

Linguistic manipulations in legal discourse: Framing questions and 'smuggling' information*

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Abstract

With an emphasis on the linguistic experiences of sexual-assault witnesses in the British legal system (adult rape victims and child abuse victims), this paper is a consideration of how the lexical choices in the questions posed to a witness encourage a particular perception of her testimony. The concepts to be discussed include conceptual frames and smuggling information, and we offer a qualitative consideration of how the semantic features of a lawyer's lexical choices can support a representation of either the witness or her experiences that is not in her interests. The appropriateness of a lawyer's chosen frame is of key importance to 'smuggling information', a term used when a lawyer's question inserts (negative) information into a witness's testimony through suggestion. We look at how such linguistic manipulations can weaken a witness's account by suggesting that she is to blame, and/or is lying or perhaps has simply misunderstood the situation. Our analysis offers an explanation as to why vulnerable witnesses may not be believed in court.

KEYWORDS: POWER, GENDER, CHILD WITNESSES, RAPE VICTIMS, FRAMES, 'SMUGGLING' INFORMATION

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1 Introduction

This article is a consideration of the conceptual representations generated through the court trial questions put to two types of witnesses now recognised as 'vulnerable' within the UK criminal justice system, namely adult rape victims and child witnesses. Lawyers make strategic linguistic choices that will reliably trigger either positive or negative associations to the subject-matter being dealt with in the trial. We illustrate the inferential power of these conceptual representations through a consideration of frame semantics (Fillmore 1975, 1982; Minsky 1975), and show how the discourse choices made in court can encourage a particular perception of a witness and consequently, how jurors are encouraged to interpret that witness's testimony. These strategies are within the creative grasp of the questioning lawyer, and may prove either facilitative or inhibitory for the person being questioned.

In the following section we summarise some key insights into the treatment of alleged sexual assault witnesses in the British (England & Wales) criminal justice system and the linguistic difficulties experienced there. In Section 3 we outline our data, and in Section 4 we illustrate the inferential power of our chosen methodological tool for analysis: conceptual frames. Here we also discuss the concept of 'smuggling' information. Finally, in Section 5 we illustrate, with examples taken from sexual assault cases, how these strategies may influence a jury's perception of the people and events described.

2 UK criminal justice system and the experience of vulnerable witnesses

2.1 Vulnerable witnesses: the legal process and victims of rape

This paper focuses on women and children who are (alleged) victims of rape and/or sexual assault. Both groups of people are recognised as 'vulnerable' within the British (England & Wales) criminal justice system. Consequently, since the Criminal Justice Acts of 1988 and 1991 there have been major changes to accommodate them through the legal process. However, we will go on to illustrate that despite changes in legislation, much discourse conducted in court still makes them vulnerable, and their account weak, compared to the narrative developed by the lawyers.

Children were the first group of people to be recognised as vulnerable in the UK criminal justice system, and this led to a number of reforms which have done much to help them to have the opportunity to give a credible account of their story (Birch 2000). These changes include the reform of the competence rule, the abolition of many of the corroboration rules, the introduction of 'live-link' as a method of giving evidence at trial and the introduction of video-recording

as a method of presenting the child's evidence-in-chief. In 1999, Part II of the Youth Justice and Criminal Evidence Act confirmed that other members of our society (including rape victims) are also vulnerable and should be entitled to 'special measures' to assist them in presenting their evidence (which came into practice in 2002). Hence, adult rape victims can now apply, for example, to use video-recording as a method of presenting their evidence-in-chief and to be cross-examined via live-link.

The Act also removed the right of a defendant charged with a sexual offence to cross-examine the complainant in person and banned (overt) mention of the witness's sexual history in court. Moreover, the 2002 Police Rape Action Plan encouraged all Forces to review their facilities for examining victims and, since 2006, we have seen the introduction of intermediaries in the legal system. These include independent persons who can help the child-witness and the professionals understand each other's terminology. Intermediaries may also function as expert witnesses and testify about the trauma experienced by rape victims. Such independent testimonies may make it easier for juries to understand why there is frequently a delay in reporting such crimes and why the complainant behaved in a certain way (e.g., she didn't immediately flee the scene or fight the alleged perpetrator).

However, these changes in procedure are not the only obstacles that vulnerable witnesses have faced. For decades it has been assumed that children are simply not capable of giving reliable accounts. They have had few rights to be heard or believed, and the reliability of their memory has been constantly questioned. They are also presumed to be too suggestible to withstand the scrutiny of the adversarial system. Davies, for example, noted that children have been treated as second class citizens in the eyes of the law (1991: 178-9) and, so not surprisingly, only a small proportion of those on trial for the sexual abuse of children have been convicted. It was hoped that changes in legislation and specialised interview training for police officers working with children (e.g., the Memorandum of Good Practice, 1992; *Achieving Best Evidence*, 2002) would give children greater opportunities to tell their story.

