

UNIVERSITY OF CAPE COAST

ELICITATION AND RESPONSE STRATEGIES IN COURTROOM CROSS-
EXAMINATION: A CRITICAL DISCOURSE ANALYSIS

BY

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DECLARATION

Candidate's declaration

I hereby declare that this thesis is the result of my own original work and that no part of it has been presented for another degree in this university or elsewhere.

Candidate's Signature: Date:

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Supervisors' Declaration

We hereby declare that the preparation and presentation of this thesis were supervised in accordance with the guidelines of thesis laid down by the University of Cape Coast.

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ABSTRACT

The right to fair hearing as enshrined in the Universal Declaration for Human Rights is one of man's fundamental need. However, this right may be repressed due to power embedded in the language. The strategic role of language in promoting or repressing the rights of the individual to fair hearing as actualized in Ghanaian law courts was the thrust of this study. The study investigated how the linguistic structures inherent in counsels' elicitation strategies and defendants/witnesses' response strategies aid in promoting unequal power relations in trial cross-examination.

The study, which was rooted in qualitative research design, was based on 50 official court transcripts obtained from three courts in Ghana: Circuit Court One and High Court One, both in Cape Coast, as well as Commercial Court 'A' in Accra. The study was anchored on the theory of Ideology and Grice's Cooperative Principle. The method of analysis was based on Critical Discourse Analysis (CDA) and Fairclough's Three-Dimension Model was adopted. The findings revealed that counsels promote power imbalance in the courtroom, especially, during cross-examination, through the use of embedded complex sentences and coercive question types. Correspondingly, the study also revealed that defendants and witnesses contribute to power imbalance by submitting to and resisting counsels' talk. It was recommended that elicitation strategies used by counsels in cross-examination should be regulated. The study also recommended that more studies into the responses of defendants and witnesses be conducted.

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DEDICATION

This work is dedicated to my husband, Padmore Kofi Ahialey, for his support.

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CHAPTER ONE

INTRODUCTION

Motivation for the Study

The motivation to conduct this study was derived from the last lecture given by the course instructor on Discourse Analysis which this researcher attended as part of the coursework for the M.Phil programme. This lecture enabled the researcher to have a better understanding of what institutional discourse is. The lecture made her recall the mission statement of Ghana Judicial Service which states: “The mission of the service is to promote the smooth and efficient administration of justice to all manner of persons without fear or favour, affection or ill-will, and thereby creating an enabling environment for good governance” (Ghana Judicial Service Annual Report, 1999). The urge to reconcile this mission statement with the language of cross-examination in the courts in Ghana led this researcher to undertake this study.

Background to the Study

The power of language to influence the lives of people and to shape their attitude and behaviour has been well attested to by scholars. Fairclough (2001) asserts that language contributes to the domination of some people by others. Similarly, Ng and Bradac (1993) view power in language as the way verbal

communication influences other people. All through the centuries, language has been exploited by all kinds of people in pursuit of their own agenda. Politicians, clergymen, advertisers, journalists and a host of others have used language to advance their course.

The rhetoric of politicians could be said to have fanned the embers of bitterness, deepened hatred, incite people against one another and push young men to carry arms to fight to the last drop of their blood. Language has also been implicated in its involvement in the causation and maintenance of war Chilton (1997) claims that language and communication play crucial role in conflict. Chilton (1997) He argues that a declaration of war is a linguistic act that is set in motion through the verbal activity of politicians who have the power to declare war and to sustain it. So, power embedded in language is capable of causing mass destruction just at the command of one person. Fairclough (1989) has argued that language has become the primary medium of social control and Coker (2010) described language as a social currency that is used to communicate thoughts and feelings.

The media is another domain where language is often used to manipulate people and it is often said that the mass media steer the information component of the world. Galtung and Vincent (1992) assert that “The media can strengthen but also undermine democracy through the way conflict and violence are presented” (p. 56). According to them, mass media technologies are one of the most fundamental forces shaping our lives. The media have also been indicted in its role in fostering some social vices. Van Dijk (1988c) argues that “whether

intentionally or unwittingly, the press ... plays a crucial role in the reproduction of racism in society” (p. 22). This assertion shows that language as the main weapon at the disposal of the mass media could either be a force for good or bad.

It is not only politicians and journalists who take advantage of the power rooted in language; participants in courtroom discourse also appeal to the power of language to further their course. For example, the use of language as a persuasive tool has often been exploited by lawyers seeking to push forward a good case for their clients. Legal professionals manipulate language and use it as a weapon to foster and sustain unequal power relations in the courtroom. Habermas (1967) and Fairclough (2001) argue that language is a medium of domination and social force, and according to Habermas, in particular, “it helps to legitimize relations of organized power” (p. 259). The use of language has been linked to the making of a good case or bad case for both the counsels and the litigants. Vogelmann (2001), a public defense lawyer in the United States of America, confirms this by saying:

The one that hires the best story-teller wins. Any jury decides on how good you tell your story [...] I’m my client’s story-teller [...] we chose words, we are words men. That’s how we convince... And then, surely, words, words, words (p. 98).

