

“She was quite capable of asserting herself”: Powerful Speech Styles and Assessments of Credibility in a Sexual Assault Trial

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Abstract. *In this article, we are interested in the relationship between linguistic style and credibility in the legal system as it pertains to the testimony of a complainant and an accused in a Canadian rape trial, R v. Wagar. While Conley and O’Barr’s pioneering work on this topic argued that powerful and assertive speech styles were more credible than powerless and deferential styles in the courtroom, we suggest that these kinds of indexical associations are neither stable nor monolithic across a speech community. Indeed, in the sexual assault trial we examine here, the complainant’s powerful speech style seemed to undermine her credibility because she was perceived to be too ‘assertive’ to be a victim. We argue that the complainant was caught between two paradoxical ideologies: although a powerful speech style, in line with Conley and O’Barr’s claims, may be associated with credibility in the courtroom, the witness’s use of such a style was regarded as inconsistent with her status as a victim of sexual assault. Thus, this paper builds on work that examines the real-world effects of linguistic styles in the courtroom, attending in particular to how certain styles come to be favoured in specific (e.g., gendered) contexts.*

Keywords: *Powerful/powerless speech styles, credibility, sexual assault, iconicity.*

Resumo. *Neste artigo, trabalhamos a relação entre estilo linguístico e credibilidade no sistema jurídico, no que diz respeito a uma denunciante e um acusado em um processo de estupro no Canadá, R. v. Wagar. Enquanto o trabalho de Conley e O’Barr, sobre esse tópico, demonstrou que estilos impactantes e assertivos (confiantes) do discurso em tribunal seriam mais credíveis que os estilos não impactantes e não assertivos (inseguros), nós sugerimos que esses tipos de associações indexais em uma comunidade de fala não são estáveis, tampouco monolíticas. Na verdade, no julgamento de violência sexual que examinamos aqui, o estilo impactante do discurso da denunciante parecia prejudicar sua credibilidade, pois ela aparentava ser muito “assertiva” para ser uma vítima. Sendo assim, argumentamos que a denunciante caiu em duas ideologias paradoxais: embora um estilo de fala impactante, de acordo com as afirmações de Conley e O’Barr, possa estar associado à*

credibilidade em tribunal, o uso de tal estilo pela testemunha foi considerado incompatível com seu status de vítima de agressão sexual. Desta forma, este artigo baseia-se no trabalho que analisa os efeitos do mundo real dos estilos linguísticos em tribunal, em particular na forma como certos estilos são favorecidos em contextos específicos (como os de gênero, por exemplo).

Palavras-chave: Estilos do discurso confiantes/inseguros; credibilidade; violência sexual; iconicidade.

Introduction

The relationship between linguistic style and credibility in the courtroom has been a long-standing issue in the area of language and law, beginning with Conley and O'Barr's important work on "powerful" and "powerless" speech styles (e.g., Conley *et al.*, 1978; O'Barr and Atkins, 1980; O'Barr, 1982). In summarizing this early work and the effects of speech styles on legal decision-making, Conley and O'Barr make the claim that the legal system "gives greater credence to those who speak in a powerful and assertive style. Conversely, those who speak in a powerless style, ... marked by deference and imprecision, are less likely to be believed" (2005: 75). While Conley and O'Barr's work has been crucial in directing our attention to linguistic ideologies that associate certain kinds of linguistic signs (e.g., features of "powerful" vs. "powerless" speech styles) with certain kinds of speakers (e.g., credible vs. non-credible), the fact is that these kinds of indexical associations are neither stable nor monolithic across a speech community. Silence, for example, may be an indication of powerlessness and domination in some situations, but a form of resistance and control in others (e.g., Gal, 1991). Moreover, linguistic ideologies can interact with other kinds of social ideologies and, thus, may operate differently across contexts.

In this paper, we are interested in the relationship between linguistic style and credibility in the legal system as it pertains to the testimony of a complainant and an accused in a Canadian rape trial, *R v. Wagar*. We show that the complainant, who uses a powerful speech style, is perceived as too 'assertive' to be a victim, while the accused is viewed as the individual who is victimized in the circumstances. Put somewhat differently, the complainant seems to be caught between two paradoxical ideologies: although a powerful speech style, in line with Conley and O'Barr's claims, may be associated with credibility in the courtroom, the witness's use of such a style seems to undermine her credibility as a victim of sexual assault. Thus, this paper builds on work that examines the real-world effects of linguistic styles in the courtroom, attending in particular to how certain styles come to be favoured in specific (e.g., gendered) contexts.

The Case: *R v. Wagar*

In 2014, the Provincial Court of Alberta heard a sexual assault case in which the defendant, Alexander Wagar, was accused of raping an acquaintance in a bathroom at a house party three years earlier. Wagar was acquitted of the charges by the trial judge, but upon appeal to the Alberta Court of Appeal the acquittal was overturned and a new trial was ordered. The appeal court judges found that the "trial judge's comments throughout the proceedings... gave rise to doubts about the trial judge's understanding of the law governing sexual assault and, in particular, the meaning of consent." Moreover, the judges "were persuaded that sexual stereotypes and stereotypical myths, which have long been

discredited, may have found their way into the trial judge's judgment" (In the Court of Appeal of Alberta, Memorandum of Judgment Delivered from the Bench, *R v. Wagar*). Among the more egregious comments made by the trial judge while the complainant was testifying—and echoed in the judge's Reasons for Judgment—included questions about why she "didn't...just sink [her] bottom down into the basin so he couldn't penetrate [her]" and why she "couldn't...just keep [her] knees together" (p. 119, In the Provincial Court of Alberta Judicial Centre in Calgary, *R v. Wagar*, Trial Transcripts).

