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‘He was telling you to shut up because you hadn’t been raped’: A linguistic investigation into the domination of female rape victims in courtroom cross examinations

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Introduction

A 2005 Home Office Report on sexual assault states there is a 'continuing and unbroken increase in reporting to the police over the past two decades', whilst the number of convictions remain static with as low as 5.6% of reported cases ending in conviction (Kelly, Lovett and Regan, 2005: x). In 2017 there were 121,187 incidents of sexual offences against women reported to the police, yet another 14% rise from the 106,111 reported in 2016 (ONS, 2018). It is also estimated that 83% of the sexual offences against women which occurred were not even reported to the police, meaning as many as 573,000 offences may have taken place in 2017 (ONS, 2018). The top reasons women list for choosing not to report sexual violence to the police include embarrassment, humiliation, not thinking they would be believed and not wanting to go to court (ONS, 2018). Women are overpowered by men when they are raped. A woman choosing not to report as a result of fear about being humiliated for a sexual attack by a man underlines that this overpowering of women exists beyond the act of rape: our social structures make women feel responsible for male attacks (Matoesian, 2001).

My analysis focuses on how this notion of female responsibility for rape is reinforced in the courtroom setting. Despite arguments that there has been progress for women in legal cases of rape, Luchjenbroers and Aldridge-Waddon's work analysing current courtroom and media discourse nonetheless underlines that 'outdated perceptions' about rape victims continue to be reproduced both inside and outside of the courtroom (2017: 16). Language is the means through which our law is communicated; linguistic investigation is essential for improving the low reporting and convicting rates for sexual violence. The dominating nature of courtroom language allows lawyers to put a woman's character and behaviour 'on trial', a form of domination and revictimisation for rape victims which is arguably 'as humiliating as the actual rape' (Lees, 1997: 53). Providing that courtroom discourse continues to perpetuate ideals of female culpability for rape, women will remain socially perceived as responsible and continue to fear reporting rape. My work combines Critical Discourse Analysis (henceforth CDA) and Conversation Analysis (henceforth CA) to underline the linguistic techniques used in a courtroom cross examination to dominate a woman, Helen, during her rape trial. CDA considers discourse as 'socially constitutive as well as socially shaped, helping sustain and reproduce the social status quo': for rape discourse this includes disapproval of women's autonomy over their own choices, for example, what they wear or drink and who they have sex with (Fairclough, Mulderrig and Wodak, 2011: 358). Adopting this CDA principle and combining it with turn-by-turn sequential CA is fitting for my research question: How does cross examination discourse (re)dominate rape victims and reproduce social ideals about rape victim responsibility?

Background

Courtroom discourse is highly structured institutional talk. Thornborrow's work on power relationships in language defines institutional talk as discourse with differentiated, pre-inscribed and conventional participant roles (2014: 4). The UK jury trial involves a number of participants who hold such assigned roles, including the judge, jury, lawyers, the accused and witnesses (Coulthard and Johnson, 2007: 96). Characteristically for institutional talk, the different participants in the jury trial do not hold equal control over the conversation: the turn taking process is structurally asymmetrical, controlled by the lawyer who asks questions of the witness. Power is 'fundamentally concerned with asymmetrical relationships', and therefore lawyers, in control of asking questions, possess power in cross examination discourse over witnesses who are expected to answer their questions (Johnstone, 2002: 112).

Lawyers' position of power over witnesses means their questions control the narrative construction of the events on trial presented to the jury. As Coulthard and Johnson's legal linguistic analysis asserts, stories are 'central to legal cases' (2007: 97). Witnesses, expected to perform within their participant role, are only able to tell their story in court through answers they provide to questions posed by lawyers. During a cross examination analysed by Levinson in his work on conversational goals, a girl who accused a man of rape is asked about her clothing, her make-up, how she was previously ill and still decided to go out, and her drinking and partying habits (1992: 83). Answers to these questions are already known – this is

highlighted by, for example, tagged assertions: 'you had had bronchitis, had you not?' (Levinson, 1992: 83). The questions do not aim to uncover new information. They are sequentially ordered by the lawyer to create a story about the girl's behaviour.

Levinson asserts that these questions build up a 'natural' argument for the jury to draw the implicit conclusion that the girl is 'not of good repute' and was actively 'seeking sexual adventures' (1992: 84). But the focus of Levinson's (1992) work 'remains within the courtroom', as Eades says in her analysis of racial prejudices in courtroom discourse is the case for the majority of courtroom linguistic analyses (Eades, 2012: 37). Labelling the line of questioning he analyses as a 'natural' argument means Levinson (1992) fails to acknowledge how such 'natural' conclusions function so powerfully as a result of wider social expectations for women. In *Language and Power*, Fairclough states that language should be considered as social practice determined by social structures (1989: 25). Linguistic analysis of a rape trial must include critical consideration of these social structures beyond the courtroom. This means challenging ideological beliefs that are sustained through discourse, beliefs which are almost always 'naturalised'; perceived as rational and universally true (Ehrlich, 2001: 65). Levinson's work highlights how implicit conclusions are effortlessly and seemingly naturally drawn from a lawyer's discourse (1992: 84). Critical analysis means challenging how these conclusions are so readily available and how the conclusions relate to existing social structures (Haworth, 2006).

