

## **LANGUAGE AND POWER IN THE COURTROOM: EXAMINING THE DISCOURSE IN PHILIPPINE RAPE TRIALS**

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### **ABSTRACT**

The language in the courtroom is described as comprehensible for the lawyers but complex for non-regular courtroom participants like the witnesses. Since cross-examinations are vital in providing evidence to courtroom investigations, analyzing the way examiners frame their questions and the way witnesses give their replies are of prime importance. Thus, this study investigated the courtroom discourse in rape trials, particularly the types of questions, replies and politeness strategies used in cross-examinations. The transcripts of stenographic notes served as the study corpus. Generally, critical discourse analysis was employed in analyzing the courtroom discourse while the classification of questions of Gibbons (2008) and Holt and Johnson (2010) was utilized in categorizing the questions; the categories of answers by Zajac et al. (2003) were used in classifying the replies of witnesses; and, the Politeness Theory of Brown and Levinson (1987) was used in identifying the politeness strategies by the lawyers and the witnesses. Findings reveal that some questions in cross-examinations are coercive and witnesses usually comply with the question or are restricted in giving explanations. In terms of politeness strategies, bald-on strategies monopolize the questioning techniques of lawyers while positive strategies dominate the replies of witnesses. Thus, the role of cross-examinations in providing evidence to courtroom investigations cannot be undermined. The language used in the courtroom might either strengthen or distort the evidence of witness, more particularly, vulnerable witnesses. Thus, it is important that witnesses be oriented to the rudiments of courtroom language investigation.

**Keywords:** Cross-examination, critical discourse analysis, rape trial discourse

### **1. Introduction**

#### **1.1 Background of the Study**

While the language in the court might appear to be simple and comprehensible to the usual court participants like the judges and lawyers, this language appears to be complex for the non-regular courtroom participants, particularly the witnesses. Some lawyers, experts in the field of investigation and presentation of evidence, seem to powerfully use the language to their advantage. The witnesses, on the other hand, not only face the dilemma of airing out their narrative correctly, but also the dilemma of properly comprehending questions in cross-examinations.

Cross-examinations are vital parts in courtroom proceedings. In fact, Cannan and Zajac (2009) emphasized that if there is no cross-examination, it is not easy to challenge the evidence shown in the courtroom. Indeed, it is in the cross-examination that the lawyers are able to build the evidence leading to the court's final judgment. The turn-taking in the cross-

examination via the lawyers' questioning and the witnesses' replies provides a built-up of the narrative discourse which serves as the basis of establishing the evidence.

Despite the vital role cross-examinations play in proving a complainant's accusation or the accused person's innocence or guilt, the witnesses consider cross-examination as a stressful experience. In fact, Tkačuková (2010) described the environment in the cross-examination as one which has a 'hostile atmosphere'. This kind of atmosphere during the cross-examination might be the result of the intense and probing questioning of cross-examiners. The witnesses struggle for words to express their own versions of an account. Gibbons (2008) also stressed that cross-examination is a 'verbal battle field' between the lawyer and the witnesses, and that since lawyers are the ones who control the examination process, they have the upper hand. Furthermore, lawyers are also in the position to exert pressure on the witnesses to make the latter agree with the former's version of events.

Gibbons (2008) also further explained that the questioning procedure in courtroom examination comprises of two parts: the question and reply. Unlike other ordinary conversations outside the courtroom, the cross-examination is structured. The lawyers and the judges are the ones asking the questions and the witnesses are expected to give the replies. Not only are the witnesses expected to give the replies, but their replies are controlled and should address the aim of the examiners' questions. It is no wonder that Gibbons (2008) further described the reply of witnesses as "obligatory, and its nature is constrained" (p.119).

Though the language studies on witness examination, specifically the cross-examination, aims to "minimize the injustices and alert legal professionals to problematic practices" (Tkačuková, 2010, p. 333), still there are limited studies dealing with forensic linguistics, particularly investigating the language used in the cross-examinations in the Philippines. In fact, Madrunio (2012) revealed 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" (p.21).