Historically, women have fared little better in the legal system. They too have found it hard to prove that they have been raped and regrettably, the conviction rate is still as low as 5.6% despite the fact that in the ten years to 2004-05 reported rapes rose from 5,136 to 14,002 (Gibb 2006: 1). This sends a public message that rapists can, and do, get away with this crime. It is hardly surprising that rape victims turn to the media to voice their contempt for the poor conviction rate. For example, one rape victim recounted her rape trial experience to the *Observer* newspaper (2005)¹ and suggested that if conviction rates became 'any lower they might as well give every woman a gun and make rape legal'. Moreover, and contrary to common belief, a study by the Home

Office (2002) shows that less than one-fifth of reported rapes are 'stranger rapes', and more than 80% of reported rapes are 'simple' (date) rape. From these findings it follows that a primary evidentiary issue in adult rape and sexual assault cases (and a significant reason for the low conviction rate), is being able to disprove 'consent'.

A successful conviction will depend on each witness's account of events, or more accurately within the adversarial system, the war of words between the prosecution and defence lawyers. While, of course, this is true of all court cases and the defence's 'standard tools of trade' are found in all cross-examinations (cf. Brereton 1997: 259), victims of rape find court trial interrogations particularly traumatic, with many reporting that they would rather have left the rape unreported than face the criminal justice system (Hill 2005).

2.2 Disempowerment through language

To put the problem into context, our language has historically disempowered women through strategic linguistic choices. The structural features of utterances that can hide and promote blame include: agentless constructions, passivisation, nominalisation and shunting accusatorial references away from the matrix clause to satellite adjuncts (cf. Cameron 1998; Ehrlich & Levesque 1996; Ehrlich 2001). For example, tabloid headlines give frequent example of these features, as illustrated in (1), cf. Ashton 2003.

- (1) (a) *Minister fired after allegations of sexual harassment*
 (b) *Company director loses top job after rape claim*
 (c) *HIV risk for park rapist*
 (d) *Plea after woman raped in alleyway*
 (e) *Woman is raped and thrown in stream*

In (a) and (b) the crime is syntactically embedded away from the matrix, the subject-verb nucleus that attracts focal attention. The matrix information is first mentioned, highlighting what has unfortunately occurred to the (male) protagonist, while reference to the event that caused 'the problem' for the (male) protagonist, is offered in a trailing adjunct (an optional modifying clause). In both examples the crime event is nominalised and the sexual nature of the crime reduced to a syntactic modifier of a non-sexual phenomenon. In each example, any reference to the (female) victim is omitted. The result is that '(sexual) harassment' and 'a (rape) claim' are represented as events that victimise the perpetrator and not the victim (Ehrlich 2001: 14).

We see a similar illustration in (c) where concern is implied for the rapist without mention of what has happened to the victim or any mention of his responsibility for the action that has put him at risk. Furthermore, we see in (d) and (e) a common feature of rape headlines, especially when the victim is female namely that the 'message' is agentless. There is no mention of the perpetrator of the crime, thereby distancing the agent from the activity and indeed, from blame (Clark 1992). The media are, of course, important sources of influence on people's knowledge, beliefs, values, social relations and social identities (Fairclough 1995: 2). If they are 'playing down' the gravity of date rape in favour of 'extraordinary sex crimes' then the sexual-assault witness in court has additional problems because rape is trivialised in the eyes of the public (cf. Benedict 1992).

In addition to the syntactic choices in example (1), lexical choices are also responsible for triggering a network of associations prototypically present with the use of a given word, and are, therefore, presumed present when that lexical choice is made. For example, consider the lexical choices made in (2) below. Whereas (2a) suggests a 'right to rule', (2b) involves an office bestowed upon the recipient that was someone's to bestow. These examples are taken from a body of print media data where verbal descriptors like (2a) only occurred in reference to men, and only women were described with references like (2b) (Luchjenbroers 1998).

- (2) (a) *He succeeds* (x) as chief executive
 (b) *She was named* executive director

The thrust of these examples is not that alternative constructions for each gender are not possible, but these are the choices that were made. That these choices are consistently made according to gender (at least in this media corpus), illustrates the social expectations associated with each gender role. Similarly, the examples given in (3a) and (3b), from rape trial data, illustrate how lexical choices trigger a network of expectations that either conforms to or conflicts with social expectations of gender roles.

- (3) (a) *This is the predator that sometimes ends up in newspapers as 'the gentleman rapist'*
 (b) *It was evident that the woman's attacker had really enjoyed the experience because she'd been so compliant.*

The description of the male protagonist in (3a) as a 'gentleman' is semantically incongruent with either 'predator' or 'rapist'. However, together these descriptors portray a kind of romantic novel hero, and, hence, not someone to be feared or locked up. Similarly, the description of the female 'victim' in (3b)

as 'compliant' runs contrary to the social expectations of how women would behave during a rape attack (i.e., with utmost resistance, cf. Ehrlich 2001). The use of a descriptor that conveys an absence of resistance may create reasonable doubt whether a rape had actually occurred. A secondary problem with the generation of such associations, is that stereotypical reporting is likely to be accepted as fact by the receiver rather than as a belief or opinion of the speaker (Fairclough & Wodak 1997).