Critical Discourse Analysis principles, as presented in Fairclough's later work (2010), consider language as both socially constituted and possessing the power to reproduce and sustain socially constituted ideals. These principles are used in Ehrlich's (2001) book *Representing Rape*, which investigates how lawyers' questioning 'insidiously' embeds ideological beliefs about female behaviour (2001: 63). Considering language as social power is necessary to uncover how pre-existing social ideologies can make judgements that women hold responsibility for being raped appear 'natural' (Fairclough, 1989: 2). Behaviours women should implement to be socially considered as true rape victims are defined in multiple analyses of rape victim discourse (see, for example, Lees, 1997; 2002; Matoesian, 2001; Ehrlich, 2001; 2010; Luchjenbroers and Olsson, 2013), including three key ideals:

1) The woman should not be interested in sex.
2) She should do nothing to invite the alleged assailant's attentions.
3) She should have obvious, physical wounds from doing everything she could to fight the assailant off.

These behaviours all fit an 'utmost resistance' standard, which, as Ehrlich argues, is an ideological framework dictating socially acceptable behaviour for women in rape cases (2001: 65). Ideological frameworks are typically undisputed beliefs which social behaviours are accordingly constructed to, or expected to be constructed to (Ehrlich, 2001: 66). The 'utmost resistance' framework means that unless a woman did everything she could to prevent an attack, she holds responsibility for being raped (Ehlrich, 2001: 66). These key ideals outlined in current analyses emphasise that resistance at an earlier stage, before physically resisting by fighting an attacker off, are required for social acceptance as a victim: a woman's choices, including her clothes, makeup, drinking, choice of bar/club/event, going on a date with or talking to a man, etc. can all be perceived as 1) an interest in sex or 2) an invitation for male attention, leading to conclusions that a woman is not sufficiently discouraging a sexual attack. Although these standards for women's behaviours are social expectations about consent, not standards defined by sexual assault laws, the UK law for sexual assault includes two sections involving the beliefs and verbal exchange of those in the interaction:

(c) B does not consent to the touching

(d) A does not reasonably believe that B consents (Government Legislation, 2003).

These two sections underline that ideological standards for what is socially perceived as consensual behaviour can support defence lawyers' ultimate aim to challenge the credibility of rape victims. In a situation where it is common that the only witnesses are those directly involved, beliefs about what constitutes as a woman giving her consent are critical for whether she is viewed in court as a credible victim instead of as responsible for being attacked. Lees'

(2002) work on British jury trials underlines that ideological behaviour standards for female rape victims are both explicitly and implicitly utilised repeatedly by defence lawyers to attack female credibility. Ehrlich (2001) argues women might feel unable to achieve the 'utmost resistance' standard by physically preventing an attack as a result of their subordinated position to men in society: women may not resist assault if they fear that doing so will bring them more harm from a stronger, dominant male force (Ehrlich, 2001: 67). Compliance with a man's demands can be seen by victims as their safest option, but a victim's compliance is regularly presented by defence attorneys as proof of consent (Ehrlich, 2001: 66).

Matoesian's critical analysis of the William Kennedy Smith rape trial involves further focus on how female responsibility is reinforced by lawyers' discourse contrasting the 'rational' and 'logical' way to behave in a rape situation with the 'irrational' way women behave (Matoesian, 2001: 39-38). The attorney cross examining Patricia Bowman, who accused Smith of raping her after meeting him in a bar, undermines Bowman's credibility through a sequential line of questioning focusing on her choice to keep on her underwear: 'you said after you left the Kennedy home that you felt dirty, is that correct', 'when you drove home you still had the same panties on' (Matoesian, 2001: 41). This questioning manipulates Bowman's actions after the encounter to suggest her responsibility for rape:

- True rape victims should not be interested in sex, as stated above. Thus, women should prioritise immediately removing anything associated with unwanted sex. If the victim felt 'dirty', then the ideal 'rational' behaviour is to cleanse herself of sexual fluids post-attack (Matoesian, 2001: 44).
- Repeated use of the word gendered word, 'panties', instead of neutral term 'underwear' functions as a reminder to the jury that keeping on her underwear is an action of sexual behaviour which Bowman chose (Matoesian, 2001: 44).
- 'Dirty' holds also a more symbolic interpretation: Bowman felt dirty because women inviting sexual attention or having 'impersonal sex' can be considered socially deviant. The lawyer implicitly suggests Bowman would create a false rape allegation to avoid negatively affecting her reputation (Matoesian, 2001: 45).

Each implication of Bowman's responsibility for rape can only be constructed as a result of the lawyer's ability to contrast her behaviour with an ideological framework of how she 'rationally' should have behaved (Matoesian, 2001: 44). Each implication pushes culpability onto a woman for male sexual actions even after the rape occurred.

This notion of female accountability for being raped highlights what has been coined by Luchjenbroers and Aldridge as the 'autonomous testosterone' myth: once a man is aroused, his testosterone will overpower him (2013: 305). It becomes a woman's *responsibility* to regulate her behaviour so that she does not arouse a man. Both Matoesian (2001) and Luchjenbroers and Alridge (2013) underline in their analyses the subordinated position which women are placed in and how their actions are viewed as responsible for male desire – dangerous ideologies which, as shown in Matoesian's (2001) analysis, are reinforced by lawyers' discourse. In a rape trial, then, a woman faces judgement about how her choices fit into an ideological framework of behaviour which is based almost entirely on a standard for women in which the woman is more responsible for male action than a man is himself.