While a second trial also led to the acquittal of the accused, the extreme sexism expressed in Justice Robin Camp's decision received national attention and expressions of outrage. After thirty different groups and individuals made complaints to the Canadian Judicial Council, Justice Camp faced a rare disciplinary hearing. In March 2017, the Council recommended that Camp, at this point a federal judge, be removed from the bench; following this recommendation, Camp tendered his resignation.

The evidence of Camp's clear gendered bias is outlined thoroughly in the prosecution's grounds for appeal document (Court of Appeal of Alberta, Factum of the Appellant, *R v. Wagar*) and in the many formal complaints lodged against Camp and the media reports written about the decision. As such, this analysis sets aside the very overt expressions of sexism and misogyny that abound in this case and, instead, focuses on the issues of language and credibility that we believe also played an important role in the accused's acquittal. Indeed, our argument is that covert sexism and gendered ideologies (e.g., rape myths) are intimately connected to the relationship between language practices and credibility in the courtroom and that this connection is borne out in this particular case.

Linguistic Style and Credibility

As noted above, Conley and O'Barr were among the first to empirically investigate variation in speech style in the courtroom and the effects of such variation on legal decision-making. An early study to come out of their original Duke University research was one conducted by Erickson *et al.* (1978). (See also Conley *et al.*, 1978.) Using as a starting point a cluster of linguistic features that Lakoff (1975) had identified as 'women's language', Erickson *et al.* determined that these features (e.g., intensifiers, hedges, hesitations, rising intonation in declarative sentences, tag questions and (super)polite forms) were generally used in the courtroom by witnesses who lacked social power. By contrast, individuals with social power did not generally use such features. These different ways of speaking, thus, became known as "powerless" vs "powerful" speech styles, respectively. As these terms indicate, the researchers on the Duke University project did not find that gender was the relevant social variable that predicted the use of one speech style over the other; rather, in a departure from Lakoff (1975), O'Barr and Atkins (1980) argued that the relevant variable seemed to be social status. As Conley and O'Barr remark in a more recent publication, "given the social realities of the 1970s, most powerless speakers were in fact women, but the correlation of powerless language with gender was not exact" (Conley and O'Barr, 2005: 65).

In order to determine whether speech styles had an effect on credibility in the courtroom, the second part of Erikson *et al.*'s research involved a perception study: experimental jurors were presented with witnesses who adopted both powerful and powerless speech styles. Results demonstrated that individuals who presented their evidence us-

ing powerful speech styles were judged to be more credible than those using powerless speech styles, and this effect was even stronger when the experimental juror and witness were of the same sex (Erickson *et al.*, 1978: 274). In attempting to explain the relationship between speech styles and credibility, Erickson *et al.* argued that linguistic features such as hedges and hesitations may suggest that the witness "lacks confidence in the statements he or she makes"; by contrast, the absence of such features "may lead to the attribution that the communicator does indeed believe the statements to be true" (Erickson *et al.*, 1978: 276).

Subsequent studies of speech styles and credibility in simulated courtroom contexts have investigated the component parts of powerless speech styles (as those were defined by the Conley and O'Barr research team) and how they may differentially impact mock jurors' perceptions of credibility. For example, Bradac and Mulac (1984) established a hierarchy of the "powerless" features identified in earlier work, with some linguistic features ranking high in the hierarchy (i.e., perceived as higher in terms of signalling social power) and others ranking low (i.e., perceived as lower in terms of signalling social power). Their study determined that super-polite forms and intensifiers were rated as relative high in the hierarchy whereas tag questions and hesitations were rated as relatively low. Hosman (1987), like Bradac and Mulac (1984), was also interested in refining the powerful/powerless speech style construct and, thus, chose to investigate evaluative reactions to a subset of the features originally identified as "powerless"—hedges and hesitations, specifically. Hosman chose these particular features because he saw them as key to perceptions of credibility and, therefore, to the outcome of a trial: "if one hedges or qualifies one's testimony, then he/she may be perceived as incompetent or untrustworthy. Similarly, if one hesitates while testifying, this may be taken as a sign of uncertainty or anxiety, and subsequently produce negative judgements of competence or trustworthiness" (Hosman, 1987: 176). Hosman examined evaluations of a defendant (as opposed to witnesses) and, very generally, found that the presence of hesitations/hedges in his testimony negatively influenced perceptions of his authoritative, character, social attractiveness and guilt.¹