In effect, the way we think about social roles has an impact on the lexical choices we make about persons who fulfil those roles, which similarly affects how we encourage others to perceive the persons who fulfil those roles. It is therefore of particular importance that we recognise how socially held views of women's conduct already predispose women to fail in court, in cases dealing with crimes of a sexual nature.

The expected rape story tends to consist of a victim who does not 'deviate from the traditional sex role of being at home with family and children' (Taslitz 1999: 23). Clark also states that the victim should be respectable and the rapist a stranger (1992: 222).

A further obstacle is that in rape cases a woman is primarily confronted by male-biased legal definitions of 'consent', where the vigour of her resistance is also challenged (Estrich 1987: 18). Here again elements of the socially held frame of how people are expected to behave in such situations (i.e., in terms of a woman's resistance), are viable weapons to be used against her in court.

It is clear that there are stubborn myths in our society about rape and the police, prosecutors, judges and juries are by no means immune to them. And further, cases involving child victims are similarly not immune from these biases. Unfortunately, despite the procedural changes (referred to above) a witness's experiences in court only further exacerbate the abuse, and the adversarial system is the central problem. In sexual assault cases, the defence lawyer has all society's entrenched attitudes on his side,² including myths such as 'you can only really be raped by a violent stranger attacking you out of the blue, leaving you covered in bruises (due to how hard you resisted)'. Another relevant myth affecting child witnesses is 'young children make up stories'. Hence, it is relatively easy for the defendant to present the more convincing account and for his narrative to be more persuasive than the victim's account of events.

Matoesian (1993, 1995) and Conley & O'Barr (1998) also remind us that the realities of power are far more complex than procedural changes. It is clear that to understand power relationships and the potential for secondary abuse, we need to analyse proceedings at the micro-linguistic level. We will continue analysing this micro-linguistic level by looking at the use of conceptual frames in the legal context to determine their possible role in helping the lawyer establish his account of events while undermining the credibility of the witness's account.

3 Data

The data discussed here are from court trials dealing with various forms of sexual assault. The transcripts are from North Wales (1994–1998), complemented by an Australian Supreme court trial, and accessible data from web sites such as Court TV Online. All names in our data are anonyms to protect the people involved. Our examples are selective in the sense that we did not catalogue every instance of the target features across the entire data-set. Instead, these have been drawn upon to illustrate how language is used to undermine or promote the witness's functioning in the legal context, and how the lawyer's choice of words and questions aims to manipulate a jury's perception of the witness, as well as the ongoing narrative. In our excerpts, the lawyers' words are in *italic*, while the witnesses' words are in standard text.

4 Conceptual strategies

4.1 Framing questions

Frames are conceptual representations of experience that define a situation (in memory), and provide an event structure that enables us to comprehend how the parts fit into a whole; how an event is unfolding; and to predict what will come next (Ribeiro & Hoyle, 1996; cf. Fillmore 1975, 1982; Minsky 1975). Even though this appears to concern event references, lexical access taps into the same field of knowledge so that as soon as we hear a word, a number of associations will be triggered dependent on our life experiences. Frames therefore also capture the body of social expectations associated with each lexical choice.

For example, a recent radio news bulletin made the report, 'The Ospreys have had triplets.' Those familiar with The Ospreys (a leading Welsh rugby team) might trigger a sporting frame to process this utterance, and imagine three babies being held up for media photographs. However, after this utterance comes another that refers to 'their nesting habits'. It is only with this additional information that the incorrect rugby frame can be abandoned and a new, appropriate frame can be retrieved to process this information. In fact, this bulletin is not about rugby players but about birds.

In brief, once the 'bird' frame is accessed, nesting conduct would not require overt mention to be available or present in the listener's conceptual representation of talk. The point of frame-based reasoning is that once a frame has been accessed all associative information relevant to the frame is immediately available for supplementary inferences. In effect, an entire network of assumptions and component features associated with a lexical entry becomes available to process speaker meaning. However, as soon as frame-inappropriate information is presented a new, more appropriate frame must be found.

A key concern of this paper is the lexical choices made in court and how these can influence the portrayal and perception of a witness. This influence is due to the network of associations triggered by the speaker's lexical choices that, when often repeated, strengthen the portrayal conveyed by the speaker. For example, Cotterill (1998) offered a metaphor analysis of the O. J. Simpson case. The prosecution repeatedly referred to O. J. as a 'time-bomb'; a metaphor that immediately triggers a number of frame-based features. These features include the procedural components involved in the working of a 'time-bomb', such as: the bomb has a fuse that, when lit, will get shorter and will ultimately explode (and do physical and possibly mortal damage); once the fuse is lit, an explosion is the necessary outcome. Clearly this choice of metaphor conveys a number of semantic features that could have led to a conviction, such as: 'predictable danger' and 'deadly' (agent).