### **1.2 Objectives of the Study**

With these brief accounts of the vital role of cross-examination in the courtroom and the need for further research in this field of linguistics, this study aimed to analyze the cross-examination discourse in rape trials. Specifically, the study aimed to answer the following:

- (1) What types of questions are usually asked in the rape trial cross-examinations?
- (2) What types of replies are usually given by witnesses in rape trial cross-examinations?
- (3) What politeness strategies are employed in the cross-examinations?

### **1.3 Significance of the Study**

Primarily, the study proves to be vital since it is probably the first study of the language used in the courtroom cross-examination in the Bicol region, Philippines. Furthermore, it seeks to contribute to the field of forensic linguistic studies in the Philippines which is just beginning to be explored by just very few Filipino researchers at present. Likewise, the study also endeavors to contribute significant findings to the vast field of critical discourse analysis. While it is true that the use of critical discourse analysis in examining the language in legal settings has been previously explored by some researchers (Madrunio, 2014; Santos, 2004) the application of critical discourse analysis in examining the discourse in the Philippines,

more particularly in one of the country's regions and more specifically in a Family Court, where incestuous rape trials are held, is an area which is likely not yet explored by researchers. In addition, though a number of studies explored the effect of cross-examination on witnesses (Caruso & Cross, 2012; Cossins, 2009; Raeder, 2010; Westcott & Page, 2002), there seems to be a dearth in the analysis of the questions and replies in the cross-examinations done between vulnerable and non-vulnerable witnesses. Investigating the cross-examination conducted between adult and capable witnesses versus young and intimidated witnesses may prove to be valuable since the findings of this study can help address the social injustices in the courtroom discourse brought about by language hegemony which puts witnesses, especially the vulnerable ones, to a great disadvantage. Hopefully, this study can then be considered as one of the novel endeavors in the field of law and language studies in the Philippines. It seeks to enlighten the courtroom practitioners, especially the lawyers examining the witnesses, about the detrimental effects of the language utilized during cross-examination. If language is used in a manner that is not understood by the witnesses or in a manner that compels the witnesses to simply conform to the propositions of the lawyers reflected in forceful questions, the witnesses might not achieve the necessary justice they search for nor will truth come out in the process of investigation.

### **1.4 Scope and Limitation**

The study focused on the rape discourse in the Family Courts in the Regional Trial Courts of Naga City, Philippines. It used the available transcript of stenographic notes (TSNs) provided by the Regional Trial Courts. Furthermore, the study only examined the cross-examinations in the court investigation and did not include direct examinations for the study would like to show that the cross-examination is undoubtedly the most stressful part of the investigation for the courtroom witnesses.

### **1.5 Theoretical Framework**

Primarily, this paper in its aim of examining the language used in the cross-examination and in the actual court trials, utilized Critical Discourse Analysis (CDA), espousing most of the principles advocated by Van Dijk (1993). CDA examines how language and power intertwine. It posits that power emanates from social relationships, group memberships, and access to communication among others. In the field of discourse, this power is further heightened as individuals utilize 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 it as a 'sociopolitical discourse analysis'.

CDA's appropriateness as the framework of the study can be validated as this paper demonstrates 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 and law. Furthermore, parallel to other CDA works, this study focuses on different dimensions of cross-examination discourse: structure, typology, and pragmatics.

Next, the classification of questions of Gibbons (2008) and Holt and Johnson (2010) were utilized in categorizing the questions. The questions were classified according to: (1) typology and structure – open-ended (wh-questions) or close-ended questions (yes/no, alternative, declarative, and tags) and so-and prefaced questions, and (2) socio-pragmatic functions of rape discourse.

Furthermore, the replies of the witnesses were classified into (1) compliance, (2) resistance, (3) giving clarification, (4) seeking clarification, (5) misunderstanding, (6) uncertainty, (7) no response, and (8) changing story or response. These categories were adopted from Zajac et al. (2003) in Cannan and Zajac (2009).

