

**Examining the Language in the Courtroom Interrogation
of Vulnerable and Non-Vulnerable Witnesses**

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Abstract

Testifying in court is a stressful experience for witnesses, most especially to abused children. One of the reasons that makes this experience more difficult is the manner of questioning of some lawyers. Recognizing the need to examine this use of language in the cross-examination of vulnerable witnesses, this paper sought to identify the types of questions commonly used by lawyers and the kinds of replies usually given by witnesses. This descriptive study employed a mixed paradigm design as it applies qualitative and quantitative analysis to the corpus consisting of 1,866 questions and 1,811 replies in the transcript of stenographic notes. The study also employed semi-structured interviews. Findings reveal that for both the vulnerable and non-vulnerable witnesses, the types of questions most frequently asked are the close-ended leading questions, yes/no and tags. One type of close-ended question, the wh- question, is also frequently used. In terms of replies, both vulnerable and non-vulnerable witnesses give the same types of replies with compliance mostly being employed. All these findings show that leading and forceful questions commonly used in cross-examinations might deter the child witnesses from telling the real truth. Some lawyers could, therefore, attend more training in investigating child-related cases while courtroom conditions deterring the child witnesses from confidently answering the lawyers' questions should be improved.

Key words: *Cross-Examination, child witnesses, vulnerable and non-vulnerable witnesses*

The language of the courtroom is described as complex for those who are non-regular courtroom participants and simple for those who regularly comprise the judicial investigation. In fact, Gibbons (2008) described the courtroom investigation, particularly the cross-examination, as a 'verbal battle field' between the lawyers and the witnesses. Witnesses have to deal with comprehending the lawyers' questions during interrogation and at the same time have to deal with verbalizing their perceptions about particular events and circumstances. It is no wonder that testifying in court is an experience that most witnesses find excruciating and threatening.

Numerous studies (Carruso & Cross, 2012; 2009; Ellison, 2007; Miller, 2013; Zajac, O'Neil, & Hayne, 2012) have illustrated that unfamiliarity with courtroom proceedings, reliving dreadful experiences, facing unknown courtroom participants, and answering intimidating questions by trained lawyers are just some reasons that make testifying in court a difficult experience for witnesses.

More particularly for young victims, the experience in the courtroom is dreadful for given their age, some of them are not emotionally and mentally mature to answer questions by skillful and experienced lawyers. This experience of children testifying in court becomes doubly stressful if these children serve as witnesses in rape trials. As posited by Lee (1993 in Ellison, 2009), when rape victims testify in court, they are subjected to a 'revictimization' or 'second assault'.

The children or young witnesses, also considered as vulnerable witnesses, have been subjected to the same rigorous questioning techniques by lawyers in cross-examinations. These vulnerable witnesses, who are described as child witnesses under the age of 18 (Ministry of Justice, 2011) or under the age of 16 (Director of Prosecutions, 2011), are powerless in the court discourse controlled by lawyers during cross-examinations. As posited by Hanna, Davies, Crothers and Henderson (2012), "while lawyers are aware of the gulf separating the language of children from their own, this does not necessarily mean that they adjust their language appropriately when questioning children" (p. 531). Therefore, it seems that there is no distinction in the questioning techniques used in investigating adults or young witnesses, thus showing that vulnerable witnesses are placed at a great disadvantage. As Raeder (2010) revealed, children sometimes cannot speak in the trial for several reasons. Some of these include lack of preparation for the trial; harsh and improper method of questioning; trauma because of recalling the experience; and, trauma due to the fear of facing the defendant during the trial (Harbinson, 2005 in Raeder, 2010). They are also not yet fully prepared to confidently answer the rigorous questioning of skilled lawyers for they still need to improve socially and cognitively (Westcott & Page, 2002). In addition, some of their interests and rights might even be neglected because of their experience in the witness stand (Cossins, 2009).

Bull (2010) furthermore noted that because of children's vulnerabilities, they may have different but special needs when they undergo legal procedures which are said to be designed for the usual adult witnesses. He further added that these needs of the child witnesses seem not to be regarded. The Scottish Executive Central Research in 2002 reported how poor or not properly trained a number of professionals are in interviewing these witnesses in jurisdictions worldwide.

In the Philippines, particularly in some regional trial courts, some of the rape trials (usually closed to the public because of the nature or sensitivity of the case) involving young victims are usually scheduled last in a series of trials held in one courtroom. Furthermore, aside from the fears of the abused children in answering the questions in the courtroom investigation, they also have to face several people, strangers who are witnesses and lawyers in other cases, and acquaintances and relatives who, while are considered part of the children's early years in life, are unfortunately sometimes the perpetrators of the crime committed against them. As claimed by several studies (see, for example, Aldrige, 2007; Cossins, 2009; Hana et al., 2012), testifying in court is a very difficult experience for child witnesses. It is noted that studies in the field of forensic linguistics, where an analysis of courtroom discourse is one example, are "just catching the attention of scholars in Asia" (Madrunio, 2012, p. 21).