Powerful/Powerless Speech Styles in *R v. Wagar*

The *R v. Wagar* case is particularly interesting in light of the findings on powerful/powerless speech styles because both the complainant and the accused were individuals who lacked social power. At the time of the events under investigation, Wagar and the complainant were both homeless, drug addicts and had criminal records. Indeed, Justice Camp described them both as "unsavoury witnesses, unsatisfactory witnesses" and said that "[their] morality, their sense of values, leaves a lot to be desired" (p. 431, in Reasons for Judgment, *R v. Wagar*). However, in spite of the fact that both individuals could be said to be socially powerless, there was an interesting difference in their use of language that corresponded to the distinction between powerful and powerless speech styles. It should be noted that, in attempting to capture the differences we perceived in the testimonies of the complainant and the accused, we did not focus on all of the linguistic features of powerless speech styles that Conley and O'Barr (and their colleagues) identified. Rather, in line with work by Bradac and Mulac (1984) and Hosman (1987), we assumed that some of these features contribute more to perceptions of lack of credibility than others, specifically, features that mitigate or qualify the forcefulness of proposi-

tions or, put somewhat differently, those that express a speaker's uncertainty/lack of confidence in the truth of propositional content.

Before presenting our quantitative analysis, we exemplify, in the excerpts below, the linguistic features we focussed on in the analysis: hedges, tag questions and self-initiated repairs. Excerpts (1) and (2) come from the complainant's direct testimony and cross-examination, and excerpts (3) and (4), from the accused's direct testimony and cross-examination.

(1) From Complainant's Direct Examination

- Q: Okay and you say that you ran into Lance [Alexander Wagar's brother] at an earlier time, do you remember where you would have run into Lance?
- A: I ran into Lance at Occupy, it was first-when I first moved to Calgary there was a bunch of tents set up at the OP park and I was with a friend of mine that was from REDACTED. I met up with her and we were drinking and there was-there are tents and she knew some of the people who were in the tent, so that's how I met Lance and that's how I encountered some of the-the folks that I've-I've encountered later, like Lance.
(Trial Transcripts, p. 12)

(2) From Complainant's Cross-Examination

- Q: Okay. And-and did you ever feel that Lance was attracted towards you?
- A: Definitely.
- Q: Definitely. And what did you-how did you gather that Lance was attracted towards you?
- A: With the things he was saying when we were at the movies and at Subway. He kept saying I was his girlfriend. I was like: I am not your girlfriend. I'm going out to the movies with you because you invited me to-but I'm not going as your girlfriend.
(Trial Transcripts, p. 66)

(3) From Accused's Direct Examination

- Q: When did the party start?
- A: It was *kind of*, like, a get together. Like, it's-like it was-it's *kind of* hard to tell, because it was, like, *it seems like*-because it was dark out, **but it was the middle of the night, right?** So, it would-*it might have been* like 4 or 5:00ish, maybe 6.
(Trial Transcripts, p. 211)

(4) From Accused's Cross-Examination

Q: And I take it that you wouldn't have really been talking to REDACTED much with the drinking and the dancing going all evening, would you?

A: We did talk. We didn't-like it was-yeah, we-we danced together. We-we said a few things to each other. And like it was-we were-*I can't remember* what was said. No, she-she said-I remember her saying like I-I like-that I was good a dancer and ***she liked my dancing, right.***

(Trial Transcripts, p. 244)

In comparing excerpts (1) and (2) to (3) and (4), we see, first of all, that the accused has more hedges (i.e., linguistic forms that mitigate the force of an assertion) than the complainant (hedges are italicized in the excerpts above). Indeed, in excerpts (1) and (2), there are no hedges whereas in excerpts (3) and (4) there are a number, for example, *kind of, it seems like, maybe*². Second, there is a difference in the use of utterances with tag questions (i.e., questions used, according to Lakoff, 1975, when a speaker does not have full confidence in the assertion modified by the tag).³ The complainant does not produce any tag questions in (1) and (2), while the accused produces two utterances with tags in (3) and (4), represented in bold italics (i.e., ***but, it was the middle of the night, right?; she liked my dancing, right.***). Third, we see more instances of self-initiated repairs in the accused's testimony relative to the complainant's. By self-initiated repair, we refer to the practice by which a speaker halts ongoing talk in order to return to and "fix" some bit of prior talk (Sidnell, 2010: 117). In excerpt (2), for example, the lawyer begins his second question with "And, what did you", halts its progress, and then provides a replacement for it, "how did you...", transforming a 'what' question into a 'how' question.⁴ The accused produces a number of self-repairs in excerpts (3) and (4): for example, in the first line of excerpt (3), he interrupts the progress of his testimony and replaces "Like it's" with "Like it was"; similarly, in the second last line of this same excerpt, the accused produces "So, it would", halts the progress of his testimony and then replaces it with "it might have been." While self-repairs were not included by Conley and O'Barr (nor by other researchers) as a component part of powerless speech styles, there are indications that they do signal a lack of social power for some listeners. For example, in an investigation of other-initiated repair in the courtroom, Drew (1990) argued that witnesses generally avoid self-repairs in the courtroom because such corrections or amendments can have the effect of undermining their credibility. In Drew's words, witnesses avoid self-repairs because "they could easily be challenged about the accuracy of their evidence..., about their ability to recall...—thus raising questions about the verisimilitude, credibility, or consistency of their evidence and hence about their competence as witnesses" (Drew, 1990: 43). Drew's comments here resonate with other characterizations of "powerless" linguistic features. That is, according to Drew, self-repairs convey to listeners that a speaker may be inaccurate in his/her rendition of events and/or may have difficulty remembering the events. Like the presence of hedges and tag questions, then, self-repairs contribute to the sense that a witness's testimony may not be trustworthy or truthful and, by extension, lacking in credibility.