Lastly, the Politeness Theory of Brown and Levinson (1987) was used in identifying the politeness strategies utilized by the lawyers and the witnesses. The five categories, (1) bald-on record; (2) positive politeness; (3) negative politeness; (4) off- the record; and (5) opting out or no communication will be considered in explaining the use of these strategies in the courtroom discourse.

### 2. Review of Related Literature

Rape discourse in the courtroom trials has been the object of studies for the past years. The way women are objectified in the trials through the lawyers' method of questioning and the manner of giving of commentaries has taken the attention of numerous researchers advocating women empowerment. In fact, rape discourse or investigation in court has already been dubbed as 'second rape'. Lamrani (2012) further pointed out that understanding rape cases in legal institution is facilitated by "an ideological framework which constrains and shapes the meanings of these events" (2<sup>nd</sup> par.) Furthermore, Lees (1996, in Lamrani, 2012) explained that feminist scholars regard rape trials as a venue where "gender relations are reproduced in particularly stark and visible ways, and they have been cited as barometers of ideologies of sexual difference" (2<sup>nd</sup> par). It is therefore important to examine how cross-examination is done on rape victims for this can show how women are treated and regarded in their own search for justice.

There are different forms and purposes of questions in cross-examination. An analysis, therefore, of the discourse in cross-examination may include both the linguistic and socio-pragmatic aspects. The linguistic aspects can focus on the linguistic features such as the typology and structure of the questions among other language aspects. Brennan (1994, in Holt and Johnson, 2010) creates a framework of linguistic features in cross-examination questions. These include the "use of negative; juxtaposition of topics that are not overtly related; nominalizations; multifaceted questions; unclear questions; embedding, and much more" (p. 21). Furthermore, the questions in direct and cross-examinations can be open type or closed type. According to Tkačuková (2010), open questions are wh-questions (e.g. What is this?) while closed questions are 'alternative' questions (e.g. Is it true or untrue?), yes/no questions (e.g. Is it tall?), declarative questions (e.g. This is it?) and tag questions (e.g. This is incorrect, isn't it?). The broad 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). Also, there is no proposition relayed to the judge or lawyers other than that some event had happened. According to Gibbons (2008), 'who, where and when' questions only elicit information regarding a person, place or time and these answers do not

challenge any information embedded in the question. ‘How and why’ questions, however, allow the witness to supply more information and explanations about motives.

Regarding the closed type of questions, the yes/no questions are generally considered to be 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 and 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 in which the lawyers incorporate their own version of events. They put pressure on the witness to agree with them and are considered blunt statements. 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). This form of question is an example of linguistic form that matches pragmatic aims.

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. The so-prefaced 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, the so-prefaced questions 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 the questions in cross-examinations, the replies of the witnesses are the adjacent pair of the questions asked by examiners. They can 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.

The table below, adopted from the categories of Zajac et al. (2003) in Cannan and Zajac (2009), illustrates the categories of witnesses’ answers.

*Table 1. Categories for witnesses' answers*

<b>Response category</b>	<b>Explanation</b>	<b>Example</b>
<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 either asks question again or continues	Q: If X had been doing something wrong to you, you would have known that, wouldn't you? A: Yes.
<i>Changes story/response</i>	Contradicts evidence given previously.	Q: But he wasn't, was he? A: I'm not sure.

Aside from analyzing the questions and replies in the cross-examination discourse, examining the politeness strategies could also help in assessing the language power in the courtroom.

Politeness is conventionally described as “behaving in a way that is socially correct and shows respect for other people’s feelings” (Cambridge Dictionary Online, n.d.). In a different perspective, particularly in the study of linguistics, politeness is defined as “the expression of the speaker’s intention to mitigate face threats carried by certain face threatening acts toward another” (Mills, 2003, p.6).

Brown and Levinson (1987) identified five politeness strategies which are the means in which communicators neutralize risks to face. These include: (1) bald-on record; (2) positive politeness; (3) negative politeness; (4) off-the record; and (5) opting out or no communication.