It is in this light that the researchers sought to conduct a study on the way lawyers cross-examine vulnerable and non-vulnerable witnesses in rape trials. The vulnerable witnesses in the

study refer to the abused children who are 18 years old and below during the time they were abused and testified in court. In the Philippines, ‘children’ refers to individuals who are below 18 years old or “those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of physical or mental disability or condition” (Philippine Congress, para. 5). Conversely, the non-vulnerable witnesses in the study refer to the witnesses who are above 18 and are generally able to answer the questions raised by lawyers. In the study, most of the non-vulnerable witnesses include the doctors, teachers, suspects and relatives of the victims.

Specifically, the study aimed to identify the types of questions asked of vulnerable and non-vulnerable witnesses and the kinds of replies given by both witnesses. To help children face courtroom investigation, the study also sought to identify some actions that courtroom officials could consider in interviewing abused children.

To identify the types of questions and replies, the researcher applied quantitative and qualitative analysis to the transcript of stenographic notes (TSNs) from the two Regional Trial Courts in one of the provinces in the country.

The Corpus and Data Analysis

The 547-page corpus consists of the transcript of stenographic notes (TSNs). More specifically, the corpus is comprised of 38 TSNs coming from eight different cases. All the TSNs deal with one type of criminal case, incestuous rape. Furthermore, there were 1,866 questions and 1,811 replies categorized. The TSNs were individually examined and only the cross-examination portion was studied since a number of studies (Carruso and Cross, 2012; Cossins, 2009; Ellison, 2007; Miller, 2013; Zajac, O’Neil, & Hayne, 2012) have revealed how stressful cross-examination is in courtroom trials. The questions were coded as open-ended, close-ended, and-prefaced, so-prefaced questions while the replies were categorized according to the eight types of answers by Cannan and Zajac (2009) (Refer to Table 1). To ensure accuracy in the coding of the examiner’s questions and the witnesses’ replies, the researchers requested the assistance of two language teachers. In addition, the researchers conducted a semi-structured interview in order to gather more information on how both lawyers and witnesses prepare for and undergo cross-examination. A semi-structured interview was also utilized. The researchers, along with a child psychologist, also interviewed two rape victims regarding their experience in the cross-examination.

It should be noted, however, that the TSNs might not be a totally accurate representation of courtroom proceedings (Martin, 2013). The TSNs are written in English since the language of the court in the Philippines is English. However, in most instances, the language of the court is multilingual, especially if the witnesses could not understand or speak English. The court then employs court interpreters to translate the lawyers’ questions asked in English to the language or dialect known by the witnesses. Since there might be a possibility of inaccuracies in the translation from the English language to a particular language or dialect and these inaccuracies being reflected in the TSNs, the researchers, through a semi-structured interview, confirmed from the lawyers their predominant questioning styles, as well as confirmed from the victims the types of replies they usually give in the courtroom interrogation. Most of the lawyers interviewed were also the lawyers involved in the study corpus.

Critical Discourse Analysis

This paper utilized Critical Discourse Analysis (CDA), integrating most of the principles espoused by van Dijk (1993). CDA examines the link between language and power. It postulates that power stem from social relationships, group memberships, and access to communication among others. In the field of discourse, this power is further heightened when individuals use their power to dominate the less powerful in the use or misuse of the language. As van Dijk (1993) explained, CDA is a study of “relations between discourse, power, dominance, social inequality, and the position of the discourse analyst in such social relationships” (p. 283). He also described it as one which involves multidisciplinary study and referred to as a ‘sociopolitical discourse analysis’.

CDA’s appropriateness as the framework of the study can be validated as this paper shows the established criteria of van Dijk (1995) for work in CDA. The study is problem- or issue-oriented for it would like to show the existence of social inequality in the courtroom through the manner of cross-examination. The study is also interdisciplinary as it examines the relations between language, law, and even psychology. Furthermore, parallel to other CDA works, this study focuses on different dimensions of cross-examination discourse: structure and typology.

Categories of Questions and Replies in Cross-examination

For categorizing the types of questions, the classifications of Gibbons (2008) and Holt and Johnson (2010) were employed. The questions were categorized according to: (1) typology and structure – open-ended (Wh-questions) or close-ended questions (Yes/No, alternative, declarative, and tags), and-prefaced questions and, so-prefaced question.

According to Tkačuková (2010), *Wh-questions* (e.g. What happened sometime in April 6, 2007?) are open type of questions while ‘*alternative*’ questions (e.g. Is this correct or not?), *yes/no questions* (e.g. Was it dark?), *declarative questions* (e.g. You have not shouted) and *tag questions* (e.g. This is not true, isn’t it?) are closed questions. In addition, the ‘*Wh-*’ questions, according to Woodbury (1984, in Ehrlich 2010), display little control because they do not “impose the questioner’s interpretation on the testimony” (p. 268). Likewise, these questions offer no proposition other than that some incident occurred. The ‘who, where and when’ questions only get information about a person, place or time, thus do not challenge any information embedded in the question (Gibbons, 2008). ‘*How and why*’ questions, however, allow the witness to provide more elaboration on motives and occurrences of events.