In order to substantiate our claim that the accused and the complainant in this trial used powerless and powerful speech styles respectively, we conducted a quantitative analysis of comparable excerpts from the two testimonies. Both of the excerpts rep-

resented in Tables 1 and 2 below come from the direct testimony of the accused and the complainant when they were being questioned about events that took place in the shower—events that the accused characterized as consensual and the complainant characterized as non-consensual. We divided each ‘shower’ excerpt into utterances, which were then coded for the presence of tag questions, hedges and self-repairs. The results exemplify the broader pattern we observed throughout the testimonies: the accused used more linguistic features associated with powerlessness than the complainant. Of the 38 utterances produced by the accused, 10 (26%) contain at least one tag question, 4 (11%) contain at least one hedge and 8 (21%) contain a least one self-repair (Table 1). In contrast, of the 58 utterances produced by the complainant, none contain tag questions, only 1 (2%) contains at least one hedge and only 4 (7%) contain at least one self-repair (Table 2). Overall, then, 19 (50%) of the 38 utterances produced by the accused contain one or more of these features of powerless speech, while only 5 (9%) of the utterances produced by the complainant do.

	Utterance	Tag	Hedge	Repair
1	So I -- I took her into the shower with me			
2	and -- and that's -- that's when I -- I started washing her.			
3	I started, like, I -- like washing her down, right?	x		
4	And then we -- we started making out in the shower.			
5	She said, Hey, it's cold water. I can't remember what she said, something like cold water.		x	
6	And -- because, like, it's -- it's like when -- when you splash cold water on you, when you put cold water on yourself in the shower when you're with somebody.			x
7	And it's just you feel their body heat. It's, like, it's a little like -- so I can't -- it's something like that.		x	x
8	But anyway, we -- we -- we started, like, trying to have sex again.			
9	And -- and, like, it's a stand up shower, right?	x		
10	So it's like from here to here, right? And, like--	x		
11	<i>For the record, he's indicating the distance of the witness stand.</i>			
12	Okay. Four feet -- four feet by four feet, for the record.			
13	And -- and -- oh, like, we're sitting down in the shower because we were sort of -- we were really drunk and, like, really high.		x	x
14	And she was -- she was riding me now, right?	x		
15	And we were like, we were going for round two.			
16	And then -- and then Mike came in the shower -- came in the bathroom			x
17	and he's like, Oh, crap.			
18	And then -- then he turned around and he walked out, right?	x		
19	And then my brother came in			
20	and, like -- because, like, my brother really wanted this girl bad.			
21	And he, like, he was so mad that he didn't get her.			
22	So, like, he was sitting there looking and he was, like, and he's all pissed off, right?	x		
23	And then we're like making out with each other			
24	and she -- she looks up at him.			
25	And she screams at him, Get the fuck out, right?	x		
26	And then Lance gets out of the bathroom, right?	x		

27	And he's like, Oh, whatever, right?	x		
28	And then -- and he kind of ruined it.		x	
29	So -- so, like, we -- we -- we -- we went at it for a little bit longer			
30	and then it was just like -- like, I was -- I was just -- I was just too -- I was too drunk.			x
31	I -- I couldn't keep it up.			
32	So -- so -- so we left the shower			
33	and -- and that -- and then, yeah , like we -- we left together.			x
34	Like, you know, I towelled her off,			
35	I towelled off			
36	and we -- we left the shower together.			
37	And -- and, like, she was holding my hand.			
38	I was like -- like this, like, from -- like, I had behind -- she was holding on it, right?	x		x
39	And, like, it was -- we were -- we were happy.			x
Tot	38	10	4	8

Table 1. Powerless Speech Features of the Accused (Trial Transcripts, p. 214).

	Utterance	Tag	Hedge	Repair
1	<i>And what happens next?</i>			
2	And then the shower.			
3	<i>How do you end up in the shower?</i>			
4	He puts me in the shower.			
5	<i>How does he do that?</i>			
6	He takes my shirt off and my tank top and my bra			
7	and then he -- he just puts me in the shower.			
8	<i>So again you know, I just want to make sure we capture what your -- what you're describing, you used your hands, if you could just put some words to exactly where he is touching you and how it is that you're being -- you get into the shower.</i>			
9	So after he cleaned up the counter and stuff,			
10	I'm just standing there I'm just standing there in the washroom			
11	and then he turns on the shower,			
12	the shower is going and he takes off my shirt			
13	and he rips it like -- top off --			x
14	<i>Rips off whose top?</i>			
15	My top			
16	and then my shirts are inside out			
17	and in the shower he starts washing -- washing my body with soap.			
18	He washes everything,			
19	he washes me.			
20	And then he tells me to wash him			
21	and then I'm washing him.			
22	<i>Why do you do that, why do you wash him?</i>			
23	Why?			