Methodology

Data

The data I have chosen is taken from a cross examination recorded in the BBC 'Anatomy of a Crime' documentary filmed in 2001. The documentary followed the case of a twenty-seven-year old man who was convicted of raping a fourteen-year-old girl (alias Helen) by dragging her into an alley whilst she was walking home and threatening her with violence if she did not let him have sex with her. For Helen's identity to remain anonymous, the cross examination recording in the documentary is an actor's reconstruction using the verbatim transcript of Helen and the lawyer's interaction. I have made a transcript of the recorded reconstruction (located in appendix) to analyse their discourse. The analysis focuses only on the language exchanged between the lawyer and Helen – this is to avoid analysis of features

(pauses, eye contact, raised voices etc.) which may be different from the original cross examination.

Approach

This qualitative approach will use CA, which involves analysing the sequential order of the cross examination and how questions are structured (Pomerantz and Fehr, 2011). It will draw upon Conley and O'Barr's (2005) CA of rape trial discourse, analysing how the lawyer's questions function to dominate the interaction. I combine CA with CDA principles, adopting a social stance in support of women, the dominated and oppressed gender. This allows me to investigate how discourse sustains and reproduces beliefs about women's responsibility for men's actions (Fairclough, Mulderrig and Wodak, 2011: 358). As Ehrlich (2001; 2010) and Matoesian (1995; 2001) achieve in their work, this research aims to deconstruct how pre-existing male domination outside of the courtroom enters courtroom discourse. My work is also informed by Lees' (1997; 2002) influential observations on how a woman's character is controlled and attacked by lawyers in cross examinations. The analysis is divided into three topics the defence attorney raises which link to social beliefs about rape victim behaviour: 1. Clothing, 2. Alcohol, 3. Consensual Activity. Synergising CA and CDA methods is essential for a thorough examination of how the lawyers hold turn-by-turn control over topics and how these lawyer controlled topics reinforce social beliefs outside of the courtroom about female culpability for rape.

It is thought that approximately 90% of rape victims know their attacker prior to the offence (Rape Crisis, 2018). This means Helen's case, being raped by a stranger, is a less common type of rape. However, stranger rape is the type most stereotypically viewed as 'real rape': a forceful violent sexual attack by a stranger in a dark alley (Estrich, 1987: 13). My investigation aims to reveal how, even when a rape is considered a socially perceived 'real rape' (Estrich, 1987: 13), the breadth of social prejudices available against women mean their choices and behaviour are still heavily scrutinised in the courtroom.

Analysis

Clothing

As Conley and O'Barr say in their CA of rape victim cross examinations, one method lawyers can use to dominate witnesses is making 'covert evaluative comments' about witness behaviour within their questions (2005: 27). Embedded in lines 12-16 is the lawyer's description of Helen's clothing on the night of the rape:

12 L: Help me with this, we know you were wearing evening clothes
13 in the evening, you were wearing a skimpy sports top and
14 tracksuit bottoms. Your mum phoned, around five o clock that
15 evening, she wanted you home because they were having a
16 barbeque

Instead of directly asking Helen what she was wearing, the lawyer uses the declarative form, 'you were wearing', which increases his control over the narrative of events which occurred by preventing Helen from describing her own clothes. He reconstructs the events in his own terms. The length of the lawyer's question means it is difficult for Helen to dispute his embedded comments: giving an alternative description would mean deviating from her participant role of answering questions in the strict turn-by-turn structure. Inserting comments about Helen's clothing within a longer question allows the lawyer to critique Helen's image without straying from the question-and-answer format of the cross examination (Conley and O'Barr, 2005: 27).

Use of 'skimpy' is evidence that this description is a negative critique of Helen's outfit. 'Skimpy' suggests her outfit was in some way lacking or inadequate. The implicit conclusion is that Helen does not fit the ideological framework of female victim behaviour, as this involves a woman not performing any behaviour, including outfit choice, which may invite male attention. Considering Matoesian's proposal of an ideal male 'rationality' in his critical analysis, labelling Helen's clothing choice inadequate means the lawyer indicates the 'rational'

behaviour for Helen is to make dress choices which actively discourage male attention (2001: 39). I agree with Lees' argument in her analysis of female treatment in rape trials that 'the identification of women as "prey", liable to be attacked on the basis of how they dress, is a reflection of women's subordinate situation in society at large. The misogyny behind such depictions may not be apparent to most jurors, it is so taken for granted' (Lees 2002: 138). Commenting on Helen's choice of 'skimpy' 'evening clothes' means the lawyer sustains this deeply ingrained social belief that a girl's clothes are of relevance in a rape case. Repeatedly in sexual assault trials 'the young woman who dresses quite normally in today's fashions is put on trial' (Lees, 2002: 138). Further, even if she was *not* dressed 'normally', there is no outfit that is an open invitation for male attention or being touched.