In terms of the closed type of questions, the *yes/no questions* are generally described as least coercive as the witnesses are less likely to deviate from the questions when they reply. In contrast, the *tag questions* and *declarative* are more coercive since these questions elicit more confirmative answers (Huddleston & Pullum, 2002 in Tkačuková, 2010). Furthermore, *tag questions* and *declaratives* when answered in the affirmative, contain additional meaning – implying that the interviewee acknowledges that the examiner is right. Declaratives is one way of asking questions where lawyers integrate their own version of events in the questions pressuring the witness to agree with them. This type of question may sometimes have a rising question intonation and as such makes the statement sound like a question. Sometimes, it is more like an accusation in which the witness is obliged to reply following certain procedures. *Tag questions* are composed of a statement at the first part of the question that includes the lawyer’s version of events and a tag at the second part which “exerts various forms of interactive pressure upon the witness” (Gibbons, 2008, p. 121). In addition, Johnson (2002) also identified the use of *so-prefaced* and *and-prefaced questions*. She stressed that *so-prefaced questions* are used to

build evidence and to examine and classify previous replies of the witnesses or interviewees. These type of questions can also be used to challenge the interviewees by repeating previous utterances, thereby making it possible for the interviewer to reassess the statements already mentioned. In this manner, they help in the evaluatory summary of the interviewees' account. Furthermore, Holt and Johnson (2010) explained that '*and-prefaced*' questions are common in trial discourse when interviewees are asked in their testimonies to narrate how particular events happened.

Aside from these questions in cross-examinations, it is also worthy to analyze the replies of the witnesses for they are the adjacent pair of the questions asked by examiners. To illustrate the categories of the witnesses' answers, Table 1, adopted from the categories of Zajac, et al., 2003 in Cannan & Zajac, 2009) is presented.

Table 1

Categories for witnesses' answers

Response category	Explanation	Example
<i>Compliance</i>	Agrees with a statement or the information contained in a lawyers question	Q: Did something happen there? A: Yes.
<i>Resistance</i>	Disagrees with a statement or the information contained in a lawyer's question	Q: That was a lie you told X's mum wasn't it? A: No.
<i>Gives clarification</i>	Gives more information than is required by the question.	Q: He used to read you kid stories, didn't he? A: Not really, occasionally to me, he would read to X, Y and my sister mostly.
<i>Seeks clarification</i>	Request to repeat question, or request for extra information.	Q: What sort of things would he be asking you to do? A: Uhm I don't understand that one.
<i>Misunderstanding</i>	Clear misunderstanding, provides a response that misses the point of the question.	Q: And you didn't want or wouldn't want there to be any bad touching, would you? A: Yes.
<i>Uncertainty</i>	Does not know or does not remember.	Q: Were you under the blankets? A: I don't know. Q: Were you being flirty with X? A: Mmm, I don't think so. I am not sure, maybe.
<i>No response</i>	Complainant remains silent; lawyer	Q: X had been doing something

either asks question again or continues wrong to you, you would have known that, wouldn't you?
 A: Yes.

Changes story/response Contradicts evidence given previously. Q: But he wasn't, was he?
 A: I'm not sure.

These types of answers reflect not only adaptive strategies, like replies that show uncertainty, clarification, and resistance, but also strategies that are described as unhelpful, e.g. compliance, misunderstanding, and changing earlier testimonies (Cannan & Zajac, 2009).

The replies of witnesses, especially in cross-examinations, help build the evidence that the court needs in finalizing its decision. The narrative accounts or testimonies scrutinized by both the prosecutors and the defense lawyers aid in courtroom decision-makings and establish the credibility or non-credibility of the witnesses.

Questions asked from the Witnesses

Table 2 shows the kinds of questions that lawyers utilize in examining non-vulnerable witnesses. There are eight accused individuals, with ages ranging from 23-81 years old, who are considered non-vulnerable witnesses in the study. Other non-vulnerable witnesses include the doctors who examined the victims, a teacher, parents or relatives of the victim and accused, a mason, a social worker, a police officer, and the live-in partner of the accused.

The top five questions dominantly used by the lawyers are: 'Yes/No' (29%), Wh (12%), And-Yes (12%), Tag (9%), and So/Yn (7%). There are low percentages for the five questions commonly used by lawyers since the corpus reveals that there are 34 types of questions that the lawyers utilize and most of these are new categorizations since these types of questions show the combination of one to three types of questions in one statement.

Table 2

Types of Questions from Non-Vulnerable Witnesses

Types of Questions		f	%
1	Yes/No	335	29
2	Wh	144	12
3	And-Yes	134	11
4	Tag	108	9
5	So-Yn	85	7
6	Yes/No-But	60	5
7	Declarative	59	5
8	And-Tag	58	5
9	And-Declarative	38	3
10	So-Tag	26	2
11	And-Wh	22	2
12	So-Declarative	17	1
13	So-Wh	14	1
14	But-Declarative	11	1
15	Declarative-Yes/No	9	1

16	But	8	1
17	And-So-Tag	6	1
18	Declarative-So-Yes/No	5	0
19	Declarative-Tag	5	0
20	And-So-Yes/No	4	0
21	But-Why	3	0
22	So-Tag-Declarative	3	0
23	Alternative	3	0
24	Alternative-Wh	2	0
25	Declarative-Wh	1	0
26	Declarative-And-Yes/No	1	0
27	Yes-Wh	1	0
28	Declarative-And-Tag	1	0
29	And-So-Declarative	1	0
30	Alternative-Yes/No	1	0
31	Alternative-Declarative-Tag	1	0
32	And-Alternative	1	0
33	So-Alternative	1	0
34	So-Wh-Yes/No	1	0
	Total	1169	100

All these top five question types, except for the “Wh” questions are considered close-ended and coercive. The sample unedited extracts that follow show how these questions are forceful and coercive.