First, the bald on-record strategies are simply described by (Moore, 2002) as doing nothing to lessen the threats to the listener's 'face'. As such, Brown and Levinson (1987) described this strategy as the least polite for it tends to cause shock or embarrassment to the hearer in some circumstances. Second, the positive politeness shows that the individual recognizes the need of another to be respected. Correo (2014) also explained that it reflects an individual's concern for social acceptance - "to be perceived as positively contributing to the social world and to feel a common ground with members of a social group" (p.78). Third, negative politeness is used when a person recognizes the needs of the hearer or the hearer's freedom to act without any imposition. It includes indirect requests, asking for apologies/forgiveness, minimizing imposition, deference through the use of honorifics, and impersonalization of speaker. Fourth, off-the-record strategies are indirect strategies that are used to minimize face threatening acts. The speaker tries to take the pressure off him by hinting, by being vague and by joking or being sarcastic. Lastly, opting out or no communication is a strategy used when the face risk is described as so great that being silent is considered the best way to preserve his or her face as well as that of others.

In general, identifying the types of questions, categories of replies and kinds of politeness strategies can concretely contribute in describing the kind of language used in the courtroom cross-examination and the power play that may exist in the discourse.

### 3. Methodology

#### 3.1 Research design

This descriptive-analytic study employs a mixed paradigm design as it applies qualitative and quantitative analysis of the corpus. The categorization of the questions in the cross-examination by Gibbons (2008) and Holt and Johnson (2010), as well as the categorization of replies from Zajac et. Al (2003) in Cannan and Zajac (2009) was applied in analyzing the cross-examination discourse. In addition, the Politeness Theory of Brown and Levinson (1987) was used in determining the politeness strategies that save or affect the 'face'.

Although, the study is generally qualitative in nature, a quantitative analysis via frequency and percentage computation was also used in determining the question, replies and politeness strategies predominantly and least used in the courtroom.

#### 3.2 Corpus

The corpus consists of the transcript of stenographic notes (TSNs) from the Regional Trial Court- Branches 20 and 28 in Naga City. Branches 20 and 28 are classified as Family Courts since incestuous rape cases are investigated in these courts. The 547 page-corpus, therefore, consists of 38 TSNs coming from eight different cases. All of the TSNs deal with one type of criminal case, incestuous rape. Furthermore, there were 1,866 questions and 1,811 replies categorized. Although the questions and replies in the cross-examination are regarded as an adjacent pair, there is no equal number of questions and replies since some of the questions were reformed, rephrased, and objected to by the lawyers. Some questions were also given continuously without waiting for the witnesses' reply.

### 3.3 Coding

To ensure accuracy in the coding of the examiner's questions and the witnesses' replies, as well as the presence of the politeness strategies, the researcher requested two language teachers to assist in coding the questions and replies. The first intercoder is an assistant professor teaching language subjects for almost 20 years in the undergraduate and graduate levels of an autonomous university in the Philippines. She is currently pursuing her Ph.D in Applied Linguistics. The second intercoder has been teaching language subjects in the secondary and tertiary level for more than five years. She graduated with a Master's degree in English Language Teaching. The researcher trained these two intercoders regarding the types of questions and replies, as well as the politeness strategies of Brown and Levinson, before the actual coding of corpus. In case of discrepancies in the coding, the researcher, together with the two intercoders, convened to recheck the coding and identify the correct categorization of the questions, replies and politeness strategies.

## 4. Results and Discussion

This section is divided into three sections corresponding to the discussion of the research problems of the study.

### 4.1 Types of Questions in Cross-examinations

From the seven categories of questions identified in the classification of Holt and Johnsons (2010) and Gibbons (2008), 34 types of questions emerged. The study found out that a single question can be structured using two to three types of questions.

The five predominantly used types of questions are Yes/No, with a frequency use of 450 (24%), Tag, 294, (16%), Wh, 242 (13%), And-Yes/No, 134 (7%) and So-Yes/No, 117 (6%).