Explicitly accusing a fourteen-year-old girl of dressing inadequately means placing a young person on trial. It implies Helen should have more control of her underdeveloped body and sexuality than an adult man has over his. Any discourse supporting and replicating the existing idea that a girl's or a woman's choice of clothing is a relevant factor for being sexually assaulted, or a factor synonymous with sexual consent, will continue to undermine a woman's control over her own choices. It will continue to imply that women must structure their life in consideration of the 'autonomous testosterone' theory: a man is overpowered by testosterone once aroused, and therefore to prevent being raped women should not dress in a way that could arouse a man (Luchjenbroers and Aldridge, 2013). As Luchjenbroers and Aldridge (2013) found in their analysis of police interviews with child sexual assault victims, interviewers repeatedly question what children were wearing. This functions to 'normalize sex with minors', treating them as potentially responsible or 'complicit' in sexual activities, (Luchjenbroers and Aldridge, 2013: 305), as the lawyer does by labelling Helen's outfit as 'skimpy'. Questioning the victim's outfit choices means absolving the man of blame for his sexual attack and pushing blame onto the victim.

Within lines 12-16, the lawyer continues his previous narrative construction in lines 1-12 of a girl of poor repute who avoids school and chooses not to spend time with her family. Helen's clothing description is connected to this narrative construction through the lawyer's repetition of the declarative forms of earlier questions: 'you got', 'you must', 'you will' (lines 1, 4, 9). As proposed in Conley and O'Barr's CA, there is a question continuum in which the WH-form (questions beginning e.g with 'what' or 'why') invites a narrative from witnesses and so is the least controlling, whereas the tag form of questions (e.g 'didn't you?') exerts far more power over the answers available to witnesses, demanding only a yes/no answer (2005: 26). Repetitive declarative question forms allow a narrative flow controlled by the lawyer, attacking Helen's credibility as a victim by threading together, over multiple questions, an image of a socially deviant girl who 'does not follow defined rules and norms' of social behaviour (Coulthard and Johnson, 2007: 98).

Further, pointing out twice during this short transcript that Helen was wearing 'tracksuit bottoms' (line 14, line 94) can be seen as an attack on Helen's social class, especially as the lawyer's narrative construction links her outfit to other forms of social deviancy. Estrich (1987) argues that the class status of the victim and rapist can affect the outcome of a rape trial, and I argue that in the transcript the lawyer develops his identity construction of Helen by utilising social stereotypes that a girl who chooses 'tracksuit bottoms' as 'evening clothes' is someone of a lower status. Credibility in the courtroom is tied with social reputation (Lees, 2002: 155). This means the lawyer's scrutiny of Helen's clothing choices reinforces a negative view of her character and suggests she does not hold moral credibility ideologically expected of a rape victim (Lees, 2002). Her clothing choice is implicitly used to highlight both her lack of responsibility in preventing a rape and her lack of ideologically expected rape victim credibility due to her supposed social status.

Alcohol

Heavy importance is placed on Helen's intoxication, with 11 out of the 39 questions the lawyer asks mentioning alcohol. The declarative question form the lawyer uses in line 33 explicitly focuses on Helen's day drinking behaviour: 'you were drinking vodka'. By replying with 'I had a little taste' (line 34) instead of submitting to a yes/no answer form, Helen attempts

to reduce this slur on her character. In response to Helen's attempt at mediation, the lawyer uses the common cross examination technique of rephrasing the question to elicit a more affirmative response from the witness (Conley and O'Barr, 2005: 27). He asks 'Is that when you were drinking vodka?' in line 42, focusing again on how Helen was drinking spirits before the rape. This question does not ask if Helen was drinking but instead assumes she definitely was drinking, despite her reply that she only had a small amount. The lawyer therefore overrides Helen's replies. Controlled, repetitive topic management is a form of courtroom domination allowing the lawyer to highlight Helen's own decision to drink alcohol (Conley and O'Barr, 2005: 26). As outlined in Ehrlich's analysis, a woman's decisions before or during rape are scrutinised for disparity from the ideological 'utmost resistance' standard (2001: 67). Emphasising Helen's intoxication for 11 questions pushes responsibility onto Helen for being raped, because intoxication is a choice which her lowers inhibitions and decreases her ability to resist an attack. Lees' (2002) observations on rape trials found that a woman's drinking habits are a consistent feature pushed into cross examinations by defence lawyers. This underlines that drinking alcohol is a choice regularly perceived as relevant for being sexually assaulted as it does not fit the ideological framework in which a woman should actively regulate her behaviour to prevent an attack.

Bernhardsson and Bogren found in their analysis of media discourse concerning drinking and sexual assault that 'intoxication is used as an excuse or extenuating circumstances for male aggressors, while intoxicated women who are sexually assaulted are held responsible for putting themselves at risk' (2012: 2). Social expectations do not attribute men and women the same responsibility for their actions when drunk – women are framed as even more responsible for being raped. Female responsibility is furthered through the socially constructed link between women who drink and 'unleashing' sexuality (Lees, 2002: 145). The lawyer reproduces this ideological link prevailing outside of courtroom discourse (Bernhardsson and Bogren, 2012) in lines 50-51: 'one of the painters remembers a girl who tapped him on the bottom, she was a bit giddy. Was that you?' Labelling Helen as 'giddy' ties together her alleged intimate act of touching a stranger with her lowered inhibitions as a result of drinking. The previous 4 questions (lines 40, 42, 44 and 46) sequentially build up the focus on Helen's drinking, meaning that by lines 50-51 the lawyer presents her as having a sexual interest unleashed as a result of drinking because she is less in control and so more likely to act in a promiscuous manner. A woman being uninterested in sex is fundamental to ideological expectations of a credible rape victim, therefore, focus on Helen's alcohol consumption attacks her credibility.