24	Yeah.			
25	Because he told me to.			
26	<i>What did you think would happen in your mind, if you didn't do what he told you to do? What were you thinking that way?</i>			
27	Just do -- just do what he wants.			
28	<i>What did you think would happen if you didn't do what he wanted?</i>			
29	I don't know.			
30	Like he -- he took control			
31	and then I -- and -- so then he -- he had the control.			x
32	So I did -- I didn't --			
33	<i>I want to go back to that moment in time you say he puts you in the shower because I -- I didn't quite get how it is you ended up in there. Can you just take me through that one more time, I mean where is he --</i>			
34	So it's a standup shower --			
35	Okay.			
36	-- it's one of those small ones that are clear on all the sides in the corner of the washroom beside the toilet, that's beside the counter			
37	so there is the sink, toilet and the shower in the corner and then there is the door across like from the counter,			
38	so the light is off.			
39	After -- after Alex puts me in the shower I swear to God that he unlocks the door and locks the door			
40	because Lance was -- was there staring through -- through the -- through the -- the shower door with a fucked up smile on his face			
41	and he says he -- he makes a comment on -- on the way my vagina looks			x
42	and he is like oh I knew your vagina was -- was shaved or -- in a landing strip or some shit,		x	
43	he keeps saying landing strip.			
44	And then I tell him to fuck off, I told him to fuck off			
45	and Alex was licking my vagina while I'm standing in the shower,			
46	he is crouched down in the shower,			
47	and then the washroom is dark			
48	but then the light is on and I -- I am not looking anywhere			
49	and then I turn, glance down to the shower			
50	and -- and Lance is right there staring, laughing with -- with Alex.			
51	<i>I'm just going to go back for a moment if I could, about -- at the point in time where you say that he is licking your vagina, this is Alex that's licking your vagina, do I have that right?</i>			
52	Yes.			
53	<i>And where is he positioned and how you are positioned in that moment?</i>			
54	He is crouched down in the small little standup shower he -- he is crouched down			
55	And I'm standing there with -- with my legs open			
56	and then he -- he is on his -- like his knees and licking my vagina			
57	and I'm just standing there.			
58	<i>Do you say anything to him when he is doing that?</i>			

59	I don't.			
60	<i>Okay. Did Lance say or do anything else when he was in the bathroom at this time?</i>			
61	Calls me a little whore			
62	and he says he knew what my vagina looked like.			
63	<i>[MR. FLYNN] Sorry what was that last thing?</i>			
64	He said he -- he knew exactly how my vagina looked like.			
65	<i>[MS. MOGRABEE] Did he say anything else?</i>			
66	That <u>is</u> he going to go tell everybody.			
67	<i>Did he say anything else?</i>			
68	I don't recall.			
69	<i>Okay. What happens next?</i>			
70	Alex just gets out of the shower and just goes --			
71	<i>Sorry Alex is?</i>			
72	Alex gets out of the shower and was -- I -- I tell Lance to fuck off			x
73	and then Alex leaves the shower and the washroom with Lance.			
74	<i>And then what do you do?</i>			
75	Pardon me?			
76	<i>What do you do next?</i>			
77	I stayed in the shower, I stayed in the washroom.			
Tot	58	0	1	4

Table 2. Powerless Speech Features of the Complainant (Trial Transcripts, pp. 27-30).

The Relationship between Speech Styles and the Assessment of Credibility

In terms of the relationship between speech style and credibility in the courtroom, one of the features that distinguishes our study from previous work on the topic is that ours are naturally-occurring data. In other words, while most previous research has been conducted in experimental settings with mock jurors, we, by contrast, are able to interrogate the responses of other participants in an actual trial (e.g., lawyers, the judge) in determining how powerful/powerless speech styles are evaluated. To this end, we note that a further indication of the complainant's use of a powerful speech style in the presentation of her evidence comes from the prosecution's characterization of the complainant in her (the prosecutor's) closing address. Consider excerpt (5) below:

(5)

Going to the complainant's evidence I would just say a few things about her evidence before I go into the details. She is consistent, she's clear, she was not challenged on cross-examination. She firmly maintained her version of events and denied any suggestion that she may have consented to the sexual touching in any way. She was candid, very candid. She was not evasive, she answered the questions as was required.

(Trial Transcripts, p. 399)

We would suggest that this description of the complainant's testimony is in keeping with our claim that she uses a powerful speech style. More specifically, someone who "firmly maintains her version of events" would seem to display confidence and certainty—traits, according to Conley and O'Barr (2005), that are projected by the use of powerful speech styles.

Of particular interest for our purposes here is the question of how a powerful speech style is perceived and assessed when produced by a complainant in a sexual assault trial (i.e., a woman who alleges she has been a victim of sexual assault). Not surprisingly, we see in excerpt (5) that the prosecutor seems to value a witness (i.e., the complainant) who provides evidence in a confident and assertive manner. Indeed, for the prosecutor, this way of giving testimony no doubt bolsters the credibility of both the complainant and her testimony. By contrast, excerpts (6) and (7), from the complainant's cross-examination, suggest that the judge may not view the complainant's confident and assertive style in quite the same way.