Even though the lexical (metaphorical) choices in the O. J. Simpson case are not disempowering, disempowerment can also follow from the conceptual frames accessed by a speaker's lexical choices. As discussed earlier (in 2.2) a speaker's lexical choices involve not only expected event sequences, but also expected characteristics of the players involved in those events. Consider here the rape data samples given in 4 (a to c).³

- (4) (a) Police: *You told me earlier on you were on the game or had been on the game*
 Witness: I've never been on the game
Never been on the game?
 Witness: I have never taken money for sex, ever
- (b) *I am going to suggest to you, that you and he had passionate, steamy, casual sex - both of you consenting*
 Witness: No, I did not consent to have sex
- (c) *Have you ever done anything like that with anyone else before?*
 Witness: No.
Has anyone ever fingered you before?
 Witness: No.
So, that was your first sexual encounter was it?
 (The accused was allegedly holding a knife while telling her to remove her jumper)

Example (4a) was produced during a police interview with an adult woman witness, and undermines the charge of rape in two ways: (i) due to the descriptor choice as being 'on the game', the question purports that this woman is a prostitute; and (ii) due to the assertion that the complainant had previously revealed as much. The conceptual frame of 'prostitute' stands in stark contrast

with a number of preconceptions of a rape victim. Because consent is such a difficult issue in rape cases, just the suggestion that a woman shows proclivities towards sex (as for example one might expect from a prostitute) casts reasonable doubt that (a) she had truly refused sex, and (b) that he had misread any possible reluctance.

The example given in (4b), produced in court to another adult woman witness, moves further in the same direction. In this contribution, the lawyer provides his own alternative account of the sex event by providing a lurid picture of consenting participants. By drawing on these frame features, he artificially provides his own evidence of consent: features that would not be part of the kind of scene the word 'rape' would generate. These examples are disempowering because the witness has little scope to refute these characterisations of herself or her responsibility for the rape.

Similarly the data sample given in (4c) to a child witness, both trivialises the sexual assault and implies that she is more familiar with sexual activities than one might legally attribute to a 14-year old girl. Because this example involves a child participant, she can hardly be described as disempowered, as she has little power to lose in situations with powerful adults (such as the police or lawyers in court). Nevertheless, the questioner's lexical choices suggest familiarity with sexual acts (i.e., 'being fingered') and trivialises the violence of that event (forced sex with a knife) by describing it as merely a 'sexual encounter'. Like (4a) and (4b) the defence's descriptions take their place in alternative event sequences: one that is non-violent and consenting while the prosecution is trying to prove that the events were violent and abusive.

In order to fully appreciate the inferential power of lexical choices, the listener needs to conceptualise an entire event, including the relative power associated with each participant's role. It is the frame that captures the social and cultural experiences as well as expectations associated with such references. In this way, the associations drawn upon with each lexical choice regarding persons, actions and events will influence (and sometimes manipulate) how listeners will evaluate the information presented to them.

4.2 Smuggling information

Thus far, we have illustrated how a speaker's lexical choices may access alternative conceptual frames: a deliberate process designed to direct the listener to alternative interpretations and thereby manipulate their perceptions of persons or events (cf. Coulson 2001; Fauconnier & Turner 2002). Our position is not dissimilar to that put forward by Ehrlich (2001), whose analyses clearly reveal the substantial ideological work performed by lawyers in the questions they put to (rape) victims. Ehrlich's argument is that the propositions contained in

lawyer contributions (often conveyed through the process of presupposition) 'frame' the way events are understood (2001: 76). The explanations offered in this paper reveal how that is accomplished. In brief, when particular conceptual frames are accessed (triggered by a speaker's lexical and syntactic choices) that frame-consistent information also becomes present in the listener's understanding of the ongoing discourse. That frame-consistent information may be so closely associated with the linguistic string uttered by the speaker, that it is defined as presupposed. It may also, of course, be the product of socially anticipated, subjective experience. In both cases, these mappings are responsible for introducing either positive or negative associations and they will manipulate the perception of persons or events. This information is referred to as 'smuggled' when it is inserted into a witness's testimony by virtue of the listener being diverted from that piece of information (cf. Luchjenbroers 1993). Considered below are examples of the relation between linguistic choices made by lawyers and the frame-consistent associations made because of those choices. This can be done both structurally, as in example (5), or, as we will see later, semantically, as in example (6). Example (5) includes an extract from the cross examination of an adult rape complainant:

- (5) *Did you tell the Police on February 13th that you're not into porno movies and it doesn't turn you on?*
 Witness: That's true
Did you tell them that you thought it was kind of boring?
 Witness: That's true
Now you told us this morning that there would be times when you would meet with...

The first two lawyer's questions in example (5) illustrate 'smuggled' information. In this example, the speaker is required, on two occasions, to answer the question 'did you tell the police (about x)' and not to address the content of what occurs in adjunct to that clause. The amount of information that occurs in adjunct to the question is however substantial and potentially devastating for the witness in this case.

The structure of the entire contribution includes two queries plus three embedded statements (i) 'you are (not) into porno movies'; (ii) 'they do (not) turn you on' and (iii) you think porno is boring. The fact that two of these embedded statements are negative may well be lost on the jury who may only remember the possibility that the victim is involved with porno movies. That this complainant describes pornography as 'boring' suggests that she is very familiar with impersonal sex and thus, not a typical rape victim (cf. Taslitz 1999).