Similarly, Walter (1988) states that language is crucial in law and that the courtroom trial is a speech event in which almost everything occurs through the spoken word. The interpretation of the law hinges and draws heavily on language usage. Sarat and Kearns (1994) affirm that a significant part of the law revolves

around small differences in the meaning of language. They argue that law is undoubtedly the very profession of rhetoric. In all, the power of language to do and undo in courtroom trials cannot be overemphasized. Berk-Seligson (1990) asserts that lawyers are masters in the art of persuasion and are true experts in the selection of the most effective linguistic choices and communicative strategies. Furthermore, it could be argued that the clearest demonstration of the use of language in court to control an individual is found in the structure and function of cross-examination in criminal trials. Several studies of language use in courtroom hearings such as those of Luchjenbroers (1997, 1993) and Danet (1980) have highlighted the multifunctional and coercive nature of questions in cross-examination (Eades, 2000).

The precise and specialized language of courtroom proceedings which tend to mystify the legal process and dictate the direction that proceedings should follow could put bottlenecks on the path of the justice delivery system. Enshrined in the Constitution of Ghana is the right to fair trial for all and the judiciary is empowered by the constitution to carry out this task (The 1992 Constitution of the Republic of Ghana, Chapter 5, Article 19). Underpinning the whole court process is the right to be heard. That is why the judiciary has the mandate not only to interpret the Constitution of the land, but to ensure that fairness, equity and the rule of law are upheld as captured in the mission statement quoted above. The law courts should therefore be a place where people go to seek redress, and hope to get justice. Unfortunately, it seems that to many people, appearing before the

court is a nightmare because their fundamental human rights may often be violated as a result of the kind of language that is used in the courtroom

Statement of the Problem

The strategic use of language to create and sustain power inequality in the courtroom, especially in cross-examination, has generated a lot of interest in courtroom proceedings in recent years. This interest has prompted several inquiries into the use of language in court by some scholars such as Tkačuková (2010); Jannery (2002); Luchjenbroers (1997, 1993); Ballano, (1993) and Harris (1984), among others. A review of some of these studies revealed that many of them concentrated on only the use of questions in the courtroom (Wang, 2007; Gordon & Fleisher, 2001; Luchjenbroers, 1997; Harris, 1984). The result is that other forms of elicitation usually employed by counsels during cross-examination have not been given adequate attention. Likewise, the response strategies employed by litigants and witnesses have been given little or no attention. Also, the methods of analysis for most of these studies are mainly based on Discourse Analysis (Shuy, 2001; Wodak, 1980), Ethnographic Analysis (Ballano, 1993) and Conversational Analysis (Philips, 1987; Nofsinger, 1983;). These studies are grounded in disciplinary perspectives such as Sociolinguistics (Wodak, 1985; Harris, 1984) and Social-psychology (Luchjenbroers, 1991). To add a new dimension to these existing works, there is the need for a CDA approach.

Of particular interest to the present study is the fact that these studies are based primarily on English-speaking participants and Western societies, giving

less if not no attention to the Ghanaian society. Thus, in order to fill this gap, a study of this nature ought to be conducted using participants from Africa, particularly Ghanaian participants, as the picture might change with different cultural settings (Brennan, 2006). Consequently, this study seeks to investigate how elicitation and response strategies in cross-examination contribute to the enactment of unequal power relations in the courtroom with particular reference to Ghanaian courts.

Research Questions

The following questions guide the study:

1. What elicitation strategies are used by counsels in courtroom cross-examination and what are their functions?
2. What response strategies are used by defendants and witnesses in courtroom cross examination and what are their functions?
3. How do elicitation and response strategies used in courtroom cross examination promote power inequality?

Assumptions Underlying the Study

Four key assumptions underpin this study. The first is that the type of questions asked by legal professionals during courtroom cross examination are geared toward promoting power imbalance between them and litigants/witnesses. Fairclough (2001) identified questions as sentence modes which are basically used by someone having greater authority. More powerful participants in a

discourse tend to ask the questions whereas the less powerful participants are required to provide answers to the questions asked.

The second assumption is that the less powerful participants in a discourse are often subordinated by interrogatives and imperatives that are used by the more powerful participant in the discourse. On the other hand, a subordinated participant in a discourse is expected to use a lot of declarative type of sentences, politeness markers and subordinating verbs (Fairclough, 2001).

The third assumption is that power is not the exclusive preserve of the powerful participants in a discourse. Power can shift from the hands of a powerful participant to the hands of the less powerful participant by means of resistance. Fairclough (2001) asserts that vulnerable members in a discourse can assert themselves in various ways, such as through the use of ambiguity, inexplicitness, silence, evasiveness and many more.

Finally, it is assumed that participants in courtroom trial (the judge, lawyers, litigants, and witnesses) constitute a community of practice. As members of a community, they bear knowledge of “in-group language practices” (Herring, 2008a). These practices include rules, norms and mores that govern turn-taking, types of questions to be asked and the kind of responses required as well as their general composure which should be in line with socially acceptable ways (Gee, 1999; Grice, 1975).

Significance of the Study

The study sought to examine the elicitation and response strategies employed by counsels and defendants together with witnesses during cross-examination and how these strategies promote power inequality in the courtroom. This study has implication for scholarship, CDA as a research methodology and human right advocacy.