The Yes-No question is a closed-ended or leading type of question. In this type of question, the witnesses are simply asked to refute or agree with the question, thus, leaving them with no great chance of explaining details so as to defend themselves. Used in child witnesses, this can pose more problem as there is a likelihood that children would just agree with the question even though they are not knowledgeable about it (Raedar, 2010).

Below is an unedited extract from the study corpus that shows how the lawyer frames the questions so as to show that the victim could have resisted rape.

- Q: When you said outside the mosquito net but it is still inside the room together with your other siblings?  
A: Yes, sir.  
Q: In fact at a point when your feet was pulled you could reach the other feet of your siblings because it is very near your feet?  
A: Yes, sir.  
Q: You were not shouting at that time you were being pulled?  
A: No, sir.



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With this type of questioning, the teenage victim in this cross-examination was not able to reason out and discredit the lawyer's insinuation that she was a willing victim.

Tag is another type of close-ended question which is described as more coercive since it compels the witness to agree with the lawyer's proposition.

The unedited extract below shows how powerful tag question is when the lawyer is trying to insist a particular belief.

- Q: And you were sleeping beside your mother, is that correct?  
A: Yes, sir.  
Q: While your father is also at the side of your mother and you are beside your mother?  
A: Yes, sir.  
Q: Every time you sleep on April \_\_\_\_, you were always on the side of your mother, is that correct?  
A: Yes, sir.

In this extract, the lawyer insinuates that the rape victim is beside her mother most of the time and there is almost no possibility for the former to be raped. Since the young victim has been asked using a tag question, every time that she agrees with these statements, her testimony weakens.

'Wh-' type of questions rank third in the number of occurrences in the study corpus. The use of this type of question is expected as these questions – Who, What, Why, Where and How elicit primary information in courtroom investigation.

The 'And-yes/no' questions rank fourth. The 'and-prefaced' questions are used to narrate how particular events happened (Holt & Johnson, 2010). Combined with the 'yes/no' questions, the framing of the questions in the 'And-yes/no' combination elicits a confirmative reply in narrative testimonies.

Below is an unedited extract showing how 'And-Yes/No' questions facilitate narration of events and draw confirmation from witnesses of their previous narrations.

- Q: And she was very dependent living with your Papa XXX?  
A: Yes, sir.  
Q: And while living inside your boarding house, your mother has also no job in \_\_\_\_\_?  
A: None, sir.  
Q: And every time your Papa XXX left for work, you and your mother were left at the boarding house with nothing to do?  
A: None, sir.

Lastly, ranked fifth in the number of occurrences is the 'So-Yes/No' type of question. As previously mentioned, the 'so-prefaced' questions can also be used to challenge the interviewees by repeating previous utterances. Combined with the 'Yes/No' type of question, the 'So-Yes/No' question can be described as compelling and forceful.

#### 4.2 Types of Replies in Cross-examinations

From the eight types of replies in Zajac et al. (2003), the researcher found 13 types of replies in the study corpus. The five replies with the highest number of occurrences are Compliance, with a frequency of 811 (45%), Giving Clarification, 319 (18%), Providing Information, 223 (12%), Resistance, 132 (7%) and Resistance-Giving Clarification, 121 (7%).

It is of no surprise that the ‘Compliance’ type of reply ranked first since in the type of questions used in the cross-examination, the ‘Yes-No’ type of question ranked first. The ‘Yes/No’ type of question is described as forceful and usually elicits an affirmative response. This is proven true in the study corpus as 45% of the 1,812 replies are all classified as ‘Compliance’.

**Table 2. Types of Replies**

	<b>Types of Replies</b>	<b>F</b>	<b>%</b>
1	Compliance	811	45
2	Compliance-Giving Clarification	105	6
3	Giving Clarification	319	18
4	Misunderstanding	6	0
5	No response	2	0
6	Providing information	223	12
7	Providing information-Giving clarification	1	0
8	Providing information-Uncertainty	48	3
9	Resistance	132	7
10	Resistance-Giving Clarification	121	7
11	Seeking Clarification	1	0
12	Uncertainty	35	2
13	Uncertainty-Giving clarification	6	0
14	Uncertainty-Providing Information	2	0
	<b>Total</b>	<b>1812</b>	<b>100</b>

The unedited extract below shows how the witness complied with the question of the lawyer.