Accusations such as those alluded to in example (5) can not be made directly, but the lawyer can covertly insert them into the on-going message. As the witness is giving evidence in a rape trial, being characterised as someone who is aware of, and bored by, porno movies, and thus, by implication, is experienced in sexual activities, is not helpful to her testimony. Our point here is that the message being conveyed (to the jury) is that, given her sexual interests, she is likely to have given consent to sex rather than being raped.⁴ Having included these messages (as a back-drop) into the on-going discourse, the lawyer then moves on to a different topic in the knowledge that the jury will not have long to process the details of the ongoing narrative (cf. Pennington & Hastie 1991).

Structurally dislocating information away from the matrix clause and into a peripheral adjunct position reduces the witness's opportunity to answer that part of the question with the effect that it becomes extremely difficult to refute or eject it from the discourse space in court. In effect, whether the witness gives either a 'yes' or a 'no' answer to this question, the propositional element of 'turned on by porno movies' will be retained.

Thus, the further the removed propositional content is placed from the matrix clause, the more difficult that sentential component will be to reject. Then, the assumed truth of that component will be carried over into the witness's answer unless the witness actively denies that sentential element in favour of answering the question presented in the matrix clause. However, because it is already denied in the lawyer's contribution, (albeit in a very non-focal way) it cannot be ejected from the discourse space.

The example of smuggled information given in (6) below is an interesting correlate to the structural example in (5) because it relies wholly on the frame associated with 'friends' – i.e., friends only try to help you. This extract occurs at the beginning of the cross-examination of a child witness who claimed she was raped by a family friend. The lawyer is checking the facts from the police video interview. This is an example of the lawyer strategy we call 'false friends'.

(6) *You remember that you must tell the truth*

Witness: Yes

You may have made some mistakes or you might have got things wrong but don't worry. It's ok if you tell us today that something happened in a slightly different way than you said on video – ok?

Witness: Ok

Now, you said on the video that everything you told us about happened on Monday. Well, I think you made a mistake there because everyone else seems to think that the police came on Tuesday not Monday – Ok?

Witness: Ok

So, you see, that is a mistake, it doesn't matter that you made a mistake about that and you mustn't be afraid to tell us about other mistakes.

In this particular extract, the lawyer's message operates on two levels: one aimed at the witness and the other, covert, message is aimed at the judge and jury. The lawyer sets himself up as a friend to the witness, by offering advice that appears to be re-assuring to her and any mistakes she may have made. At the same time, we suggest that the court is being told 'we are already aware of some inaccuracies in this witness's account and so, there may well be more. Can we, therefore, be sure (beyond reasonable doubt) that this witness will give an accurate and truthful account of what really happened unless she admits her errors? The idea that the witness might be lying has also been introduced.

Even if this witness were aware of what is happening and how seriously her character, as well as her testimony, is being undermined, there is absolutely nothing she can do about it. Of course, vulnerable witnesses (and especially children) do not always realise (in time) that they are being set up. Consider the example given in (7); involving a 10-year old boy who alleged that a teacher used undue force toward him at a swimming pool. This extract also occurs at the beginning of a cross-examination.

- (7) *The first thing I want to do is ask you about some of the things you talked about on the video. But before I do that, I just want to ask you a little bit more about what sort of lad you are. Are you the sort of lad, do you think, who runs away from a fight or an argument?*

Witness: No.

In an example such as (7), only frame consistent associations can be responsible for the smuggled information. The association clearly rejected by this boy is 'coward' (i.e., someone who would 'run away' from a 'conflict' is a 'coward'), however more damning associations are smuggled with this question (i.e., someone involved in 'fights and arguments' is a 'trouble maker', someone needing discipline (this is a school setting), and someone to whom a heavier hand may be required). Each of these associations will help the defendant, and blame the complainant. He is the complainant but this question starts a run of questions defining how much trouble he gets into at school and his accusations cannot be believed.

In this subsection we have discussed how frames are used to smuggle information into a witness's testimony, and how disempowering these strategies are, because any witness (but particularly vulnerable witnesses) is completely unable to offer any defence, even if she realises that these strategies are in play.

5 Conceptual manipulations

Having looked generally at how the conceptual representations drawn upon by speakers are chosen to encourage a particular (and often negative) perception of the people and events being described, we now look more closely at how these strategies may influence the jury. This could contribute to the low conviction rate in rape and sexual assault cases. Throughout this section we present a number of examples that show how conceptual frames of reference and smuggled information are used by lawyers to destroy a witness's credibility. The products of such manipulations fall into a number of identifiable outcomes for either or both adult and child witnesses. These outcomes include:

- (i) Attributing blame to the victim [adult witnesses];
- (ii) Suggesting that the witness could be lying [both adult and child witnesses];
- (iii) Suggesting that the complainant has misunderstood the defendant's actions because it was really just a game, or part of a dream [child witnesses];
- (iv) Pretending to help the witness by giving them advice about the content of their testimonies or how to be a competent witness [child witnesses]. This fourth strategy has also been referred to (briefly) above as 'false friends'.

Also evidenced in this section is that each of these strategies often makes use of a subtle progression in the lawyer's questions from descriptions of events that involve familiar (maybe uncontroversial) conduct to those involving extreme behaviour(s). We call this the 'small steps' approach, which enables lawyers to camouflage the full force of their questions until the witness can not turn back. Each of these representational strategies is discussed in turn.