The study contributes to the scholarship on language in courtroom cross-examination. A major concern in academia, especially in Africa, is the dearth of research in general. At the Conference of Rectors and Vice-Chancellors and Presidents of African Universities (COREVIP) held in Stellenbosch, South Africa from May 30th-June 3rd, 2010, this fact was painfully revealed. So it is the desire of this researcher to contribute to the growth of scholarship in Africa, thereby helping to expand the knowledge base in the field of courtroom discourse. The study will be of help to researchers who might be interested in doing further study in courtroom discourse.

Methodologically, the study lends credence to the claim by some scholars who trumpet CDA as a research methodology, thereby contributing to the growing literature on the relatively new analytical approach of CDA. As a relatively new approach of conducting research, CDA is at the heart of investigating social power abuse, dominance and inequality that are embedded in language (Fairclough, 2001; Fowler et al., 1979). It is hoped that the study will contribute to the growth of CDA as a research method.

Finally, this study points to the need for collaboration between academia and civil society towards strengthening Ghana's fledgling democratic governance. Critical Discourse Analysts are interested in opaque as well as transparent structural relationships of discrimination and control as manifested in language, the aim of CDA is not only to reveal structures of domination but also to provoke changes in the way power is exercised in social relationships (Basturkman, 2009; Fairclough, 2001).

Delimitations

This study is built around a number of parameters. The first parameter for this study concerns the kind of courts where the data for the study are obtained: Commercial Court One in Accra, High Court One and Circuit Court One both in Cape Coast. The choice of the two courts in Cape Coast is based on their proximity to where the researcher resides whereas the choice of the commercial court in Accra is due to the fact that the commercial court in Cape Coast was barely a month old and was not fully operational at the time of data collection. Also, since commercial court is one of the specialized courts in Ghana, the researcher thought it would be proper to compare the data from them with those of the traditional courts to see if there were any trends worth commenting on.

Secondly, this study focused on elicitation and response strategies as rhetorical forms that are used in courtroom cross-examination. The study examined the elicitation and response strategies employed by counsels and

witnesses with defendants and how these contribute to the promotion of unequal power relations in the courtroom.

Thirdly, the main medium of discourse for the study is written data supported by interviews and observation. The data comprised fifty official transcripts of court proceedings which the researcher applied for from the three courts visited. The choice of this medium is borne out of the fact that standard language is most definite and best observed in its written form, described by Bloomfield (cited in Hymes,1964) as “ the Literary Language” (p. 393).

There are other areas of courtroom discourse such as police interview, wills, attestation, documentation of rights and obligations, marriage ordinance, disclaimers, swearing of oaths. However, these are outside the scope of this study; rather, the study investigated the roles elicitation and responses used by counsels and defendants as well as witnesses play in fostering the enactment of power dynamics in the courtroom.

Summary of Chapter

This thesis is organised into five chapters. Chapter one has so far laid the foundation upon which the entire study rests. This was done by articulating the research problem, research questions and assumptions underlying the thesis. Also, the purpose of study and its significance are discussed in order to establish the relevance of the work. A delimitation of the study is provided in order to define its boundaries.

Chapter Two provides a detailed discussion of both the literature review and the theoretical framework. The chapter begins by explaining the theoretical framework that lends support to the present study, justifying its choice. The review of related literature is explored by the present study by taking into account the specialized nature of courtroom discourse paying attention to language use, with particular focus on elicitation and response strategies used in courtroom cross-examination. This is followed by a discussion of empirical studies conducted in this area. The review of the literature is crucial as it helps to establish a point of departure from other works. It also helps to identify the missing gap of knowledge needing attention.

In Chapter Three, attention is given to the methodology employed in the study. Here, the rationale for the choice of research design and the selection of the research site are given. The data collection procedure and methods of data analysis are described in this chapter. The difficulties encountered in the collection and analysis of the data is also presented.

In Chapter Four, a critical discourse analysis of the elicitation and response strategies that dominate courtroom cross-examination sessions is presented. The analysis is based on Fairclough's (2001) three stages of text analysis.

Chapter Five forms a canopy under which the summary, key findings, conclusions drawn from mainly the assumptions of the study and recommendations for future research are considered.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

Introduction

This chapter discusses the theories for the study, emphasising their usefulness to the present study. It then dilates on the term ‘discourse’, tracing its meaning from medieval times to its modern usage. Different types of discourse are also discussed. Attention is paid to elicitation and response strategies that are used in courtroom cross-examination. Two different approaches to the analysis of discourse are discussed. Finally, studies on the use (and functions) of elicitation/response in different contexts are reviewed in order to demonstrate how the present study is both similar to and different from such previous studies.

Theoretical Framework

This section provides a comprehensive discussion of the theories that underpin the thesis. These theories are crucial for two main reasons. First, they help to situate the analysis of the data within a specific scholarly paradigm; second, they serve as a lens through which one is able to understand the findings of the research. Specifically, the theoretical framework comprises Fairclough’s (2001) theory on ideology and Grice’s Cooperative Principle. The choice of these theories recognizes the view that the analysis of discourse preferably requires a

multidisciplinary approach (van Dijk, 1997; Fairclough, 1992); the framework is drawn from discourse analysis and communication studies. Both theories provide a social framework for analyzing discourse in society.