- 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.  
 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.

In this extract, the lawyer is interrogating the brother of the accused. To weaken the testimony of the witness, the lawyer tries to allude that the relationship between the witness and accused has great bearing on the truth of the testimony. This is made more obvious in the last question, specifically indicating that the witness will tell anything to save his brother from persecution. A reply that simply serves as an affirmation or compliance might therefore discredit one’s testimony.

Ranked second is giving clarification. This is important for the witnesses since replying in this manner can offer more details to their narration thus strengthening their testimony.

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An unedited extract below shows how giving clarification can reinforce testimonial narratives.

Q: Every time you sleep on April \_\_\_\_, you were always on the side of your mother, is that correct?

A: Yes, sir.

Q: So it is clear that there was no instance on April \_\_\_\_ that you slept alone in the sala because you were together with your mother?

A: When I woke up my mother is not anymore beside me.

If the witness, a young rape victim, did not give clarification, then the lawyer's purpose of showing that there is no opportunity for his client, the accused, to have raped the victim because the victim is always beside her mother, would be reinforced.

Ranked third is a type of reply not found in Zajac's et. al (2003) classification. This is 'Providing Information'. This type of reply is very important since this gives the witnesses an opportunity to provide more details in their testimony. This is different from 'Giving clarification' for giving clarification is described as giving more information than what is required by the question.

An unedited extract below shows this type of reply.

Q: When did you take the cytotic?

A: On the 30<sup>th</sup> of March.

This reply could not be classified under 'Giving Clarification' since what is provided is only an answer or information and there is no extra information added in the reply. Replies of this kind in this study were classified under this new type by the researcher.

Ranked fourth and fifth in the replies are 'Resistance' and 'Resistance-Giving Clarification'. 'Resistance', as a reply, is more helpful on the part of the witnesses' testimony since by way of negating the proposition of the lawyer-interrogator, they are asserting what they want to relay during the cross-examination.

The unedited extract below shows how the witness, the mother of the rape victim, gives her testimony against the accused, her own husband and father of the victim.

Q: But you are aware that your parents and your relatives were almost against the accused being married to you?

A: No, sir, because we were even married twice, civil and church rites, my parents brought crabs and other variants to be served to all guests.

Q: He was still working at that time as XXX?

A: Yes, sir.

Q: And in that situation where he has no more work, your parents and relatives were already against the accused?

A: No, sir, because my Tita even shoulder the tuition of my children.

The replies consist of 'Resistance' and 'Resistance-Giving Clarification'. If the witness did not provide resistance and clarification, then the lawyer of the accused would have succeeded in his aim of showing that the complainant's relatives bear a grudge against the accused and therefore have other motives in filing a case against him.

### 4.3 Politeness Strategies in Cross-examinations

In terms of politeness strategies, the bald-on record strategy dominated in the questions.

Figure 1 shows that bald-on record strategies comprise 98% of the politeness strategies used in the questions. As described by Moore (2002), bald on-record does not do anything to lessen the threat. Levinson (1987) further added that this strategy is the least polite for it tends to cause shock or embarrassment to the hearer in some circumstances.

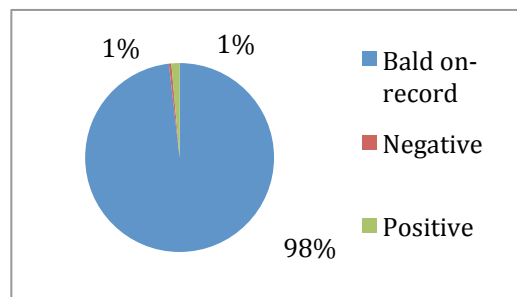


Figure 1. Politeness strategies in questions

An unedited extract below shows how lawyers utilize this strategy.