I am not suggesting if Helen in fact did tap a painter on the bottom that that was acceptable or should be excused (as that would be sexual assault on the painter), I am arguing that connecting Helen's 'giddy' lowered inhibitions with unleashing a sexual action reproduces the belief that women's sexual desires accidentally emerge as a result of drinking. The lawyer therefore implies that when sober a woman should actively suppress her sexuality. Suggesting Helen's intoxicated state led to unleashing sexual feelings, which ideologically should be suppressed, lays the foundation for a common presumption made in rape trials as observed in Lees' (2002) trial work: women lie about being raped. Focusing on Helen's interaction with this other man prior to the sexual interaction with the rapist means Helen is presented to the jury as a girl who regretted unleashing sexual interest when 'giddy'. This leads to the implicit conclusion that she had consensual sex when drunk but later, when sober, created false rape allegations to prevent the social ridicule associated with women having sexual interests.

Multiple stereotypes of women's behaviour relating to alcohol are able to work together and point to a woman's own responsibility for sexual assault: either by increasing her vulnerability or increasing her sexual feelings. This is the 'sexual double bind' which women face during cross examination, as Conley and O'Barr say in their CA of rape victims (2005: 32). Helen is either a sexually excited 'calculating pursuer' or a vulnerable 'helpless victim' because of alcohol, and social ideologies mean that *either way* the rape can be structured as her fault (Conley and O'Barr, 2005: 34).

Consensual activity

This final analysis section focuses on techniques the lawyer uses to construct the events as consensual and Helen as a liar, first through other forms of consensual activity and then by recasting the sexual interaction as initiated and pursued by Helen.

The questions in lines 68-75 highlight that Helen was interacting with the man prior to her accusing him of rape:

68 L: You got into conversation with one of the men
69 V: Got asked where me house was
70 L: He got up from the bench, started walking and you followed him.
71 There's a time when you walked off that he put his arm around you,
72 and you had your arm around him.
73 V: Can't remember
74 L: Is it not true that you went off walking with your arms around each
75 other?

Continuing the narrative control applied in the questions focusing on Helen's clothing (lines 12-16, 20-21), the lawyer's questions in lines 68-70 are statements structured as questions. Even sharper focus is placed on this physical touching between Helen and the man by the lawyer's next question (lines 74-75), with the domineering yes/no form of question repeating the previous statement. Matoesian's analysis underlines that during cross examination a woman's decision to engage in intimate behaviour of one kind is often presented as an 'irrational' female logic if she did not want to have sex (2001: 47). Emphasis on Helen's consent to one form of interaction can therefore be perceived as logically meaning she must have consented to all types of sexual behaviour (Matoesian, 2001).

Sexual interactions are far more complex than this simplistic ideological, 'rational' (Matoesian, 2001: 47) view of sex wherein one consensual interaction means future consent: for example, if two people have had consensual sex before that does not mean they must consent to sex every time in the future. But these ideas that talking and touching mean consent are deeply ingrained social beliefs: Amnesty International's 2005 'Sexual Assault Research' Poll of 1,095 adults revealed that one third of people believe women are at least partially responsible for being raped if they flirt with the assailant beforehand. This idea of a logical accountability of women for rape links again to Luchjenbroers and Aldridge's (2013) theory of the 'autonomous testosterone' myth that, as well as a woman's clothing choices, her choice to talk to or touch a man risks arousing his sexual urges beyond his control. Questions focusing on Helen's engagement in some form of contact with the man before he raped her therefore implicitly push responsibility onto Helen for being raped. Sharp attention to Helen's other forms of intimacy with the man means the lawyer implies Helen was interested in sex and invited male attentions. This separates Helen from characteristics expected of an ideological rape victim and undermines the credibility of her rape allegation.

'You got into conversation with one of the men' (line 68) is also a question which amplifies Helen's lack of credibility as a rape victim by furthering the construction of her as 'calculating pursuer' who engaged in consensual sex, as initially shown in the Alcohol analysis section (Conley and O'Barr, 2005: 32). Line 68 presents Helen as the agent of the situation, therefore reducing the man's responsibility for engaging with Helen. The lawyer's presentation of Helen's agency is emphasised in lines 77-80:

77 L: Let me put this to you, it was you who suggested to this man when you
78 walked off that you went down the alleyway
79 V: No
80 L: And you went down willingly

Beginning the question with 'Let me put this to you' allows the lawyer to create his narrative of events in which Helen is the initiator of the sexual interaction. Although Helen's response denies this narrative, beginning the next question with 'And' allows the lawyer to disregard

Helen's answer and continue his domination over narrative construction (Matsumoto, 1999). As Conley and O'Barr say, a witness's 'denial may be lost in the flow of the lawyer's polemic' due to the strength of the lawyer's statement questions (2005: 26). The 'And' question form continues the narrative flow of Helen as sexually interested by describing her behaviour as 'willing'.

