

## WITNESSES' ANSWERING STRATEGIES IN THE ROMANIAN WITNESS EXAMINATION

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### ABSTRACT

This paper focuses on the answering strategies used by witnesses in the Romanian witness examinations. The Romanian witness examination is governed by the judge-lawyer-witness triad, with the judge acting as the intermediary between the lawyer and the witness. In the Romanian courtroom (belonging to the inquisitorial system of justice), witnesses are not as constrained by the system as the American ones. Therefore, some of them may use some strategies through which they reprimand the judge or the system of justice. Such strategies include counter-questioning strategies and dispreferred answers.

***Keywords:** courtroom, witness examination, dispreferred answer, counter-questioning strategies*

### INTRODUCTION

Questioning in the courtroom 'is predominantly characterized by question-answer sequences in which the professionals largely ask questions and the lay 'clients' respond with answers' [2]. The lawyer-witness interaction in the American courtroom is characterised by the unequal distribution of power, which is expressed in the form of the pre-allocation of turns (only lawyers ask the questions and the witnesses answer) and in the control that lawyers have over topics, question form, and question sequence.

The Romanian witness examination is governed by the judge-lawyer-witness triad, with the judge as the intermediary between the lawyer and the witness, meaning that the judge is the one asking all the questions when questioning a witness.

The main peculiarity of the Romanian trial is that in questioning a defendant or a witness, both the prosecution and the defence have to rely on the presiding judge who has the role of the 'sole interrogator' [6] and reformulates all the questions asked to the person on the stand by the lawyers. S/he is 'in pivotal position' [6] to allow or deny the floor, s/he controls courtroom communication, s/he accepts, refuses, or reconstructs a question and can cut off an answer. S/he summarises the answers and dictates them to the court clerk.

The courtroom discourse is very constrained, witnesses not having the right to strike back at the lawyers' questions in the American courtroom. However, the Romanian system of justice is more permissive in this respect and therefore, there are witnesses who do not always comply with these rules.

The witness 'can exercise indirect power by "infiltrating" unwanted information or manipulating the discourse within the bounds allowed to him/her' [4]. Harris [5] talks about the discourse strategies used by defendants in the form of counter-questions and interruptions. Nevertheless, Conley and O'Barr [1] consider that the witnesses' rebellion has no chance to succeed as 'the linguistic resources available to the lawyer are simply too many and those available to the witness too few.'

Besides the questions asked by witnesses, which are requests for clarification, witnesses may use counter-questioning strategies or may give dispreferred answers for which they will be reprimanded.

## RESULTS

The data presented here are part of my doctoral thesis research and are based on 100 pages of transcripts of Romanian criminal trials that took place at the Timisoara Courthouse and that I personally attended, recorded, and then transcribed [3]. In what follows, I will discuss the main answering strategies employed by the witnesses in the Romanian witness examination.

### Counter-questioning strategies

The counter-questioning strategies are questions through which the witness takes a stand against the questioner. Romanian witnesses do not seem to be as constrained by the system as the American ones and some of them may use some counter-questioning strategies through which they reprimand the judge or the system of justice. A very good example is (1), in which the witness reprimands the judge for letting the defendant threaten him in the courtroom. The judge does not admonish the witness, even though he was very rude and did not respect her position of power and admonishes instead the defendant by raising her voice and threatening him with another criminal case.

#### (1) (Case 9-Witness 1)

- J: Ce s-a întâmplat dup-aia?  
W: Dup-aia noi am mers la terasă, ei or dispărut de-acolo și noi am mers în continuare la terasă și dup-aia am primit un telefon că în față la casa primarului, K.S. o venit cu o coasă, s-o urcat pe R., un băiat, un coleg de-al lui fiu-miu și o vrut să-l taie.  
O ieșit primarul afară și ( )  
J ((consemnează)):  
În timp ce mă aflam la terasă (5.0)  
((către martor)):  
Cine v-a dat telefon?  
D ((îl amenință pe martor))  
→ W: Îl vedeți cum mă amenință?  
Asta nu vedeți?  
J ((către inculpat)):  
Ce faceți?  
D: ( )  
J ((către inculpat)):  
Da, am auzit.  
CHIAR VREȚI ÎNCĂ UN DOSAR PENAL?  
D ((tace))
- [ J: What happened then?  
W: Then we went to the bar, they went away and we stayed at the bar and after that I received a phone call that K.S. had come with a scythe in his hand in front of the mayor's house, had jumped onto R, a boy, one of my son's classmates and had wanted to cut him.  
The mayor came out and ( )

J ((dictating)):

While I was at the bar (5.0)

((to the witness)):

Who called you?

D ((threatens the witness))

→ W: Can you see how he's threatening me?

Can't you see that?

→ J ((to the defendant)):

What are you doing?

D: ( )

J ((to the defendant)):

Yes, I heard that.

DO YOU REALLY WANT ME TO START ANOTHER CRIMINAL CASE  
AGAINST YOU?