Theory of ideology

The term 'ideology' is used in a variety of senses in different contexts. Marxist or anti-Marxist inspired concepts of ideologies are always negative. Wodak and Meyer (2009) claim that this negative connotation of ideology, which was derived from its roots in fascism, communism and the Cold War totalitarian era cannot be divorced from the new concept of ideology. Knight (2006), cited in Wodak and Meyer (2009), maintains that "it is not easy to capture ideology as a belief system and simultaneously free the concept from negative connotation" (p 8). Even though the notion of Marxist' ideology as a coherent and relatively stable set of beliefs which uses brute force or exercise power through coercive means is viewed as evil, an even greater evil has emerged in its place which is the latent and hidden form of ideology that is embedded in discourses in the form of conceptual metaphors leading to the domination of vulnerable groups in the society.

Many researchers such as Althusser (1971), Wodak (1989) and Fairclough (2001, 1992) regard ideology to be more embracing of other social conditions and context that make it possible for people to be dominated and exploited. Althusser, for example, argues that ideology is a process that obscures the fact that unacknowledged value system operates in a systematic manner to oppress people.

Fairclough (2001) defines ideology as those practices which function to sustain unequal power relations; which seem to be universal and which can be shown to originate in the dominant bloc or group. He links ideology to institutional practices which people draw upon without thinking - practices that embody assumptions which directly or indirectly legitimise existing power relations.

Fairclough (2001) posits that ideology is 'meaning in the service of power' (Fairclough, 1995b, p.14). More precisely, he asserts that ideologies are crucial to the constructions of meaning that contribute to the production, reproduction and transformation of relations of domination (Fairclough, 1992). Here, Fairclough (2001) adds ideology and common sense to discourse. He explains:

Ideologies are closely linked to power, because the nature of the ideological assumptions are embedded in particular conventions, and so the nature of those conventions themselves, depends on the power relations which underlie the conventions; and because they are a means of legitimizing existing social relations and differences in power, simply through the recurrence of ordinary, familiar ways of behaving which take these relations and power differences for granted (p. 2).

According to him, discourses can be more or less ideological; the ideological discourses are those that contribute to the maintenance and transformation of power relations within a discursive network. Fairclough (2001)

postulates that ideological workings are embedded in text and talk and its function is perceived in the positioning of the subject, the highlighting or fore-grounding of agency and in the controlling and constraining of the contributions of non-powerful participants. These functions, he argues are carried out via the vehicle of certain grammatical features such as: sentence types, nominalizations, pronouns, modality, lexical verbs, vocabulary and the kind of subordinating or coordinating conjunctions that are used.

Fairclough (2001) also posits that ideological interest is further heightened through interactional conventions that are used in text and talk and which include organizational features of dialogues such as conversations, interviews, lessons; and monologue (e.g. speeches, newspaper articles and sermons). He explains that ideological working is at its best in the turn-taking system during dialogue where one participant, especially, the powerful participant can put constrain on the contribution of the less-powerful one by means of formulation, enforcing explicitness, controlling topic and interruption. On the other hand, the less-powerful participant can also deal with those with power through the use of ambiguity, ambivalence and silence, among others. Fairclough argues that the use of ideology to foster power inequality is further manifested in the use of certain speech acts, metaphors, presuppositions and hyperbole.

Arguing along similar lines, van Dijk (2006) states that ideology which is closely linked to manipulation is used to represent the vulnerable in negative light through ideological polarization and negative self-presentation that is often done through the highlighting of agency and through the use of hyperbole among

others. This is often contrasted with the positive self-presentation of the speaker (powerful participant) who often enhances his credentials through language.

Fairclough (2001) opines that so crucial to the issue of power relation is having clearly demarcated groups that are ordered in terms of hierarchical relations of domination and subordination which often gives rise to oppression (Fairclough, 2001). He further argues that power struggle, as manifest in social groups, is evident in the relationship between the state (government) and other social groups over which it exercises a certain degree of control. These groups include the security agencies, the civil service, government parastatals and corporations. Wodak and Meyer (2009, p. 8) echo the thoughts of these scholars:

“It is, however, not that type of ideology on the surface of culture that interests CDA. It is rather the more hidden and latent type of everyday beliefs, which often appear disguised as conceptual metaphors and analogies”.

Three components of ideology which are crucial to its workings are: common sense, power and resistance.

Common sense: The sustainability of unequal power relations either directly or indirectly is very crucial to ideology and this is what Fairclough (2001) refers to as common sense. Ideological common sense, according to Fairclough (2001), is “common-sense in the service of sustaining unequal relations of power” (p.70) and this he argues, is a matter of degree. He asserts that common sense assumptions may in varying degrees contribute to sustaining unequal power

relations. This in turn leads to domination, influence or authority over another, especially, by the one exercising authority over another because one possesses certain knowledge that the other does not have or controls wealth which puts one on a higher pedestal over the less privileged one.