Constructing questions in which Helen is the agent solely responsible for the sexual interaction means the lawyer portrays Helen as older and more in control of her decisions than is defined by law which states she is under the age of consent. Asking in line 82 'How was he able to get your trousers and knickers off?' furthers this portrayal that Helen possesses more agency and control in the situation than the man does. It suggests that the man would not have the ability to use considerable force over a much younger girl. Using 'How' may seem to be a less controlling question form, however, this open ended question implies that it would be difficult for the man to have taken off Helen's clothes. The question disregards the strength and domination men can have over women, meaning, as Ehrlich points out, it is disregarded that a woman may be afraid of a man (Ehlrich, 2001: 67). Instead, the lawyer implies men and women have the same amount of power and if Helen did not want him to take her clothes off then she would have felt able to resist. This results in the conclusion the lawyer makes in his next question that if Helen's trousers were taken off then she must have wanted 'him to take them off' (line 84). At this point in the transcript, the lawyer begins completely opposing the idea that Helen is a rape victim by rejecting the notion that the sexual interaction was non-consensual.

Helen attempts to negate the accusations that she initiated sexual actions, but this is combatted by the lawyer who regains his control:

85 V: I didn't follow him, I tried to push him away I were crying and
86 screaming the whole time, I told him I didn't want to do it
87 L: <u>He didn't put his penis inside you, did he?</u>

Helen tries in lines 85-86 to construct an identity of herself which fits with the socially expected rape victim behaviour of actively resisting male advances. Her attempted construction is responded to with the most controlling question form, the tag ending question, 'did he?', meaning the lawyer regains domination and regulation over his narrative of Helen as a liar (Conley and O'Barr, 2005: 26). The question removes male responsibility by forcefully proposing that the man did not have agency in the situation.

In the next questions, the lawyer further reduces male responsibility by heightening the image that Helen initiated the sexual interaction: 'I suggest you were not crying and screaming and you took your own tracksuit bottoms and knickers off and laid down on top of them' (lines 92-93). Beginning the question with 'I suggest' means the lawyer transforms the cross examination from 'dialogue to self-serving monologue' (Conley and O'Barr, 2005: 26). Using 'I suggest' allows the lawyer to repeat and contest Helen's narrative that she was 'screaming and crying' (lines 85-86), overpowering her attempt at her own narrative construction and reconstructing the narrative to implicate Helen's own agency, instead of the agency of her attacker, in removing her clothing.

As shown in the Clothing analysis, Helen's choice of dress is scrutinised as a choice which is relevant for being raped. Earlier in the transcript, in line 13, the lawyer criticises Helen's insufficiency in maintaining responsibilities expected of a woman to prevent rape by labelling Helen's clothes 'skimpy', and now in lines 92-93 he furthers the idea that Helen's clothing choices mean she is not a credible rape victim through suggesting she invites male attention by taking them off herself. Lines 92-93 directly attack Helen's own narrative construction in lines 85-86 and thus her credibility as a victim, implying that after dressing promiscuously she also promiscuously removed them and 'laid down on top of them' (line 93). Specific use of 'knickers' in the accusation that Helen took her own underwear off relates to Matoesian's findings in the William Kennedy Smith rape trial that using female specific words for underwear instead of gender neutral terms functions as a reminder of a female sexuality

(2001: 44). Using the declarative form 'you were' and 'you took your own' omits any male responsibility and pushes responsibility further onto Helen for supposedly inviting sexual interaction.

The final transcript questions accuse Helen of lying about rape after her promiscuous seduction of the man in which she initiated sex:

95 L: I suggest you heard the car, you stood up yourself, saying you
96 you didn't want anything else
97 V: [No
98 L: [That's when you started shouting and screaming
99 you had been raped
100 V: No
101 L: He was telling you to shut up because you hadn't been raped
102 V: No
103 L: He didn't rape you

Repeating the question structure 'I suggest', as used in line 95, means the lawyer continues to dominate the narrative image of Helen, persisting with his implications that Helen was the agent in the situation who made all of the decisions concerning sexual interaction. The lawyer's argument in these final questions that Helen is lying about being raped focuses on the idea that hearing a car (line 95) was the moment in which she stopped her sexual engagement. He suggests her reason for stopping sex was because she became aware that someone may see her acting in a promiscuous manner: these accusations align with Matoesian's findings that his victim is shamed in court for the dirtiness of 'impersonal sex', implying that women should be embarrassed about their sexual promiscuity (2001: 45). The lawyer's argument rests on the existing belief, already implied by the suggestion of Helen's drunken unleashing of sexual behaviour analysed in the Alcohol section, that in rape trials women tell 'nothing but lies' (Lees 2002: 134), and that women tell these lies to prevent a promiscuous image and maintain sexual reputability.

Linking the lawyer's final accusations in lines 101 and 103 with Matoesian's (2001) ideal of a male 'logic of rational behaviour', the lawyer implies it is more logical that a woman would fabricate a rape allegation than that she is telling the truth about being raped (Matoesian 2001: 45). The 'logical' conclusion is that Helen cares so strongly about her social acceptability that she would lie about being raped, when she had consensual sex, to prevent receiving a socially deviant reputation. The lawyer argues Helen was told to 'shut up' because she was making a false claim of rape (line 101), not because the man wanted her to stay quiet about the sexual violence he enacted on her. A rapist telling their victim to 'shut up' means attempting to silence a victim who tries to make a stand against domination. Reusing the words of Helen's rapist, 'shut up', in the courtroom setting revictimises Helen. It punishes her for 'breaking the silence' enforced by societal 'emphasis on female respectability and chastity' (Lees, 1997: 73).