Extract 1

- Q: As an investigator, you see to it that you gather all the evidence?
A: Yes, sir.
Q: And you said you saw a somewhat red stain and it came to your mind that it would be an evidence?
A: Yes, sir.
Q: However, you did not cause the t-shirt to be examined for the possible presence of blood?
A: Yes, sir.
Q: You were asked by the complainant to testify on rebuttal to prove that there is blood on the shirt?
A: Yes, sir.

In Extract 1, the defense lawyer was asking the witness, a police officer, regarding the supposed to be blood stain on the shirt of the accused. However, since the witness was only asked with a ‘Yes/No’ question and did not provide any elaboration on his answer, his testimony is somehow weakened by not being able to explain why he was not able to gather evidence to the existence of blood in the shirt. If given the chance to explain, he could have defended himself and could even perhaps provide more details that would prove the existence of the blood stain.

In Extract 2, another police officer was cross-examined and this time tag questions were used by the lawyer in the interrogation.

Extract 2

- Q: When the complainant XXX went to your office in the complaint for rape, you did not prepare a child study report, is that correct?
 A: No, sir.
 Q: And you did not take the initiative to make sure that XXX was properly examined by the doctor?
 A: Yes sir, because at that time there are still other clients.
 Q: You did not take initiative to go with the father of XXX to make sure that the incident could not be repeated anymore, is that correct?
 A: Yes, sir.

In this extract, the actions of the police officer were questioned, somehow indirectly questioning his credibility since he did not follow the usual procedures when victims file their complaints. As pointed out by Gibbons (2008), tag questions are composed of a statement at the first part of the question that includes the lawyer’s version of events and a tag at the second part which “exerts various forms of interactive pressure upon the witness” (p. 121). In the previous extract, the lawyer posits that the police officer failed to make a report and failed to monitor the victim’s consultation with a doctor.

Table 3 below reveals the types of questions asked from the vulnerable witnesses. The vulnerable witnesses are the eight rape victims whose ages are from 12 to 19 years old.

Table 3

Types of Questions from Vulnerable Witnesses

Types of Questions		f	%
1	Tag	186	27
2	Yes/No	115	16
3	Wh	98	14
4	And-Tag	51	7
5	So-Tag	50	7
6	So-Yes/No	32	5
7	And-Yes/No	29	4
8	Declarative	26	4
9	But-Tag	18	3
10	So-wh	17	2
11	Alternative-Declarative	16	2
12	So-Declarative	10	1
13	Declarative-Yes/No	8	1
14	Alternative-Wh	7	1
15	And-So-Yes/No	4	1
16	Alternative-So-Declarative	4	1
17	And-So-Tag	3	0

18	So-Declarative-Yes/No	3	0
19	Declarative-Tag	2	0
20	But-Yes/No	2	0
21	Declarative-Alternative	2	0
22	Alternative-Wh	2	0
23	Alternative-Declarative-Yes/No	2	0
24	Alternative	1	0
25	But-Wh	1	0
26	And-Tag-Declarative	1	0
27	But-Yes/No	1	0
28	So	1	0
29	Declarative-Tag	1	0
30	But-Declarative	1	0
31	Alternative-Yes/No	1	0
32	So-Wh-Alternative	1	0
33	Wh-Alternative-So	1	0
Total		697	100

Surprisingly, there is almost no difference in the types of questions asked by lawyers to vulnerable or child witnesses. Similar with the top five types of questions asked from the non-vulnerable witnesses, there are four questions that are closed-types; namely, Tag (27%), Yes/No (16%), And-Tag and So-Tag with similar percentage (7%). Similarly, there is one open-type of question asked from the vulnerable witness, the Wh- questions (14%).

A general look at the types of questions asked from both the non-vulnerable and vulnerable witnesses would show that the young or vulnerable witnesses are asked more forceful questions since the type of question on top of the rank is 'Tag' which is considered more forceful than the 'Yes/No' question. The tag question is more coercive since this question compels the witnesses to agree with the lawyer's proposition in the questions (Huddleston & Pullum, 2002 in Tkacukova, 2010). Aside from the 'Tag' question ranking first in the type of questions used by the lawyers to vulnerable witnesses, there are still two other types of questions using tag in the top five. These are the 'And-Tag' and the 'So-Tag'. Compared to the questions asked from the non-vulnerable witnesses, the 'Tag' question ranked third but there is no other type of question combined with the 'Tag' among the top five questions asked from the non-vulnerable witnesses.

The unedited extracts that follow show how forceful closed-ended types of questions are when asked to young witnesses.

Extract 3 shows how the defense lawyer interrogates a 15-year old victim. In the series of questions, four out of the five questions are tag questions. Interestingly, the proposition in all the tag questions insinuates one concept, that the victim does not have the capacity to recall events that transpired since the rape incidents happened a year before the trial. This type of questioning casts doubts on the witness' credibility. The witness was intelligent enough to give her explanations in two of the five questions. But in the last question, perhaps embattled by the insistence of the defense lawyer, the child witness just gave a confirmation answer.