D ((shuts up))]

There are also cases when the witness may reprimand the lawyer, breaking all the rules, as such a contact is not allowed in the Romanian courtroom. In the following example, the lawyer asks an ambiguous and pretentious question, which is not very well understood even by the judge, which makes the witness admonish the lawyer for her lack of clarity. Finally, the judge sensing that the things are getting out of control, seizes the power again by interrupting them and asking a clearer question.

(2) (Case 9- Witness 1)

J ((către avocați)):

Întrebări dacă aveți?

DC: D-na Președintă, cu riscul de a mă repeta, vă rog să-l întrebați pe martor dacă fapta despre care vorbim, ăăă, băgarea în tomberon a lui, ăăă, A.B., i-ar fi fost povestită de alte persoane sau dacă domnul nu ar ști de asemenea acte, ar putea să facă câteva comentarii despre inculpat?

J: Deci, să-l rugăm pe martor să facă o apreciere de ordin subiectiv?

→ W ((se întoarce spre avocată)):

Eu nu vă înțeleg.

DC: Adică:-

→ W: - Nu-nțeleg ce vreți.

DC: Încerc să stabilesc dacă această reacție [a fost

J: [BĂGAREA ÎN TOMBERON], băgarea în tomberon a lui A.B. a determinat o stare de temere, aveți cunoștință, vă întreb din nou, dacă introducerea lui în tomberon a determinat o stare de temere fiindcă a fost băgat în tomberon sau fiindcă cei doi frați l-au băgat în tomberon?

[ J ((to the lawyers)):

Do you have any questions?

DC: Mrs. President, with the risk of repeating myself, could you please ask the witness if, in case he had found out from other people about the crime that we are talking about, errr, the throwing of errr, A.B. into the dumpster or in case he hadn't been aware of such crimes, could he still make some comments on the defendant?

J: So, you want us to ask the witness to make some subjective comments regarding the defendant?

- W ((turning to the lawyer)):  
I don't understand you.  
DC: I mea::n-  
→ W: - I don't understand what you want.  
DC: I am trying to establish if this reaction [was  
J: [THE THROWING OF A.B. INTO  
THE DUMPSTER], the throwing of A.B. in the dumpster, did it stir a state  
of fear, I am asking you again if the throwing of A.B. into the dumpster had  
stirred a state of fear, because he was thrown into the dumpster or because the  
two brothers did that?]

The witnesses in (3) and (4) challenge the lawyers again in the following examples.

(3) (Case 9- Witness 1)

- DC: Dacă în ultimul an de zile, au mai fost probleme sociale în care să fi fost  
implicat K.S.  
→ W: Mai bine nu mă întrebați așa ceva.  
J: [Au mai existat, au] mai apărut asemenea::  
DC: [În ultimul an]  
→ W: V-am spus, eu dacă eram apărătorul lui, mai bine tăceam.  
Cereți o adresă la noi, la poliție, și o să vedeți câte probleme a făcut.  
[ DC: Whether or not during the last year, there have been social problems in which  
K.S. was involved.  
→ W: You'd better not ask me such a question.  
J: [Have there been] su::ch  
DC: [The last year]  
→ W: I told you, if I'd been his defender, I'd have shut up.  
Ask for a memo from the Police and you'll see how many problems he  
created.]

(4) (Case 8)

- J: Întrebări?  
PC: Da, domnule președinte.  
Dacă:: martorul poate să aprecieze viteza cu care se deplasau autoturismele  
afla în spatele dumnealui și distanța dintre acestea și autoturismul condus de  
dânsul.  
J: Puteți să apreciați care era::↑  
→ W ((către avocată)):  
Doamnă dragă, eu nu pot să apreciez distanța celor din urma mea, dacă el era  
în urma mea, poate aș putea aprecia, dar în urma celui din urma mea, să  
apreciez o distanță, asta nu se poate.  
[J: Any questions?  
PC: Yes, Mr. President  
Whether:: the witness can determine the speed of the vehicles behind him and  
the distance between those and the vehicle driven by him.  
J: Can you determine what wa::s the::↑-  
→ W ((to the lawyer)):  
Dear Madam, I can't estimate the distance between the vehicles behind me, I  
could perhaps say what the distance between my vehicle and the one behind

me was, but the distance between the one behind me and the one behind it, that's impossible to say.]

### Dispreferred answers

Adjacency pairs (question-answer turns) are closely related to the *preference system* concept. The hearer has the choice to either accept or reject the speaker's proposition. Therefore, in an invitation, the hearer has the option to accept or reject the invitation. According to Levinson [7], *preferred* responses are produced without delay or hesitation and the action is stated directly.

*Dispreferred* second pair parts are recognisable from the following features: (1) they are delayed by pauses, and/or (2) they are introduced with prefaces (markers such as 'well', 'uh', partial agreement/appreciations/apologies, or qualifications); (3) they include accounts (explanations for not providing preferred response) and (4) a declination component which addresses the first pair part. Levinson further claims that 'the two essential features of dispreferred actions are thus (a) they tend to occur in marked format, and (b) they tend to be avoided' [7]. As a result, markedness, or the absence of these markers, shows the preference status of the turn.