Power in discourse: Fairclough (2001) argues that the discourse that is powered by ideology is exercised through power. He asserts that there are relations of power behind discourse and ‘discourse is the site of power struggles’ (p.61). He further argues that discourse is the stake in power struggles and that the control over orders of discourse is a powerful mechanism for sustaining power. These mechanisms, he argues, include universally followed and accepted practices, coordination through hidden powers which he calls *inculcation* and lastly coordination through a process of rational communication and debate which he prefers to call *communication*. These mechanisms on the part of the more powerful ones, Fairclough (2001) claims, put constraints on the contributions of the less powerful participants in a discourse. He outlines four devices which are used for doing this: interruption, enforcing explicitness, controlling topic and formulation. So, one can say that power in discourse involves powerful participants controlling and constraining the contributions of non-powerful participants (Fairclough, 2001). However, the less powerful participants also devise tools by which they can resist such oppressive acts.

Resistance: Another very important aspect of ideology is resistance. Power is not the prerogative of the more powerful participant in a discourse. Power is a shared property of all and indeed the vulnerable in a discourse also exercise power; they do so in several ways. Fairclough (2001) identified five ways the less powerful participants can do this: silence, ambiguity, incoherence, deviation and resistance. Halliday (1985), as cited in Fairclough (2001), asserts that the oppressed can reappropriate acts of oppression and dominance so that they too are able to wield power. This is what he calls *anti-language*, a kind of oppositional language that is invented and used as conscious alternatives to the dominant or established discourse types; such as those of the criminal world or an oppressed minority.

In summary, the theory of ideology is characterized by the fact that it is linked to power that is less obvious and subtle and it is present in the daily activities of people, in their norms, their values their belief system and customs of people and even in face-to-face interaction between or amongst people without they realizing it. Ideology could lead to domination and oppression of the less powerful and vulnerable participants in a discourse and the more powerful participant often always exploit power as a tool which they exercise in a disguised manner. Again, power can shift base from being a tool in the hands of more powerful participants into the hands of less-powerful participants by means of resistance and with it looks like with time discourse is negotiated between the powerful and less powerful participant in a discourse if the resistance is severe.

Since ideology promotes power that is less obvious in institutional text and talk, it is most relevant to this study in view of the fact that discourse often occurs

in institutional settings which incorporate powerful ideological frameworks deeply embedded in larger social, economic and political structures and processes. The theory of ideology enables the third research question to be answered; as the task of this study is to investigate how unequal power relation is enacted in the courtroom between legal professionals on one hand and defendants as well as witnesses on the other. By means of ideology, the precise language used by legal professionals which tends to promote unequal power relation in the courtroom is revealed. Similarly, by means of this theory, this study demonstrates how defendants and witnesses use language in the courtroom to highlight their vulnerable and subjective positions.

Grice's maxim of cooperative principle

Grice (1975), a philosopher, posited The Cooperative Principle, which is believed to ensure successful communication among humans. Grice (1975) points that talk exchanges that human beings are involved in do not have disconnected remarks and that everyone can recognize "a common purpose or set of purposes or at least a mutually accepted direction" in these remarks (p .45). Within these remarks, participants are expected to observe a general principle which maintains the following rule: "Make your conversational contribution such as is required, at the stage that it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged" (p.45) Grice further describes four maxims, some of which have more specific submaxims and he calls these categories Quantity,

Quality, Relevance and Manner. These maxims are elaborated in the following sections.

Quantity: This maxim of quantity relates to the amount of information provided. In observing this maxim, participants in a discourse are expected to make their contributions as informative as is required in order to suit the purpose of exchange at any given time and on the other hand, they are not to make their contribution more informative than is required. This requires that for successful communication, especially in the courtroom trial to take place, balance must be maintained so that the contribution of one side in a communicative encounter will not be considered to be too much or too little (Celce-Murcia & Olshtain, 2000, p.22).

Quality: This maxim of quality relates to the truthfulness of the information provided. Under it are the following submaxims: “Do not say what you believe to be false” and “Do not say that for which you lack adequate evidence”. According to this maxim, participants in conversation are expected to provide information they believe to be true and they are expected to avoid providing false information as well as the information which does not have any evidence. This maxim is in consonance with the tenets of courtroom practices where anyone making a submission is required to swear to the truthfulness of his or her testimony,

Relevance: This maxim is related to the relevancy of the information provided and it simply states that “Be relevant”. This means that the participants are expected to make a contribution to communication that has a bearing on the communicative event related to the case before the court.

Manner: This maxim of manner relates to “how what is said is to be said” rather than what is actually said (Grice, 1975, p.46) and there are four submaxims under it namely: “Avoid obscurity of expression, avoid ambiguity, be brief (avoid unnecessary prolixity) and be orderly”. This means that the participants are expected to make a contribution which is clear and comprehensible, avoiding unnecessary repetitions. In short, these maxims specify what the participants do to carry out the communication “in a maximally efficient, rational, co-operative way” (Levinson, 1983, p.102). That is, each participant involved in the courtroom discourse should contribute to the debate, providing sufficient information sincerely, relevantly and clearly.