What is disheartening in this kind of questioning regarding the dates in the cross-examination is that the manner of questioning is clearly described in the Prosecutor's Manual on Handling Child-Related Cases [citing *People v. Alfeche*, G.R. No.124213, 17 August 1998, 294

SCRA 352] (2007) as minor and immaterial since time is not an essential element nor has any substantial bearing on the commission of the crime.

Extract 3

- Q: Since it was long time ago you cannot recall the exact date when your father raped you, is that correct?
- A: Yes, sir.
- Q: The exact date whenever your father rape you prior to June 15, 2007 you cannot anymore remember because it was already long time ago, is that correct?
- A: There are incidents that I could still recall such as the incident that happened on June 12 and June 14.
- Q: But the other incidents of rape since it happened long time ago you cannot exactly remember the date?
- A: The others sir.
- Q: You mean to say that you are sure only of June 12, 14 and 15 2007 as dates when your father raped you, is that correct?
- A: Those are incidents that happened sir but the others I already narrated what happened.
- Q: But the other incidents of rape you cannot anymore remember the exact time and date, is that correct?
- A: Yes sir.

The unedited Extract 4 shows a defense lawyer interrogating a 19-year old victim who at the time of the commission of the crime was only 14 years old. With the use of ‘Yes/No’, the young witness was not able to provide reasons as to why she did not seek the help of her siblings who were within the vicinity during the commission of the crime. However, by providing a reason in her last answer, she was able to strengthen her testimony.

Extract 4

- Q: In fact at a point when your feet was pulled you could reach the other feet of your other siblings because it is very near your feet?
- A: Yes, sir.
- Q: You were shouting at that time you were being pulled?
- A: No sir.
- Q: At that time he undressed you, you did not also try to call the attention of your siblings who were inside the room?
- A: No sir because a knife was poked on my neck.

However, it should be noted that the questions asked by the defense lawyer disaffirms again what *Department of Justice’s Prosecutors’ Manual on Handling Child-Related Cases* (2007) stipulates that rapists are “not deterred from committing odious acts by the presence of people nearby [citing *People v. Ramos*, GR No. 129439, September 15, 1998]” (p.146).

The findings in the study that leading questions, such as the ‘Tags’ and ‘Yes/No’ questions, dominate the types of questions used in the cross-examination are corroborated in separate interviews with defense lawyers and prosecutors of the regional trial courts under study here. Lawyers should not let the witnesses explain and should only ask leading questions in cross-examinations (A. Nachor, personal communication, February 4, 2016 & Z. Monserate, personal communication, January 19, 2016). Furthermore, leading questions are used in the cross-examination to establish more control since if ‘Wh-’ questions are used, the lawyers do not have an idea of the answers that the witness will give (C. Tible, personal communication, January 5, 2016).

Types of Replies

Table 4 reveals the kind of replies given by both non-vulnerable and vulnerable witnesses. It can be noted that for both the non-vulnerable and vulnerable witnesses, the top three types of replies, namely: Compliance, Giving Clarification, and Providing Information, are the same. Providing Information is a new category created in this study since this is not found in Cannan and Zajac’s (2009) classification. ‘Giving clarification’ is different from ‘Providing Information’ since the former entails that more information is given than is required by the question while ‘Providing information’ is simply giving information to answer a question.

Example of giving clarification:

Q: You did not scream or shout when he forced himself on you?
A: No, because I was afraid.

Example of providing information:

Q: Where did you go right after the incident?
A: I immediately went to my mother.

Table 4

Replies of Witnesses

Replies of Non-Vulnerable Witnesses	f	%	Replies of Vulnerable Witnesses	f	%
Compliance	448	39	Compliance	363	55
Giving Clarification	224	19	Giving Clarification	95	14
Providing information	164	14	Providing information	59	9
Compliance-Giving Clarification	93	8	Resistance-Giving Clarification	55	8
Resistance	109	9	Providing information-Uncertainty	48	7
Resistance-Giving Clarification	66	6	Resistance	23	3
Uncertainty	35	3	Compliance-Giving Clarification	12	2

Misunderstanding	5	0	Misunderstanding	1	0
Uncertainty-Giving clarification	5	0	Seeking Clarification	1	0
Uncertainty-Providing Information	2	0	Uncertainty-Giving Clarification	1	0
No response	2	0			
Providing information-Giving clarification	1	0			
Total	1154	100	Total	658	100

Extract 5 shows a defense lawyer interrogating a 51-year old witness, who is a doctor and a municipal health officer.

Extract 5

- Q: In the findings of Dr. XXX, she likewise placed here laceration, it could not be determined whether or not the laceration could be hymenal?
- A: Yes, sir.
- Q: In your interpretation, you were guided by the date of the subject person XXX. But you will agree with me doctor there are other causes other than penis insertion that could cause laceration in the vagina?
- A: It can be caused by penetration of a hard object.
- Q: A finger can cause laceration?
- A: Yes sir.
- Q: Biking can also cause laceration?
- A: Yes sir.
- Q: Or a person herself can cause laceration on her private part?
- A: Yes sir.