5.1 The witness may be to blame

Example (8) illustrates the inferential power of a relatively simple lexical choice. This extract is taken from a cross-examination of a young woman who claims to have been raped.

- (8) *You used to tell K, did you not, that you were into boys?
You liked boys.*

The lawyer's choice of words 'you were into boys', and 'you liked boys' conveys the likelihood of consent by merely drawing on the already active concept of sex and its associated frame. Hence, if she likes boys then the defendant could

have mistaken her friendly overtures as consent. The responsibility is thus hers to be entirely clear in her refusal.

Furthermore, the conceptual properties of the preposition 'into', is that the noun following the preposition is a bounded location (passive and not volitional), and the preceding pronoun, an active agent. The iconic correlation between this description and the process of rape is also obvious (i.e., rape = male agent penetrating 'into' her but in this case she is 'into' him and persons like him). Together with the conceptual frame 'promiscuous female' triggered by this description, the focus is on her responsibility for the alleged rape. In brief, if she was 'into' boys she most likely consented to the sexual activity, and may even have been the aggressor.

In such cases, even if the witness is sufficiently sensitive to the semantic consequences of the lawyer's lexical choices, she is largely powerless to negate the inferences that follow from them. Similarly, example (9) shows how the lawyer alludes to the witness's guilt, through assertions of how he is not allocating blame. This witness has claimed that her father is sexually and physically violent towards her.

- (9) *Why did you need to leave [sic] your father's house? ... I do not want to go into the in's and out's of what happened between you and your father.*

I do not want to dwell on it. If we can just deal with it in a sentence, I am not going to go into the background. You just say why you left.

Witness: Because of the physical violence from my father.

I do stress to you, because there are rights and wrongs on every side, no doubt, in the relationship between father and daughter. I do not want to put the blame on either side, but you are quite sure that the reason you left was physical violence on the part of your father?

Again drawing on frame-based knowledge, if a person is violent towards you, then there are only two choices before you: (i) be violent in return or (ii) get as far away from that person as possible. Frame-based knowledge also triggers two reasons for violence towards you: (i) you are a victim; or (ii) you are the aggressor. In this case, because the lawyer emphasises that he does not want to put the blame on either side, together with the repeated questioning of her answer, *are you sure...*, he manages to suggest (to the jury) that she was not the victim, and that her conduct may be responsible for her father's violence, thus making the complainant at least partially responsible for her father's actions.

The examples above, illustrate how the lawyer's questions can weaken an accusation of rape through suggestions that the witness was at least complicit in the sexual activities and was not entirely a victim (if at all).

5.2 The witness may be lying

As well as attributing blame to the witness, a lawyer may sow seeds of doubt into jurors' minds that she is a liar. The following examples show how conceptual frames of reference and information smuggling are used to trigger a 'child's imagination' frame.

- (10) *I want to suggest to you that you're making that little bit up, C.
Do you understand? That's not true, is it?*
Witness: Yes.

Here, the lawyer offers no evidentiary support for his claims, relying on an inclination to assume children invent stories. Thus, if 'that little bit' has been made up, why believe any of her account of sexual assault? This difficulty is further compounded by the ambiguity of the answer – i.e., 'Yes, it is not true' or 'Yes, I understand' (cf. Lane 1985).

Another example where the witness's credibility is broken down through the possibility of lying or invention follows in (11).

- (11) *You told us as well, didn't you that L. broke the glass and put his
hand through and turned the key?*
Witness: Yes.
You did not see that happen, did you?
Witness: No.
*And you also told us I think that your mum saw the police come up
the stairs?*
Witness: Yes.
You did not see that, that is what your mum told you, was it?
Witness: Yes, but I heard all the banging.
Yes, you heard the police arrive, did you?
Witness: Yes.
Were there any sirens before they arrived?
Witness: No.

Here, the child has reported events that the lawyer now claims she hasn't witnessed or seen. In effect, she gives as direct testimony statements about actions and events that are beyond her personal experience. The implication is if these parts of the story are falsely reported as her experience, the jury can't really be sure that any of her account was not invented.

5.3 The defendant was misunderstood: it wasn't abuse, but a game or a dream

Sometimes, rather than implying that the witness is lying, it may be sufficient for the lawyer to suggest that the complainant has misunderstood the defendant or the (sexual) event. Repeatedly, in our transcripts with child witnesses, we note that the 'game' frame is accessed – i.e., what the child thought was abuse was actually just a game. To illustrate this point we give the following three examples.

Example (12) involves a child witness (aged 12 years) who alleged that he was sexually abused by his baby-sitter. In this example the 'playfulness' of the baby-sitter defendant is created to set the scene for the alleged abuse.

(12) *I just want to ask you about this game, this touching. Because it was supposed to be a game, was it not?*

Witness: Yes.

Do you remember if you played it more than once or only once?

Witness: Once

Are you sure? Do you remember how it came about that you played the game?

Witness: No

Well what did you do? Tell us how the game worked

Witness: He touched my arm and I touched his

Did he touch your nose?