Grice argues that a participant in an exchange may fail to fulfill a maxim in various ways such as violating, opting out, facing a clash and flouting, and he gives four ways this may happen. Firstly, he explains that a participant may fail to follow the maxims if he quietly and unostentatiously violates a maxim intentionally for some purposes. Also, a participant may decide to opt out of observing a maxim by refusing to contribute to the exchange in the way that the maxim requires, thus indicating unwillingness to cooperate or resistance. Thirdly, the participant may fail to observe a maxim if there is a clash. For instance, the

participant may be unable to observe a maxim without violating another maxim. Grice exemplifies this by saying that the participant is not able to be as informative as is required without violating the maxim that requires having adequate evidence for what one says. Lastly, Grice argues that a participant may flout a maxim. That is, the participant blatantly fails to observe a maxim with the intention of generating an implicature.

Grice's principle forms the bedrock on which research questions one to three are answered. It seeks to show how the language of defendants and witnesses promotes power dynamics in the courtroom. The maxims demonstrate how powerful participants in the discourse (legal professionals) put constraints on the less powerful participants (that is, the defendants and witnesses) who appear before the court. Courtroom practices demand that the information to be given by witnesses should not only be informative, but in the right quantity; as they are not expected to give too much information than is required by the court. Also, testimonies given by the defendants as well as witnesses are expected to be factual and relevant to the issues at stake. They are also expected to avoid ambiguity and obscurity of expression in their testimonies. However, just as Fairclough (2001) indicates, resistance in discourse can lead to an unfulfilled maxim when a participant either intentionally violates a maxim or refuses, to cooperate (Grice, 1975).

Related Concepts

This section discusses some key concept and issues that are relevant to the present study. These concepts and issues relate to the notion of discourse,

language in use and courtroom interaction. These are meant to provide a conceptual framework in support of the theoretical framework discussed above.

Discourse and types of discourse

Types of discourses are narrowed down to legal discourse with a further narrowing to courtroom discourse and then to discourse of cross-examination. The dynamics of cross-examination manifested in elicitation and responses are reviewed. Discourse analysis as well as critical discourse analysis forms part of this section.

The definition of the word “discourse” is as varied and diverse as the definition of the word “language” (van Dijk, 2009). The word discourse is derived from the Middle English word “discours” which means *process of reasoning*. The word “discours” stems from the root word “discursus” which is of the Medieval Latin origin and which means *a running about*. An archaic definition of discourse is the “process of succession of time, events, actions, or the act of understanding” (Miffin, 2009).

Today, the word ‘discourse’ is used in diverse ways. In the study of language, discourse often refers to the speech patterns and usage of language, dialects, and acceptable statements, within a community. Leeuwen (cited in Wodak & Meyer, 2009) asserts that the term “discourse” is often used to mean an extended stretch of connected speech or writing. On the other hand, Gee (2000) defines discourse with little “d” as “Language-in-use or stretches of language (like conversations or stories)” (p.17).

However, in more recent times, the notion of discourse as an extended communicative or interactive act or as simply an address has been greatly altered. Scholars such as Fairclough (2001), Foucault (1990) Wodak and Meyer (2009), Jager and Maier in Wodak and Meyer (2009) as well as van Dijk (2006) view discourse differently. Discourse involves more than text analysis. Fairclough (1999) argues that it refers to the whole process of social interaction of which a text is just a part and this includes in addition to the text, the process of production of which the text is a product, and the process of interpretation, for which the text is a resource, what Gee (1999) refers to as “other stuff”. In the view of Fairclough (2001), discourse is “language as social practice determined by social structures” (p.14).

For discourse to be meaningful, every part of it must be shared, understood and accepted by those involved in the discourse. This concept is what Gee (1999) refers to as a discourse community. According to him, a discourse community refers to a group of people who share similar thoughts and ideas which presupposes that discourse is not limited to just text , but other activities, actions and behaviour which he refers to as: “Language plus other stuff”. Gee (2000) thus distinguishes between discourse with “Big D” (Discourse) and discourse with little “d” (discourse). He explains that the “Big D” (Discourse) is always “Language plus other stuff” whereas discourse with little “d” is “Language-in-use or stretches of language (like conversations or stories)” (p.17). So he argues that Discourses in any modern, technological, urban-based society will include the interaction between doctor and patient, teacher and student,

member of a night club or a street gang versus the police or society. And he stated that “Discourses are always embedded in a medley of social institutions, and often involve various “props” like books and magazines of various sorts, laboratories” (p.17).

From the quote, it is obvious that Discourse goes beyond just being mere conversation and the meaning behind them and it also involves more than the beliefs, ideas, thoughts and values shared by a social group of a community of people, but include the interplay of power. Jager and Maier in Wodak and Meyer (2009) also assert that discourse is not only merely expressions of social practice, but it also serves particular ends, namely the exercise of power. Similarly, Link (1983) defines discourse “as an institutionalized way of talking that regulates and reinforces action and thereby exerts power” (p.60).

Fairclough and Wodak (2009) believe that discourse is constitutive in the sense that it helps to reproduce the social status quo, and transforms it. They argue that since discourse is so socially consequential, it gives rise to issues of power. They point out that discursive practices may have ideological effects that can help produce and sustain power imbalance between/among, members of a social class such as: women and men, and ethnic majorities and minorities, through the ways in which they represent things and position people.

From the previous discussion, it is certain that there are various types of discourses. Among types of discourses identified by van Dijk (1998) are: government and legislative discourses of decision-making, information, persuasion and legitimating; bureaucratic discourses of higher level policy-

making and policy implementation. Mass media discourse of major news media; scholarly or scientific discourse and corporate discourse. Foucault (1990) looks at institutionalized discourse and thus, identified political, religious as well as legal discourse.

