their alcohol intoxication or memory fallibility, which are considered plausibility challenges.

5.3. Future Recommendations

Building on the study's limitations, there are suggestions for future research endeavors. First, it is recommended that future research in this area adopt a corpus-based analytic approach by assembling large corpora of court transcripts, to be able to provide more generalizable results. Second, in conducting a thematic analysis, such as the one performed by this study, it is recommended that coders identify strategy-based questions not for one tactic only, but for as many as the questions yield. Third, it is also recommended to explore some of the contextual background information of the rape cases to determine if the presence or absence of some of the broad strategies or specific tactics, such as the consumption of alcohol by complainants, is generically unmarked in the analyzed American legal system.

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