As the questioning progresses, jurors may not register the importance of a later line; *you wore pyjamas in bed, did you not, so you would not be able to see where your hand went, when you touched willies*. The lawyer has carefully developed the frame of 'playing a game', which is associated with fantasy for children. If the events can be described as a game then surely no serious crime was committed, and any 'touching willies' was surely an accident. Also as a consequence of the 'small steps' approach, it would be difficult for a child or any (vulnerable) witness to recreate a sense of foul play.

A similar theme is developed in extract (13), taken from the cross-examination of another 10-year old, who was inappropriately tickled by a baby-sitter.

(13) *When you were out and about with X, he could be quite fun couldn't he?*

Witness: Yes

He would play games and he would wrestle the dog

Witness: Yes

He would let you stay up late

Witness: Till half nine

You'd play darts, you'd play cards

Witness: Yes

And when you played cards, he'd get the names wrong. What did he call spades?

Witness: Shovels

Isn't he daft?

The lawyer here is creating a defendant who is a youthful, playful (= non-sexual) person who must have been misunderstood by this child. The tickling was actually a game and there is no crime involved.

Similarly, the extract given in (14) of a cross examination of an 11-year old boy shows again how the 'misunderstood adult' and 'it was just a game' themes are frequently used to counter the charge of sexual assault in cases involving children

(14) *Did you play on the computer at X's house*

Witness: Yes

Did he play with you?

Witness: Yes

Would you describe him as a friend then?

Witness: Yes

You used to play football with him?

Witness: Yes

The defendant is again portrayed as an unlikely person to commit a sexual offence despite (later) descriptions of slapping, which are similarly categorised as a game: cf., *Do you remember the game where he would hold you and let X come up and slap you?*

This class of outcomes, described generally as 'the accused was simply misunderstood' (by this impressionable and/or fanciful child) also includes examples where the lawyer suggests that there really was no event to be misunderstood at all, as the whole thing was the product of the child's imagination. In such cases a 'dream frame' is accessed, from which the lawyer suggests that the imagined abuse is just a figment of the child's imagination, through dreaming. Excerpt (15) is from the cross-examination of a 6-year old boy and (16) the cross-examination of a 10-year old girl.

(15) *And I am saying to you that either this was a bad dream you have had or you are telling fibs about it. Do you understand?*

Witness: I am not a fibber

You've had a dream about it before?

- (16) *After the first tickling you must have gone to sleep. There was not more than one lot of tickling. Do you understand? Do you think you might have dreamt the second one, the third one and the fourth one?*

This latter form of invention relies on the social construct of a 'child' as an innocent who cannot differentiate truth from fiction. This is an important contrast with a liar, who does differentiate between truth and fiction and chooses to relate fiction, such as the boy who was portrayed as an unruly youth, in examples (6) and (7) above. It is plausible that because this strategy of 'being misunderstood' is often employed with children, it may be the product of legal professionals aspiring to take the less aggressive route when possible – i.e., suggesting a 'dream' is less vilifying than 'liar'. It may be in the court's best interests to be seen to be compassionate towards children, thus encouraging lawyers to avoid vilification of a child's character when possible. The outcome, however, is the same: relying on the same representation of 'fanciful' children, just offering the suggestion that invention creates 'reasonable doubt'.

5.4 I am your friend

As has already been demonstrated in Section 4 above, lawyers often use the strategy of 'false friend' to lure a witness into agreeing with a version of the crime narrative that is favourable to the defence agenda, but possibly not at all favourable to their own. With this strategy, the lawyer's (and sometimes also the judge's) contribution may suggest amiability towards the witness on one level, while their trial objectives suggest otherwise. Here we offer examples of how this 'false friend' strategy often co-occurs with the above-mentioned suggestions that the witness may be to blame, may be lying or may simply have misunderstood the events because it was really a game or a dream.

- (17) *Just to assist and nobody is going to tie you down exactly to numbers, but on how many occasions do you think that ... did [sic] inappropriate things to you?*

Let me help you in this way, because I promise you nobody is trying to tie you down exactly, but was it five times? Ten times or 50? Was it every day?

The lawyer here uses phrases that appear 'non-hostile', offering advice that is in her interests. References such as 'let me help you...' serve to enhance the 'friend' frame, and even if the witness doesn't believe it, jurors may be swayed by it. However the content of the advice suggests that precise answers can not be expected of this witness, and therefore it may all be invention (fiction or a lie).

Similar examples follow in (18) and (19) from the beginning of a cross-examination of a 7-year old girl.

- (18) *The first thing I would like to ask you about is when you were speaking to the policewoman; you seemed to remember quite a bit. Thinking back today, are all of those things that you told the police-women things you can really remember, or are some of them wrong?*
 Witness: Some of them are wrong
 Ok. Can I try and help a little bit. *Let's go through it bit by bit*
- (19) *Ok, we're all getting mixed up. Obviously I got you mixed up. So could you put me right please because you were there and I wasn't?*

Again, these two samples illustrate how a lawyer may present himself as someone who is not devious and not trying to trick the witness; while the very fact that he discusses inconsistencies in her testimony triggers the 'lying' frame where all parts of her testimony come under suspicion.