(6)

- 1 Q: And at this point, I suggest to you that you were having intercourse with my client and you were holding onto his shoulders for encouragement as well as to balance your own body while you were having sex with him?
- 2 A: No.
- 3 Q: Consensual sex?
- 4 A: No, it was not consensual.
- 5 Q: And my understanding is he did what he said he would do. He pulled out and he ejaculated onto the—you said, the counter?
- 6 A: Yes.
- 7 Q: Which is what he said he would do, that he would not come inside of you. Is that right?
- 8 A: I don't understand.
- 9 Q: I'm sorry?
- 10 A: I don't understand what you're...
- 11 Q: My understanding of testimony earlier is that you told him that he couldn't fuck you because he didn't have a condom.
- 12 A: Yeah, so he wouldn't.
- 13 THE JUDGE: **Sorry, you don't have to shout.**
- 14 COMPLAINANT: Sorry.
- 15 THE JUDGE: **We're all trying to-to -**
- 16 MR. FLYNN: Sorry.
- 17 THE JUDGE: **- keep our tempers here. I know it's hard.**
- 18 MR. FLYNN: I apologize.
(Trial Transcripts, p. 86)

In this excerpt, the defense lawyer, Mr. Flynn, is engaging in a fairly combative cross-examination, suggesting, through his questioning, that the accused and the complainant had engaged in consensual sex (turns 1 and 3). In response to this questioning, the complainant asserts without hedging or qualification that it was not consensual sex (e.g.,

"No" and "No, it was not consensual" in turns 2 and 4). The lawyer then goes on to question the complainant about the accused ejaculating on the counter rather than inside of her (turn 5). The complainant seems to initially not understand the import of this question (turns 8 and 10); however, when the lawyer's inference becomes clear in turn 11 (i.e., that the complainant's concern about lack of condoms was an indication that the sex was consensual), the complainant responds that her refusal to have sex without condoms was indeed a way of refusing sex ("Yeah, so he wouldn't" in turn 12). The lack of prosodic information in the transcripts makes it impossible to know the volume/tone of the complainant's utterance in turn 12, but the judge's response in turn 13 characterizes it as "shouting" and his utterance in turn 17 indicates that the complainant needs to "keep [her] temper." Thus, what could be construed as a reasonable and firm response to aggressive cross-examination is for the judge an occasion to admonish the complainant for her "shouting" and her "temper." We see something similar in excerpt 7.

(7)

- 19 Q: So what my question is: How do you know that they would have his back if you never spoke to anybody before you charged him?
- 20 A: Because Lance was saying to everybody about what happened, but that-that twist of getting me angry. So he's saying to the group, and-and I'm-and I hear them saying, we have Alex's back.
- 21 Q: You're-so you heard this and you-and I'm just trying to understand. So you say that this group, are-are you by yourself when you hear this?
- 22 A: No. I-I'm there.
- 23 Q: You were there. So they were talking right in front of you and saying, We've got Alex's back.
- 24 A: Yeah.
- 25 Q: And why would they say that?
- 26 A: Because I'm not a part of their-I-they don't know me.
- 27 Q: Well, but my question is this, REDACTED. Why would they tell you they have his back if they do not know about the sex assault?
- 28 A: Because Lance.
- 29 THE JUDGE: **Mr. Flynn, I-I know that she's becoming heated, but it's easier if you don't -**
- 30 MR. FLYNN: Yes, Sir.
- 31 THE JUDGE: **- don't reciprocate.**
(Trial Transcripts, pp. 116-117)

In this excerpt, the defense lawyer is questioning the complainant about friends of the accused who were present at the house when the alleged sexual assault took place. Some of these individuals testified for the defense, providing evidence which supported the defense's position that the accused and the complainant had consensual sex. The complainant's contention is that Alex's friends "have his back" and the defense lawyer is cross-examining her about this. Once again, we see the judge characterizing the complainant's responses as inappropriate; in this case they are depicted as "heated" (turn 29) and the defense lawyer is instructed not to reciprocate (turn 31). Again, without more detailed transcripts or access to audio-tapes, it is impossible to know how the prosodic

features of the complainant's utterances may have contributed to the judge's impressions. However, what is clear from excerpts (6) and (7) is that the judge does not view the complainant's assertiveness as appropriate (even in the context of cross-examination), perhaps because being assertive clashes with expectations that victims of sexual assault should self-present as defenseless and vulnerable.

On the question of credibility, the judge's assessments of the complainant's communicative style were even more consequential. As noted above, the accused was acquitted and in his Reasons for Judgment, the judge indicated that he did not find the complainant credible (p. 431). Interesting for our purposes is the fact that the judge, in supporting his finding that the complainant—and her version of events—was not credible, repeatedly cited aspects of her "powerful" speech style. Consider excerpts (8) and (9) below.⁵

(8)

So on the basis of the remarks I made during a recitation of the evidence, I come to the following conclusions. The accused's (sic) version is open to question. She certainly had the ability, perhaps learnt from her experience on the streets, to tell me to fuck off.... She certainly had the ability to swear at men.
(Reasons for Judgment, p. 450-451)

(9)

There's no talk of fear. That doesn't mean there's consent. It just means the accused (sic) hasn't explained why she allowed the sex to happen if she didn't want it. She certainly wasn't frightened, and as appears later in the evidence, she was quite capable of asserting herself with other men when they did things she didn't like.
(Reasons for Judgment, p. 437)

The judge's logic here (and repeated throughout his ruling) appears to be that, because the complainant "had the ability to swear at men" and "was quite capable of asserting herself", she also had the ability to resist rape. And, the judge held such a view even though the prosecuting lawyer drew attention in her closing address (and at other points during the trial) to the significant physical differences between the accused and the complainant:

(10)

The complainant's version is she didn't want it. She told him to stop. She tried to push him off without success. She said she didn't yell because he was in control and that she was scared. Now keeping in mind that we have an individual here, that is the accused, who is significantly larger than the complainant, which is a relevant fact. His testimony is that he is over 6 feet tall and that he weighed over 210 pounds at the time of the incident and was in healthy condition and had just gotten out of [jail] and was in-was feeling very strong physically, because he worked out a lot while spending his time in custody.... And you'll recall that she said she was 100 pounds at the time.
(Trial Transcripts, pp. 357-358)

In emphasizing these physical differences, the prosecutor appears to be highlighting for the judge contextual information that is relevant to a finding of consent/lack of consent. In other words, just because the complainant was linguistically assertive does not preclude the possibility that she was (also) fearful of the accused, especially given the disparities in their physical size. Indeed, an important aspect of rape law reform in Canada (and also the United Kingdom and the United States) over the past few decades has involved the recognition that women can acquiesce or submit to sex because of fear or physical intimidation and that 'agreement' which occurs under these circumstances does not constitute consent. While we know from the appellate court judges, as already noted above, that they had "doubts about the trial judge's understanding of the law governing sexual assault and, in particular, the meaning of consent", our argument is that Justice Camp's failure to believe that the complainant was afraid (see excerpt 9) and, thus, accept the possibility of submission or acquiescence (rather than consent) derives, in part, from her assertive and confident speech style in the courtroom, and the potential extension of that style beyond the courtroom.

But, if it wasn't sexual assault that motivated the complainant to charge the accused, what, according to the judge, did motivate these charges? The judge seems to subscribe to a 'scorned woman narrative' when he explains the complainant's allegations of sexual assault. In other words, rather than viewing the complainant as the victim in the circumstances, the judge sees the accused as the victim of a 'scorned woman's' retaliation. Consider excerpt (11) from the judge's Reasons for Judgment.

(11)

In all the circumstances, despite the one criticism of the accused's version, I cannot reject his evidence. On his evidence it was consensual sex, indeed it was even tender sex.... What went wrong is that the brother came and spoiled things. And that subsequently the accused (sic) was upset because she thought he [the accused] had slept with Skylar.... If the complainant hadn't seen the accused with Skylar subsequently, who knows how all this would have turned out?
(Reasons for Judgment, p. 451)

We see in this excerpt that "what went wrong" between the complainant and the accused was not a sexual assault; rather, the accused's version of events, which is not "rejected" by the judge, characterizes the events as tender...consensual sex." According to the judge, the complainant was "upset" for other reasons, most notably, because she thought the accused had slept with another woman after having sex with her. Apparent in this excerpt, then, is one of the many rape myths reproduced by the judge in his decision: the idea that women fabricate stories of rape out of vengeance and spite. What is of interest to us, of course, is the possible relationship between the accused's powerless speech style and the victim status ascribed to him in the judge's invoking of this rape myth. As for the accused's powerless speech style, there are indications from the trial that the judge saw the accused as requiring guidance in answering questions. Indeed, excerpts (12) and (13) show the judge 'coaching' the accused on how to be more effective in responding to the questions asked of him.

(12)

THE JUDGE: Listen to me, Mr. Wagar. In the same way she stood up and sometimes stopped Mr. Flynn from asking questions, Mr. Flynn can stand up and stop and tell me that she's asking unfair questions. And then I'll decide. It's my job to see that it's fair. You may not always understand why I decide one way or-or another, but I do do my best to make it fair. You must understand that. But try and listen very careful-carefully to the questions she asks and answer just those questions. Don't give long answers as you did to Mr. Flynn which don't really answer the question when you carry on about other stuff. It just takes a long time. So listen to what she's got to say, think about it, and answer that question, okay. Do your best.

A: All right, Your Honour.
(Trial Transcripts, p. 229)

(13)

THE JUDGE: Mr. Wagar, back here, and remember you're still under oath.

A: Okay.

THE JUDGE: Okay. And please remember to listen very carefully to the questions, and try and answer the questions as briefly as you can.

A: Okay.
(Trial Transcripts, p. 272-273)

These excerpts (and others like them) have particular import, we believe, when juxtaposed with excerpts like (6) and (7), where the judge admonishes the complainant for what he seems to view as her overly aggressive tone. While the judge treats the accused as discursively challenged and in need of guidance, he treats and characterizes the complainant as extremely capable of "asserting herself" (see excerpt (9)). And, these discursive characterizations, we contend, are inextricably connected to some of the judge's

findings: for example, his finding of consent on the part of the complainant (i.e., she was discursively assertive and aggressive and could resist rape) and his characterization of the accused as a victim of fabricated charges of rape (i.e., he needed discursive guidance, was unable to defend himself discursively). From a somewhat different perspective, we can see here the operation of what Irvine and Gal (2000) have called iconization—a process by which linguistic features are projected onto individual speakers or groups of speakers. For example, iconization is in play when a slow-talking speaker is thought to be a slow-thinking, or cognitively impaired, individual. Likewise, in the case under investigation here, the linguistic features of the complainant and the accused, i.e., their powerful and powerless speech styles, are projected onto their identities more generally, and this, in turn, facilitates the invoking of rape myths where women are understood as the aggressors and men as the victims. Consistent with this characterization of aggressors and victims is the error Justice Camp made throughout the trial and in his Reasons for Judgement (see excerpts (8), (9) and (11) above)—referring to the complainant as “the accused.”