With the use of the ‘Yes/No’ questions, the non-vulnerable witness, a physician, only replied with the affirmative except for one reply that gives clarification. The affirmative replies, without the presence of reasoning or details, unwittingly strengthen the insinuation of the lawyer that the laceration on the victim’s vagina could have been possibly caused by other circumstances and not by the accused.

Extract 6 shows how the vulnerable witness, a 15-year old boy who is the half-brother of the 15-year old victim, replied to the ‘Yes/No’ and ‘Tag’ questions of the defense lawyer.

Extract 6

- Q: You are not very close with you sister, XXX?
- A: We are also close Ma’am.
- Q: But you don’t talk a lot with her, is that correct?
- A: Yes, ma’am, no.
- Q: And since the case against your father had been filed by XXX, you have not seen her except when you saw her last time that she was here, is that correct?
- A: Yes, ma’am.

- Q: But you are always talking to your father, is that correct?
 A: Yes, ma'am.
 Q: In fact, you are in the custody of your grandmother, XXX, right now, is that correct?
 A: Yes, ma'am.
 Q: And you are always talking to your grandmother?
 A: Yes, ma'am.
 Q: And she asked you to testify against your sister in this court, is that correct?
 A: Yes, ma'am.
 Q: And it was your grandmother who told you what you are going to say in this court, is that correct?
 A: No, ma'am.
 Q: Are you aware, XXX, that if it would be proven that you lied before this court, you can be prosecuted with criminal offense?
 A: Yes, ma'am.

There are nine adjacent pairs of questions and replies in this extract. All the questions are either 'Yes/No' or 'Tag'. All the questions were answered with the affirmative except for the first one when the witness offered a clarification. The questions that follow next all insinuate that the child witness might have been influenced by the family of the accused to give his testimony in favor of the father. The child could not defend himself since he simply answered with a confirmation. However, when the prosecutor boldly suggested that the grandmother coached the child on what he will say, culminating her insinuations in her previous statement, the young boy denied this in his reply. The prosecutor then gave a rattling statement regarding the consequences of lying in the court. Certainly, such instance may cause anxiety and fear to the child being questioned, who was already nervous and torn between his loyalty to family members who are both the defendant and accused.

Looking back at the overall types of replies for both witness, it can be interestingly noted that, while both the non-vulnerable and vulnerable witnesses have 'compliance' as their top reply, the vulnerable witnesses or children agree more with the lawyers' questions with 55% compliance compared to the non-vulnerable witnesses who only have an agreement of 39% to questions asked by defense lawyers. It is of no surprise that both the non-vulnerable and vulnerable witnesses have 'compliance' as ranking first in the types of reply since in the questions for both witnesses, the type of question that ranked highest is the 'Yes/No'. It should be noted, however, that the children's higher percentage for agreeing to the questions of the lawyers might have bearing to their young age or limited experience. As pointed out by Raeder (2010), the 'Yes/No' type of questions can potentially compromise the testimony of children since they are either to agree or disagree with the statement and are not able to express that they do not know when they are not knowledgeable about the question. Worse, there is a likelihood that children are simply "acquiescing to inaccurate information" (Scurich, 2013, p.13).

The findings as regards the types of questions asked of and kinds of replies received from child witnesses further support the findings of Davies and Seymour (1998, in Hanna et al., 2002) that 80% of the questions asked of children (13 years and over) were closed ended or leading questions. As Krähelbül and Blades (2006) asserted, these children serving as witnesses are compliant to what they think is being required of them. They are reluctant to express that they do

not know the answer even though they were already oriented that it is acceptable to say they do not know. Zajac, Gross and Hayne (2003 in Cossins, 2009) also pictured children witnesses as acquiescent and seldom seek clarification.

In relation to critical discourse analysis, the theory presupposes that “systematic asymmetries of power and resources between speakers and listeners, readers and writers can be linked to their unequal access to linguistic and social resources (Luke, n.d., para. 25). Linking this proposition to this study’s analysis of courtroom discourse, it can be deduced that unequal access to linguistic and social resources may be possible due to the lawyers’ and the witnesses’ expected roles in the courtroom examination. Since witnesses are only expected to give replies to the questions asked by the lawyers in the cross-examination and the lawyers are the only ones who can ask questions in the interrogation, power emanates from the way lawyers can dominate the discourse through framing of questions and presentation of facts or assumptions. Extract 7 reveals how the lawyer yields his authority as he controls the discourse.

Extract 7

- Q: XXX is not related to you by blood, is that correct?
A: Yes, ma’am.
Q: So, she is really not your niece?
A: Yes, ma’am.
Q: And your brother never married the mother of XXX, is that correct?
A: Yes, ma’am, because the mother does not like ma’am.
Q: You are the biological brother of XXX?
A: Yes, ma’am.
Q: And you love your brother, is that correct?
A: Yes, ma’am.

In the extract, the witness testifies for his brother, the suspect for raping a 15-year old girl. The forceful questions led the witness to simply comply with the questions asked by the lawyer who controls the discourse. The lawyer controls the direction of the interrogation and therefore has the power to incorporate a particular proposition that will weaken the testimony of the witness since the witness is led to agree with the statement. This weakening of testimony is seen in the next extract which is a continuation of the interrogation in Extract 7.