Discussion

Using CA allows my research to show that Helen is overpowered in cross examination as a result of the lawyer's sequential topic management. He maintains his control over the interaction through his use of question structure, repetition and covert comments on Helen's behaviour. Controlled questions focusing on her clothing, her choice to drink and her other supposed consensual behaviour mean the lawyer seizes power over the image of Helen's body. He dominates Helen, reconstructing her image to attack her credibility as a rape victim. As Conley and O'Barr's CA research says: 'the basic linguistic strategies of cross examination are domination and control. When used against the background of the rape victims experience, they can bring about a subtle yet powerful re-enactment of that experience' (2005: 37). The lawyer's forceful possession of Helen's bodily description through his institutional control of the interaction parallels with the physical domination women undergo during rape.

Combining CA with CDA underlines that elements of the horrific trauma and domination Helen experienced when she was sexually assaulted are reproduced by the sequential control the lawyer possesses in court, and that this lawyer controlled scrutiny of her conduct is effective as a result of the plethora of pre-existing social stereotypes outside of the court for rape victim behaviour. In addition to dominating Helen on a turn-by-turn sequential basis, the language used in courtroom cross examination is socially constituted: 'it relates to existing social structures and reproduces social structures' (Fairclough, 2010: 3). The lawyer's discourse is constituted by existing myths of 'utmost resistance' (Ehrlich, 2001) and 'autonomous testosterone' (Luchjenbroers and Aldridge, 2013) which reinforce women's social position as the oppressed gender. The lawyer reduces male responsibility for raping women through instead focusing on how women's behaviour and character make them responsible for being raped. Ideals of victim culpability are reproduced by the lawyer, firstly through criticism of Helen's inadequate clothing and alcohol behaviour and then by accusing her of being the sexual agent taking off her inadequate clothing to seduce the man. The maintenance of a status quo which emphasises female culpability for being raped shown in the lawyer's discourse is also found in media discourse analysis, including work by Clark (1998), Bernhardsson and Bogren (2012) and Luchjenbroers and Aldridge-Waddon (2017). Fairclough asserts it is essential for CDA work to focus on social relations between discourse (2010: 3): these media discourse analyses highlight that social ideals about rape victim responsibility persist outside as well as inside the courtroom setting. Helen is disadvantaged against a barrage of pre-existing ideals the lawyer can utilise, and reinforce, about how a victim should 'rationally' or 'logically' behave (Matoesian, 2001: 39).

Clark's discourse analysis states that 'in our society men commit acts of violence on women every day. All women's lives are affected by this: by actual violence or by the fear of it' (1998: 183). Analysing Helen's cross examination reveals that after this actual violence of being raped, she is subjected to further victimisation during cross examination in which she is blamed for rape as a result of not fearing male violence enough. Men are depicted as unable to be held accountable for their acts of sexual violence, and therefore if women do not regulate their behaviour, they are responsible for being raped (Matoesian, 2001; Luchjenbroers and Aldridge, 2013). The lawyer's focus on how Helen should regulate her behaviour in relation to a fear of male violence reflects Lees argument that cross examinations function as a way of controlling women instead of protecting them (1997: 69). Control is further exerted through the questioning focusing on Helen's sexual behaviour: the sequential organisation of the questions moves from implying Helen drunkenly unleashed sexuality to explicitly asking her 'did you want him to take them off' (line 85). Helen is shamed by the lawyer for performing these sexual actions which the lawyer himself introduces into her description.

The man in Helen's case was found guilty of rape. However, my analysis reinforces Matoesian's (1993; 2001) and Lees' (2002) assertions that the courtroom experience can feel as invasive, humiliating and violent as the act of rape itself. The lawyer's cross examination labels Helen as someone who dressed provocatively and acted 'giddy' (line 51). It accuses Helen of enjoying the sex and lying about rape. It victimises Helen by reusing the words of her rapist, that she was told to 'shut up' (line 101), as a means of attacking her reliability as a rape victim. My introduction stated the leading causes for the 83% of women who chose not to report their rape in 2017 included fear of humiliation, embarrassment and the courtroom (ONS, 2018). CDA aims to 'produce interpretations and explanations of areas of social life which both identify the cause of social wrongs and produce knowledge which could contribute to righting or mitigating them' (Fairclough, 2010: 8). CDA of Helen's cross examination underlines that the small proportion of women who do feel able to report rape are subject to humiliation in the courtroom. There is currently a repeating cycle wherein women's subordinated social position under male domination leads to fear of reporting rape to the police, and those who do report are dominated again in the courtroom, affecting both reporting and conviction rates.

Conclusion

This dissertation investigated the pressing social issue of the subordination of the female identity in the courtroom. Synergising Conversation Analysis and Critical Discourse is a strength to this work, showing that after being raped Helen is victimised and attacked again in cross examination by the strength of the lawyer's questions on two levels. Firstly, he controls the institutional interaction through his forceful questioning techniques which allow him to control the description of Helen's body and behaviour. Secondly, this control of Helen's image, reputation and character is powerful as a result of pre-existing social ideals about how rape victims should behave and how women can be responsible for being raped. My analysis underlines the invasiveness of the lawyer's questioning and the institutional domination faced by those women who do feel comfortable to break the socially expected silence of women (Lees, 1997) and speak out about being sexually assaulted.