Finally, in the following examples we show the step-wise strategy that lawyers adopt to build their story. Often, their opening comments are neutral but by the end of the questions a very damning picture of the witness has been created.

5.5 The small-step approach

As has been suggested above, lawyers (particularly with child witnesses) use a strategy where questions seem harmless, but the negativity or absurdity grows with each new question, forcing the witness into a position that cannot be redeemed. For example, in (20), the lawyer uses the expected frame of violence to show that because there were no overt signs of violence, this could not be rape because rape victims fight back (and that would leave bruises).

- (20) *He didn't have a gun. Is that correct?*
He didn't have a knife?
He didn't have a weapon of any type is that correct?
He never showed you any weapon. Is that right?
He never hit you?
He never slapped you?
He never punched you?
There was no bruising at all to your face, was there?
There was no bruising to the front of your body or breasts or any area like that, was there?

The step by step increments in the lawyer's argument deals with each component of the socially held frame regarding how sexual assaults would unfold.

Having already portrayed this female complainant as somewhat violent herself (through his assertion that blame for violence lies on both sides), he can rely on the representation of her as someone who would not be a meek and unresponsive victim of unwanted sexual advances. She would have fought back and this could not have been rape. In effect, the thrust of the lawyer's questions not only conveys that the defendant on trial is not violent, but that this complainant is a liar.

The small step approach is observed again below in example (21).

- (21) *You would like messing about with the teachers?
You come into contact with other kids?
In that it is just bumping into each other?
Do you ever get hold of any of the other kids?*

As the testimony proceeds, the tenor of the form of contact increases. This defence lawyer is performing an examination of a child witness offering testimony that is antagonistic to his aims. The lawyer does not go so far as to actively suggest sexual impropriety on the part of the child, but he does suggest that this child gets physical with others (to justify the alleged contact by his client). The first frame is veiled in the sense that 'bumping into' suggests play; while in the next line 'get hold of' suggests conflict. So the lawyer has subtly moved the jury's thought processes from a 'play' frame to the more significant 'assault' frame, with the complainant in the role of agent. The lawyer must not overtly blame the victim for what has happened nor can he overtly call him a liar. However, through lexical choice and the conceptual frames those choices trigger, much can be implied.

6 Conclusion

Earlier work by Aldridge and associates (1998, 2005) with witness testimonies during police interviews and in the courtroom has shown how professionals can manipulate accounts to make witnesses present as credible or otherwise. Here, we have given an insight into how these processes are actually achieved through an appreciation of some very specific conceptual strategies. We have presented a number of speaker-strategies that can either undermine or promote a person's functioning in discourse. These strategies are of obvious methodological concern to the analyst dealing with legally relevant forms of discourse. We note that cultural stereotypes are encoded in a speaker's lexical choices, and the conceptual frames that are triggered by them. These are powerful tools in the investigation of attitudes towards members of different cultural groups, often sustained by members of those same groups.

We have also illustrated how references come together to form a bank of repeated semantically-framed descriptions. These often amplify the historical stereotype of the woman who was really asking for it, or the one who cries 'rape' rather than the woman who was genuinely abused. Similarly, the child witness couldn't really have been abused but must have misunderstood or dreamt what was happening. Through the lawyer's lexical choices he continually disempowers the witness and implies that she is to blame, that she may be lying or that she may have misunderstood. These ideas support pre-conceived ideas the jurors may have from their own experiences and/or the media on the relative likelihood of the witness being a victim of abuse. We have analysed and identified how these strategies are used so that members of the public (the jury) are less likely to analyse in detail what they are hearing and may well just accept the gist of the lawyer's message based on their expectations of what a rape victim looks like and how she should behave. It is clear that we need to change the attitudes of society towards the rape of women and children and dispel the myths, if rape victims are to receive a fairer hearing and we must continue to work for legal changes so that the lawyers can less easily linguistically manipulate the outcome.

Notes

- * An earlier version of this paper was presented at the 7th Biennial Conference on Forensic Linguistics, Language and Law, in Cardiff 2005. The research drawn upon in this paper was supported by (a) an ESRC grant (ref: R000222508) awarded to Aldridge 1998 and (b) Publication support leave from Bangor University to the second author. Many thanks go to Aaron Cicourel, Seana Coulson George Lakoff and Esther Pascual for their very helpful comments on our work. Special thanks go to Diana Eades and three anonymous reviewers for their invaluable help with this manuscript. Of course all oversights are our own.
- 1 Our thanks to Hazel Meek (MA student, Cardiff University) for showing us this article.
- 2 For ease of presentation we use 'he' to refer to the lawyer/police officer and 'she' to refer to the witness. We fully acknowledge that women can be lawyers/police officers and men can be witnesses.
- 3 This is a transcript of 'Rape on Trial' which was made for Panorama by Films of Record and first transmitted on BBC One on Sunday 25 June 2006.
- 4 Or worse still, given her (extensive) sexual experience, any man could assume she was interested, and maybe she didn't try hard enough to convince him otherwise?

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