Extract 8

- Q: And you will tell anything in this court so that he will be exonerated in this case, is that correct?
A: Yes, ma’am.

It could be noted that the lawyer was able to shift topic effortlessly, from the witness’ relationship to the suspect to his intention of clearing the victim’s accusation to his brother. The lawyer was able to strengthen his claim and in the process discredit the witness’ testimony by eliciting a confirmation from the witness that the former will “tell anything to the court’.

The power that a lawyer wields can also be seen in how he discredits the testimony of a witness with the use of repetition. In the unedited extract that follows, a 17-year old witness was interrogated by the defense lawyer.

Extract 9

- Q: When you first woke up, since it was very dark at the sala, you did not know the person holding the different parts of your body, is it not?
- A: Yes, sir.
- Q: So when you first woke up, you immediately felt frightened and shocked when you notice that somebody was holding the different parts of your body and at that time, you still did not know the identity of the person holding your body, is that correct?
- A: Yes, sir.
- Q: Despite of that fact, you did not shout or ran away or asked helped from any family member inside your house, is it not?
- A: No, sir.
- Q: So you mean to say that although you did not know the identity of that man, the first time you were awoken, you did not shout or ran away but you still allowed that person to hold you different parts of the body, is that correct?
- A: That time I was shocked and afraid, my father told me not to create any noise and that was the time I learned it was my father.
- Q: You heard that utterance about two minutes after you woke up, is that correct?
- A: Yes, sir.
- Q: So prior to that, for two minutes even you do not know the identity of the person holding your body and sex organ... I will withdraw that question. So the next incident, when somebody sexually molested you, was sometime in your summer vacation in 1999?

It could be noted that the lawyer was insinuating that the witness did not try to fight her assailant. There are two questions implying the same belief that the victim seem to have allowed what happened by stating that the victim did not shout or run away. When the witness tried to assert herself that she was not able to do anything because of her fright, the lawyer regains control of the discourse by re-strengthening his proposition that the victim did not do anything when he added the time element, two minutes, as the duration in which the victim was not doing anything at all. Furthermore, while the witness is only expected to answer the questions asked by the lawyer and therefore does not have any control of the topic under investigation, the lawyer has the power to change the topic immediately, as exhibited in the last question in Extract 9, when the lawyer withdrew his question.

The dominance of the lawyer is also seen in how he rephrases his question when the witness gives an answer that the lawyer does not favor. This can be seen in Extract 10 below:

Extract 10

- Q: So from May 1998 until summer vacation of 1999 nobody sexually molested you, is that correct?

- A: There was an incident because I was raped by my father in March 1999.
- Q: My question is between the periods of May 1998 until February 1999, no one sexually molested you, is that correct?
- A: There was.
- Q: But although there was sexual molestation, you did not complain, is that correct?
- A: How can I complain when I am afraid of my father because he even treated me with a knife and who wants to kill me?
- Q: You testified that between May 1998 and February 1999 you were sexually molested but you did not file any complaint of sexual molestation during the period before the Provincial Prosecution Office, is that correct?

It is clear from the first question in Extract 10 that the lawyer was asking about a sexual molestation that could have transpired from May 1998 until summer vacation of 1999. But, when the witness answered that she was molested in March 1999 which is still within the time frame given in the lawyer's question, the lawyer rephrases his question. He repeated his question with an emphasis on 'my question' and using the new time frame May 1998 until February 1999, therefore excluding the testimony of the witness that she was molested in March 1999. When the witness tries to assert herself by saying that she was not able to file a complaint because of a threat in her life, still the lawyer makes a follow-up on his next question that the witness did not file a complaint.

Cross-Examining Young or Vulnerable Witness

While it is true that some trial courts in the country have a separate chamber, monitors and screens to shield the child witness from the public during courtroom investigations, some regional trial courts in the country do not have these facilities. As such, child witnesses who are victims of sexual abuse wait for their turn to narrate their testimonies along with other witnesses, police officers, lawyers and visitors in a single courtroom. Since some of these cases are usually investigated last because the judges have to close the hearing to the public, child witnesses are able to view the proceedings in other cases. If ever these proceedings involve agonizing cross-examinations, these incidents might add to the fear the child witness experiences in facing an investigation.

In an interview with a judge and some lawyers, the researchers learned that though lawyers in the Philippines are required to complete every three years, at least 36 hours of continuing legal education activities via the Mandatory Continuing Legal Education, it seems that not all lawyers handling child-related cases receive specific training in handling sexually abused children. Moreover, during the five-month observation of the researchers in two regional trial courts, they observed some child witnesses who do not want to talk in court due to excessive fear. In an interview with a lawyer, the researchers learned that despite several pre-trial orientation and briefing, some child witnesses fail to talk because of their anxiety in seeing their assailants. As such, there is also a need for some lawyers who might not have coordinated with some psychologists to guide their witnesses. The psychological services offered by the Bantay Familia or the Department of Social Welfare could assist the children in completing their testimonies. However, it is worth mentioning that some lawyers, indeed take the effort to help their witnesses with the use of testimonial aids (e.g., dolls, papers, pencils, and toys) in giving their testimonies if they could not express themselves verbally, especially if the questions pertain to the very act of rape itself where a number of witnesses become emotional and unstable.