Q: Your pupil complained that she was raped you did not find the importance to know the result of the medical examination whether this pupil accusing this old man of rape and having this old man incarcerated for a very long period of time you did not find the importance to look into the contents of the medical certificate?

A: It is important sir.

In this extract, the lawyer asks the teacher of the rape victim regarding the action she has taken upon knowing that her pupil was raped by her own grandfather. The question uses a bald-on record strategy since the question has an accusing tone that does not show any consideration on the feelings of the witness.

In the following extract, another bald-on record strategy was used, this time to a doctor-witness.

Q: You are testifying under oath and if you find to be lying in your testimony do you know that the charge is a very grave offense. Can you prove to us based on your findings that there was an old hymenal laceration?

A: When we say old hymenal laceration.

This strategy indeed is very threatening and does affect one's positive face. Defense lawyers seem to predominantly use this strategy to defend their clients. A strategy and tone of this kind also create an image of power and dominance as defense lawyers strategically maneuver the discourse to achieve their interrogation aims. This becomes more evident in the unedited extract that follows that might rattle any witness to change his answer due to fear and anxiety.

Question: So you are firm in saying that Mr. XXX was with you the whole time from January XXX to May XXX and you will not change your answer?

Answer: No, ma'am. Yes, ma'am.

Question: And you will not change your answer even if I show you a document that will prove that barangay blotters were recorded against Mr. XXX on April XXX and May XXX in Barangay XXX?

Answer: I will not ma'am.

For the replies in the cross-examination, the positive strategies lead the politeness strategies.

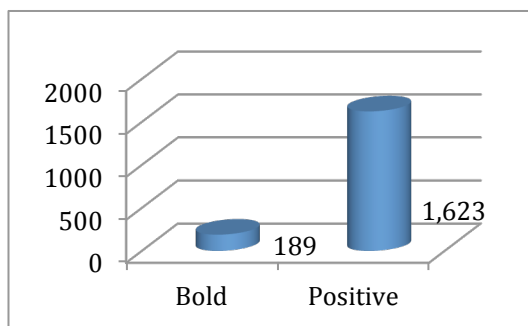


Figure 2. Politeness strategies in replies

If bald-on record dominates the types of politeness strategies in questions, in contrast, the positive strategies lead the strategies with 1,623 occurrences (90%) in the replies as seen in Figure 2.

This can perhaps be attributed to the fact that lawyers are regarded with high-esteem. In the courtroom, witnesses seem to acknowledge that lawyers have the power and authority in investigations and as such they accord respect and compliance to the questions given by lawyers. In fact, most of the 'Yes/No' questions were answered with a 'Compliance' followed by the nominative address, 'Sir' or 'Ma'am'.

### 5. Conclusion and Recommendation

The language in cross-examination discourse is very powerful for it can strengthen or weaken a witness' testimony. Since the witnesses' replies are expected to conform to and are restricted by the questions raised by examiners or lawyers, these lawyers exhibit more control in the investigation. Vulnerable witnesses, especially children and teenagers in rape cases, are powerless when massive and forceful questions are asked of them. Still faced with the ordeal of physical, mental, and emotional torture brought about by rape, child and teenage rape victims are of no match to the experienced lawyers' powerful questioning techniques. Furthermore, bald-on record strategies, though effective in interrogating witnesses, may also affect testimonies as witnesses become embarrassed, hurt or frightened.

The analysis of the questioning techniques, replies and politeness strategies, therefore seek to enlighten courtroom investigators and practitioners that though carefully planned coercive and forceful questions are techniques that they can readily employ in courtroom cross-examinations to test the evidence and testimonies, justice can be better served if the witnesses are proven guilty not only because of the power play in the language use but also because of the sufficient evidence and proven credibility of narrative accounts or testimonies. A pre-trial orientation to witnesses regarding the language in the courtroom and the manner of interrogation in cross-examination could also help these witnesses effectively and truthfully narrate their testimonies.

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