Legal discourse is a specialized form of discourse which stands out from other forms of discourses and it is as old as civilization itself. Fumaroli (1980) asserts that legal discourse is one of the three types of discourse categorized by ancient rhetoric. Also, Crystal and Davy (1969) opine that legal English is very complex and that its complexities are so unlike ordinary discourse that they are not easily generated, even by experts. Legal discourse is of various types as it covers a wide range of activities. These range from discourses of sworn affidavit, marriage ordinance to courtroom where arbitration takes place. This study focuses on the discourse of courtroom interaction

Courtroom interaction and language use

The language of courtroom discourse encompasses many different kinds of spoken, written and even non-verbal language which involve interaction in a trial among judges, lawyers, defendants, witnesses and interpreters. Language is manifested in courtroom discourse in various ways and these comprise defendants and witnesses' submissions; the argumentative and persuasive lawyer talk; question and answer session and the declarative and imperative mode of sentences contained in judges' overruling, instructions to juries, judgments, among others.

Prominent among these forms of discourse is the elicitation and response session in cross-examinations, which is discussed next.

Forms of elicitation

Elicitation according to *Macmillan British Dictionary*, is the process of verbally or non-verbally getting information from someone or the process of making someone reacts in a particular way. Elicitation takes different forms, with questions as the commonest.

Questions are sentences, phrases or even gestures that show that the speaker or writer wants the reader or listener to supply them with some information, to perform a task or in some other way respond to the request. Fairclough (2001) identifies questions as a mode of grammatical sentences that position the interrogator as one wielding power over the addressee who is the weak one and must provide an answer. In effect, the speaker or writer is asking something of the addressee, who in this case, is the provider of information (Fairclough, 2001). According to him, asking, whether it is for action or for eliciting information is generally a position of power.

Quirk and Greenbaum (1973) identified seven types of question: yes-no questions with modal auxiliaries, tag questions, declarative questions, Wh-questions and alternative questions. Other minor types of questions they identified are exclamatory and rhetorical questions. Danet et al. (1980) identified Yes/no questions and WH- interrogative as some types of question. Also, Witter-Merithew, cited in Russell (2004), refers to question and answer session as a

critical part of legal events. They argue that questioning techniques are used to solicit the narrative of the speaker and have him or her retell events from a particular perspective.

Besides questions which are often employed in courtroom interaction, there are other ways of eliciting information from defendants and witnesses. Danet et al. (1980) identified declaratives and imperatives as some forms of elicitation. In a similar vein, Coulthard (2002) identified some types of elicitation some of which are: elicit– inform, elicit-confirm, elicit-commit and elicit-repeat. He argues that in elicit-repeat, the addressee repeats the question asked by the speaker. This situation indicates that he (the listener) did not hear the message clearly or he is only pretending not to hear in order to buy time. Likewise, Heffer (2005) identifies several coercive forms of elicitation used during cross-examination and which tend to place defendants and witnesses in a compromising position. They are as follows: negative question subjective projector, repetition, stressing the force of the lie, negative propriety, focusing on witnesses' capacity for lying.

Types of responses

The main purpose of asking questions is to get a response and such responses come in different forms, depending on the kind of questions asked. The context in which communication takes place goes a long way in determining the kind of response to be elicited. Taiwo (2006) identifies two broad types of responses [verbal and non-verbal].

Verbal responses include Yes/no answers given to questions that might require affirmative or negative answers and they are limited in nature as in *Would you want a drink?* which has a Response *No*. An affirmative and negation may be conveyed by words or expressions other than yes/no. Quirk et al. (1972) argue that words such as *certainly*, *of course*, *not at all* and *never* may also be forms of answers to yes/no questions. According to them, Yes/no questions may also be answered by replies that lie somewhere along the affirmation-negation scale, making them neutral (Leech & Svartvik 1985) such as *probably*, *perhaps*, *it appears so*, *to some extent*, *occasionally* and *very often*. Yes/no answers can also be replies to tag-questions which are added to the end of a statement for confirmation of the truth of the statement. To illustrate:

Question: *It rained in Ho yesterday, didn't it?*

Response: *Yes*.

Also, the yes/no answers can be given in response to a of type alternative question which resembles yes/no questions.

Another way addressees could respond to questions especially in the courtroom is through narration. Gergon (1994) identifies well-formed narrative as a part of courtroom testimony. He argues that narratives in the courtroom testimonies are either attempts by witnesses to either recall actual events or were fictional contrivances. He asserts that stories believed to be genuine were those in which events relevant to the endpoint were dominant. Similarly, Thornborrow (2007) argues that narratives function to structure the production of opposing opinions and stances.

Having discussed verbal response strategies, it is important to emphasise the role of silence as a form of response. Tannen and Saville-Troike (1985) assert, “Silence has two opposite valuations – one negative – a failure of language and one positive - a chance for personal exploration” (p.94). The communicative function of silence in social interaction is evident in diverse ways. Silence can be used as a tool for resisting power in a discourse that is dominated by a powerful participant (Fairclough, 2001). Similarly, Lebra (1987) argues that “Silence is an inferior obligation in one context and a superior’s privilege in another, symbolic of a superior’s dignity in one instance and of an inferior humility in another (p. 351).