The dispreferred answers in the American courtroom may take the form of requests for clarification on the part of the witness, which surprise the lawyer, as s/he expects an answer and not a question in return to his/her question; this disrupts the rhythm of the interrogation and of the 'bombing' of the witness with questions.

Witnesses in the Romanian courtroom may give dispreferred answers in the form of non-answers 'Nu știu' ('I don't know') or disconfirmation answers 'Nu' ('No'), which are immediately reprimanded by the judges.

#### (5) (Case 2)

- J: N-a vorbit soțul dumneavoastră cu el?  
 W: Ba da, dar i-o spus că-  
 J: - Cum îl cheamă pe omul acela?  
 → W: Nu știu io.  
 → J: Păi, de ce nu știți?

- [J: Didn't your husband talk to him?  
 W: He did, but he told him that-  
 J: - What's this man's name?  
 → W: I don't know.  
 → J: Well, why don't you know it?]

#### (6) (Case 7)

- J: Aveți un act de identitate?  
 → W: Nu.  
 J: Alt act aveți la dumneavoastră?  
 → W: Nu.  
 → J: Păi, cum ați plecat așa?  
 Unde ați crezut că mergeți?  
 W: M-am grăbit și am uitat să-l iau.

- [J: Do you have an ID card?  
→ W: No.  
J: Do you have another ID?  
→ W: No.  
→ J: Well, how could you leave your house like that?  
Where did you think you were going?  
W: I was in a hurry and I forgot to take it.]

Another type of dispreferred answers given by witnesses are those when the witness provides an answer and a clarification to it (usually in the form of a rhetorical question), which may be disregarded or not taken into account by the judge. In (7), the judge stresses the word ‘Păi’ (‘Well’) so as to remind the witness that his place in the examination was not to ask questions, but to answer them.

(7) (Case 9- Witness 1)

- J: Dar credeți că, dacă ar fi făcut altcineva, dacă l-ar fi băgat pe A. în tomberon altcineva, nu s-ar fi speriat?  
W: Cred că da.  
→ Cum dracu' să nu se sperie?=  
J ((consemnează)):  
=Precizez că (5.0)  
→ W: Tomberonul plin de gunoi, cum era pe-acolo.  
(2.0)  
J ((consemnează)):  
dacă fapta (5.0) ar fi fost comisă de o altă persoană (12.0), toți ar fi fost la fel de speriați.  
[J: But do you think that they would have been frightened if somebody else had closed A. in the dumpster?  
→ W: I think so.  
How the hell wouldn't they be?=  
J ((dictating)):  
I hereby specify that (5.0)  
→ W: The dumpster being full of garbage like that  
(2.0)  
J ((dictating)): if the crime (5.0) had been committed by another person (12.0), they would have all been equally frightened.]

(8) (Case 9-Witness 3)

- J: V-ați speriat în momentul în care v-a amenințat?  
→ W: Păi, foarte tare, nu?  
J: Păi, eu vă întreb.  
W: Da.  
[J: Were you scared when he threatened you?  
→ W: Well, very much, don't you think?  
J: Well, I'm just asking you.  
W: Yes.]

## CONCLUSION

The courtroom is the arena for the study of spoken legal language, which depends on special rules of language use, very different from ordinary conversation. It is an essentially hierarchical place, with the judge at the top, the lawyer in the middle and the witness, who is seen as being powerless, at the bottom of the pyramid.

Power is used mainly by those who have the most right to speak and to control, i.e. the judge/lawyer. Thus, speaking rights in this institutionalised context are extremely restricted, the interlocutors being divided into questioners and answerers. These roles are fixed by law and can never be interchanged.

The speaker turns are also pre-allocated and fixed by law. This means that the questioners have special institutional powers to demand answers from the answerers and answerers must provide them.

My research has presented the fact that, in spite of these institutional constraints, witnesses sometimes rebel against such restrictions and use all the ammunition they have at their disposal to show their discontent.

The analysis of the Romanian corpus has revealed that Romanian witnesses, as opposed to their American counterparts, seem to be let to vent their frustrations by the Romanian judges asking the questions. Thus, witnesses make use of counter-questioning strategies and dispreferred answers trying to show that the system of justice is not perfect and to escape, even if only for a second, the rigidity and the strictness of the courtroom.

## TRANSCRIPTION CONVENTIONS

:::	Prior sound, syllable, or word is prolonged or stretched.
More colons	indicate longer prolongation
(.)	Micropause (less than 0.2 sec)
(3.2)	Timed pause (greater than 0.2 sec)
[	Beginning of overlapping speech
]	End of overlapping speech
=	Latching between two turns or words within a turn
	(contiguous stretches of talk)
↑	Rising intonation
↓	Falling intonation
<u>Word</u>	Underline - Vocalic stress or emphasis
(( ))	Transcriber's comments (e.g., gestures, non-speech sounds).
J	Judge
W	Witness

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