Conclusion and Recommendations

Testifying in court is truly a stressful experience for witnesses more so, for child witnesses, and doubly excruciating for sexually-abused children. Perhaps, some lawyers could consider the vulnerability of child witnesses. The study's findings show that leading and forceful questions commonly used in cross-examinations might deter the child witnesses from telling the real truth or from elaborating some details since these children are of no match to the powerful language use of some lawyers and simply conform to the lawyers' propositions. Furthermore, certain conditions in the courtroom like facing the public while waiting for the child's turn to take the witness stand, viewing other cross-examination of witnesses in other cases, and facing the child's assailant and other witnesses of the assailant affect the child witness' ability to narrate her testimonies. It is recommended that lawyers could perhaps attend more training in investigating child-related cases and that courtroom conditions that deter the child witnesses from confidently answering the lawyers' questions should be improved.

References

- Aldrige, M. (2007). The questioning of child witness by the police and in the court: A linguistic comparison. In J. Gibbons & M.T. Turrel (Eds.), *Dimensions of forensic linguistics* (pp. 115-130). Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Bull, R. (2010). The investigative interviewing of children and other vulnerable witnesses: Psychological research and working/professional practice. *Legal and Criminological Psychology, 15*, 5-23. doi: 10.1348/01446509X440160
- Carruso, D., & Cross, T. (2012). The case in Australia for further reform to the cross-examination and court management of child witness. *The International Journal of Evidence and Proof, 364-397*. doi: 10.1350/jep.2012.16.4.412
- Cossins, A. (2009). Cross-examinations in child sexual assault trials: Evidentiary safeguard or an opportunity to confuse? *Law Review, 33*, 68-104.
- Department of Justice - Special Committee for the Protection of Children. (2007). *Prosecutor's Manual on Handling Child-Related Cases*. Manila, Philippines: Special Committee for the Protection of Children.
- Director of Public Prosecutions. (2011, July). Vulnerable witness provisions. [Fact sheet]. Government of South Australia. Retrieved from <http://www.dpp.sa.gov.au>
- Ellison, L. (2007). Witness preparation and the prosecution of rape. *Legal Studies, 27*(2), 171-187. doi: 10.1111/j.1748-121X.2007.00051.x
- Ellison, L. (2009). The use and abuse of psychiatric evidence in rape trials. *The International Journal of Evidence and Proof, 13*, 28-49. doi:1350/ijep.2009.13.1.309
- Gibbons, J. (2008). Questioning in common law criminal courts. In J. Gibbons & M.T. Turrel (Eds.), *Dimensions of Forensic Linguistics* (pp. 115-130). Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Guidaben, A. (2014). Rape in the Philippines: Numbers reveal disturbing trend. GMA news research. Retrieved from newsstory/376614/news
- Hanna, K., Davies E., Crothers, C., & Henderson, E. (2012). Questioning child witnesses in New Zealand's criminal justice system: Is cross-examination fair? *Psychiatry, Psychology and Law, 19*(4), 530-546. doi: 10.1080/13218719.2011.615813

- Krähelbül, S., & Blades, M. (2006). The effect of interviewing techniques on young children's responses to questions. *Child Care, Health, Development*, 32(3), 321-331. Retrieved from EBSCO host database.
- Martin, I. (2013). Is justice lost in Philippine translation? *Philippine Journal of Linguistics*, 43, 1-17.
- Madrunio, M. (2012). Forensic linguistics. Educators Speak. *Manila Bulletin*. Manila: Manila Bulletin Publication, D11, D21.
- Miller, H. (2013). Winning—or at least not losing—on cross-examination. *Pace Law Review*, 33(2), 747-769.
- Ministry of Justice. (2011). Vulnerable and intimidated witnesses: A Police Service Guide. United Kingdom.
- Philippine Commission on Women. (n.d.). Policy brief no. 11. Strengthening the provisions of R.A. 8353: Amending the anti-rape law. Retrieved from <http://www.pcw.gov.ph/wpla/rape>.
- Raeder, M. (2010). Distrusting young children who allege sexual abuse: Why stereotypes don't die and ways to facilitate child testimony. *Widener Law Review*, 16, 239-278.
- Scurich, N. (2013). Questioning child witnesses. *The Jury Expert*, 25(1), 12-16.
- Van Dijk, T. (1993). Principles of critical discourse analysis. *Discourse and society*. Volume 4. London: SAGE.
- Tkačuková, T. (2010). Representing oneself. Cross-examination questioning: lay people as cross-examiners. In M. Coulthard & A. Johnson (Eds.), *The Routledge handbook of forensic linguistics* (pp. 333-346). London and New York: Routledge.
- Westcott, H., & Page, M. (2002). Cross-examination, sexual abuse and child witness identity. *Child Abuse Review*, 11, 137-152. doi: 10.1002/car.739
- Zajac, R., O'Neil, S., & Hayne, H. (2012). Disorder in the courtroom? Child witness under cross-examination. *Developmental Review*, 32, 181-204. Retrieved from <http://www.elsevier.com>