Conclusion

Previous work on rape and sexual assault has, like this article, drawn attention to the very restricted subject positions victims/survivors can occupy in order to be believable as victims (see Ehrlich, 2014). Indeed, Anderson and Doherty have said that “a decision to report a rape incident may... ultimately rest on whether the victim believes that they conform to the culturally defined ‘ideal’ or ‘genuine’ victim type” (2008: 13). So, what does an ‘ideal’ or ‘genuine’ victim look like? The literature on rape shows that victims/survivors are taken seriously/not taken seriously based on their actions prior to, during and after being raped (Trinch, 2013). Less-than-ideal victims are blamed for putting themselves in the wrong place, dressing ‘provocatively’, or drinking too much alcohol before the rape occurred. Less-than-ideal victims are blamed because during the rape, they did not fight hard enough, did not say ‘no’ explicitly enough (Ehrlich, 2001), or displayed an interest in their perpetrator prior to the sexual aggression (Matoesian, 2001). And, after a rape, less-than-ideal victims are blamed because they appear not to have suffered enough trauma (Trinch, 2013) or did not display enough emotion in the courtroom (Matoesian, 2001). This article has also identified a less-than-ideal victim type. We have argued that the complainant’s lack of credibility in the *R v. Wagar* case was, in part, a result of her “powerful” speech style in the courtroom.⁶ This style projected traits like assertiveness and confidence onto the complainant and these traits appeared to have been viewed by the judge as incompatible with the traits of an ‘ideal’ victim, for example, vulnerability and defenselessness. While we do not wish to reduce the lack of credibility ascribed to the complainant in *R v. Wagar* to a single cause, given the variety of “sexual stereotypes and stereotypical myths [that]... may have found their way into the trial judge’s judgment” (In the Court of Appeal of Alberta, Memorandum of Judgment Delivered from the Bench, *R v. Wagar*), we, at the same time, believe that some “sexual stereotypes” are activated by styles of speaking. Specifically, for the victim/complainant in this rape trial, the use of a powerful speech style seemed to undermine the credibility of her account, as assertiveness and power are incongruous with stereotypical views about female victims of rape. And, in combination with the complainant’s powerful speech style, the use of a powerless speech style by the accused

appeared to contribute to his status as a victim and his concomitant credibility in this context.

This article not only augments our understanding of how rape complainants can be disadvantaged in the courtroom, but also has implications for the investigation of speech styles and credibility in the courtroom. Although it has been argued that "powerful" speech styles are more credible than "powerless" ones, this analysis suggests that the relationship is not uniform across speakers and contexts. We have demonstrated that powerful speech styles are only credible to the extent that they align with particular kinds of speakers. Put somewhat differently, our analysis has demonstrated that the operation of linguistic ideologies (i.e., ideologies that associate powerful/powerless speech styles with credible/non-credible speakers) is constrained by other kinds of social beliefs in the sense that the particular meanings assigned to speech styles will depend on what kinds of social actors are using the styles and in what contexts. Thus, in order to gain a full understanding of how credibility is connected to speech styles, we would suggest that studies do not neglect the interaction of linguistic ideologies with other kinds of social ideologies—in this case, the gendered ideologies that often inform decision making in sexual assault trials.

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Notes

¹There was one exception to this result: "the dual presence of hedges and hesitations produc[ed] a relatively positive effect on authoritativeness judgements" (Hosman, 1987: 183).

²Although there are some uses of *like* that have hedge-like properties in excerpts (3) and (4), and in the accused's testimony more generally, we chose not to quantify *like* because of the variety of functions it can have, some of which do not involve hedging. (See D'Arcy, 2007.)

³Critiques of Lakoff's (1975) claims about tag questions (e.g., Cameron *et al.*, 1988) have emphasized their multifunctionality. For example, in some contexts tag questions may be used as an interactional tool, that is, to encourage/invite an interlocutor's participation in an interaction. Given that witness testimony is not generally produced to elicit contributions from other trial participants, we assume that the tag questions in the accused's testimony function in the way Lakoff claimed.

⁴Self-repairs are typically initiated with a pause or hesitation marker "which then enable[s] listeners to interpret what follows as a replacement of the problematic part of the utterance" (Garcia, 2013: 117). In excerpts (3) and (4) (and elsewhere in the trial transcripts), we see that many of the repair 'solutions' are preceded by a dash. This is one indication that these dashes, at least in some contexts, represent pauses in the official court transcripts.

⁵Throughout the trial, Justice Camp mistakenly referred to the complainant as the accused. This mistake was repeated eight more times as he read out his Reasons for Judgment, examples of which can be seen in excerpts (8) and (9).

⁶Ponterotto (2014) makes a similar point when she suggests that it is detrimental for rape victims to "resist the hedging trap." However, unlike this, Ponterotto does not provide evidence from legal decision making to substantiate her suggestion.

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