My work focuses only on one transcript; additional research into how ideological beliefs about rape victims strengthen lawyers' attacks on rape victim credibility is necessary. Quantitative analysis is needed in further studies to provide a more extensive overview of the trends in how lawyers depict rape victims during the courtroom. Using a combination of CA and CDA methods when investigating trials of other forms of sexual assault, including victims of acquaintance rape and date rape, is essential to further understand the problematic nature of rape trial discourse in which victims are subjected to further domination. Research into how ideological beliefs impact courtroom discourse of trials for male sexual assault victims as well as female victims is also needed. We must continue to question how reporting rape and conviction rates for rape are consistently so low (Ehrlich, 2001). We must continue to investigate how social prejudices against victims of sexual assault are utilised and reinforced in our courtrooms, subjecting victims to further domination.

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Appendix

Data transcribed from: https://www.youtube.com/watch?v=hQGd22KFcnc [Accessed 15 March 2018]

Part one cross examination – video time - 47:26-50:58
Part two, the same cross examination continues on the next day – video time - 52:02-54:00

Key:
L – Lawyer
V – Victim
J – Judge

Notes on transcription:
[– simultaneous speaking

Part one Cross Examination

Line	Speaker	
1	L:	You got into a bit of trouble for not going to school, for playing truant
2		from school?
3	V:	Yeah
4	L:	You must remember what you were doing during the day, just
5		walking the street just wondering around?
6	V:	Yeah
7	L:	What did you do? Where did you go?
8	V:	Nowhere
9	L:	It was a pretty awful day, you will remember it well
10	V:	We were just 'anging around, me mates were over the brittanic pub
11		it's just over from the white square.
12	L:	Help me with this, we know you were wearing evening clothes in the
13		evening, you were wearing a skimpy sports top and tracksuit
14		bottoms. Your mum phoned, around five o clock that evening, she
15		wanted you home because they were having a barbeque
16		
17	V:	Can't remember
18	L:	Did she say you hadn't been to school?
19	V:	Can't remember
20	L:	You arranged to meet your boyfriend at six fifteen that evening and
21		he gave you the time his bus was coming in
22	V:	Yeah
23	L:	Can you remember where you went?
24	V:	We went to tescos, cos he said he wanted a drink, so we waited
25		outside for him and he got a can of beer
26	L:	Are you sure about that? Think about it, you want to stick to that?
27		
28	V:	Yeah
29	L:	He bought a bottle of vodka, didn't he?
30	V:	Yeah
31	L:	You can remember that?
32	V:	Yeah
33	L:	You were drinking vodka

34	V:	I had a little taste
35	V:	You keep trying to make out that it's my fault
36	J:	We'll take a short break
37	L:	How long were you under the bridge with your boyfriend and the
38		other girl?
39	V:	About two hours
40	L:	Is that when you were drinking vodka?
41	V:	Yeah
42	L:	Was there anything else you were drinking?
43	V:	Had some cans
44	L:	Who bought the cans?
45	V:	Boyfriend bought cans of beer
46	L:	How many cans of beer did he buy?
47	V:	Three or four
48	L:	Do you remember some men, painting in the station?
49	V:	Yeah
50	L:	One of the painters remembers a girl who tapped him on the bottom,
51		she was a bit giddy was that you?
52	V:	Can't remember
53	L:	Why did you see your boyfriend to his bus but he didn't see you to
54		yours?
55	V:	Because his bus were due in and if he missed it he would've had to
56		walk home
57	L:	How did you intend to get home?
58	V:	Just wanted to walk
59	L:	You could've caught a bus home
60	V:	My bus was already gone
61	L:	I thought the reason you went with your boyfriend was so that he
62		could get his bus and you could get yours
63	V:	No I said that to him
64	L:	You just said that to us
65	V:	I'm going to leave it now cos you're confusing me

Part two cross examination

Line	Speaker	
66	L:	Why did you walk past the railway station, was that your way home?
67	V:	Because it were lighter and it's easier
68	L:	You got into conversation with one of the men
69	V:	Got asked where me house was
70	L:	He got up from the bench, started walking and you followed him. There's
71		a time when you walked off that he put his arm around you, and you had
72		your arm around him
73	V:	Can't remember
74	L:	Is it not true that you went off walking with your arms around each other?
75		
76	V:	I can't remember
77	L:	Let me put this to you, it was you who suggested to this man when you
78		walked off that you went down the alleyway
79	V:	No

80 L: And you went down willingly
81 V: Well he told me it would be a quicker way, so I thought it would be
82 L: How was he able to get your trousers and knickers off?
83 V: Pulled them
84 L: Did you want him to take them off
85 V: I didn't follow him, I tried to push him away I were crying and screaming
86 the whole time, I told him I didn't want to do it
87 L: He didn't put his penis inside you, did he?
88 V: A little bit yeah
89 L: You never saw it at any stage, how do you know it went inside you?
90
91 V: Cos I could feel it pushing
92 L: I suggest you were not crying and screaming and you took your own
93 tracksuit bottoms and knickers off and laid down on top of them
94 V: No
95 L: I suggest you heard the car, you stood up yourself, saying you didn't want
96 anything else
97 V: [No
98 L: [That's when you started shouting and screaming you had
99 been raped
100 V: No
101 L: He was telling you to shut up because you hadn't been raped
102 V: No
103 L: He didn't rape you
104 V: Yes, he did, I wouldn't be here if he didn't