The direct and cross-examination segment

The American Bar Association (ABA) Continuing Legal Education (2011) indicates that there are different steps in a trial case, whether criminal or civil. It shows that the direct examination (evidence-in-chief or examination-in-chief) is usually the opening phase of evidence in a trial before the cross-examination and, if necessary, a re-examination.

The direct examination constitutes the phase in which the evidence of a case is presented. In this segment, lawyers lead their clients and witnesses testifying for their clients to give evidence in such a manner that they do not incriminate themselves. In this phase, the lawyer is questioning his/her own client or a witness testifying for his/her client. Direct examination may elicit both direct and circumstantial evidence. Witnesses may testify to matters of fact and, in some

instances, provide opinions. They also may be called to identify documents, pictures or other items introduced into evidence. In this case, counsel-witness interaction is typically cooperative, non-coercive, and the witness is given the opportunity to narrate her story with relative freedom. Thus, the questions asked in this phase are usually wh-questions (Luchjenbroers, 1993, 1997).

Cross examination is the highest art form ever devised in the history of the human race (Lipson, 2008). According to him, “It is a ballet of hand and eye gestures, movement, vocal gymnastics and intellectual warfare. It is the ability to stare an enemy litigant in the eye with the understanding that you are going to take control of his mind and speech (p. 1)”. Heffer (2005) recognizes cross-examination as fundamentally concerned with judging the witness, thus, it is a useful site for investigating more subtle construal of judgment and questions are used as strategic instruments of domination and testimony management. In cross-examination, interaction is generally unsympathetic, non-compromising, non-cooperative, and coercive.

One of the most popular questions used in cross-examination is leading question and this includes tag questions, Yes-no leading and/or argumentative questions (Luchjenbroers, 1997, 1993; Pozner & Dodd, 1993; Danet, 1980). An attorney in the US defined direct examination metaphorically as “dancing with your partner” and cross examination as “fencing” (Heffer, 2005: p. 15). Several studies of language in courtroom hearings have highlighted the multifunctional and coercive nature of questions in cross-examination.

Questioning strategies in cross-examination

The questioning strategies used by counsels can affect the presentation of submissions and evidence by witnesses. It appears that two main types of questions are used in cross-examination: those that are coercive meant to weaken and rebut witnesses' testimonies (Danet et al., 1980) and those that seek to obtain information (Danet & Kermish, 1978), or to enact social status and authority (Philips, 1984).

A prescribed form of questions recommended for courtroom cross-examination is the Socratic dialogue which is considered an invaluable tool in the hands of lawyers who are urged to arm themselves with it. Socratic dialogue is a questioning strategy that started to gain ground at the time of Plato and, among other things, is meant to confuse the witness (Heward-Mills, 1988). According to Heward-Mills (1988), the Socratic Dialogue is meant to disarm the witness, the author asserts that

Thus by picking up valid though absurd inferences out of the general declaration you, like Socrates, can force the declarant to reduce the scope of his declaration or statement bit by bit until the declaration falls to the ground or the declarant exclaims in anger that he is being diddled out of something (p. 17).

Socratic dialogue is a dialectic method of inquiry that uses cross-examination of someone's claims and premises in order to point out a contradiction or internal inconsistency among them. Socratic questioning is at the

heart of critical thinking – it enhances critical thinking skills. Socratic questions challenge accuracy and completeness of thinking in a way that acts to move people towards their ultimate goal (Paul 2001).

In fact, Younger (1975) prescribes the following "Ten Commandments of Cross-Examination:

- (i) Be Brief
- (ii) Use Short Questions and Plain Words
- (iii) Always use Leading Questions
- (iv) Always Know the Answer to the Question
- (v) Listen to the Answers Given
- (vi) Don't Quarrel with the Witness
- (vii) Don't Let the Witness Repeat His Story
- (viii) Don't Let the Witness Explain
- (ix) Don't Ask One Question too Many Times
- (x) Save your Ultimate Point for Argument

(p. 75).

In general courtroom practice, the law forbids questions on direct examination that suggest the answer. On cross-examination, however, Younger (1975) cited in American Bar Association Manual asserts that the law permits questions that suggest the answer and allows the attorney to put his or her words in the witnesses' mouth. He argues that cross-examination, therefore, specifically permits the counsel to take control of the witness and take him where he (counsel) wants him to go. He argues that it also involves the counsel telling his important

point to the jury through the witness. Younger further points out that not asking controlled leading question leaves too much room for the witness to wriggle. He stated that questions such as wh-questions are the antithesis of an effective cross-examination stating that questions which permit the witness to restate, explain or clarify the direct examination are a mistake. He recommends that the witness be put on 'auto pilot' so that all of his answers are series of yes.

Communicative functions of cross examination

The cross-examination segment of courtroom discourse is the most crucial part of trial cases because it is at this stage that counsels for both sides ought to impress upon the judge the innocence of their clients and to try to incriminate the other party's witness. They do this by devising strategies which will construct the opponent's testimony as lies and unreliable and they do so trying as much as possible to control the question forms. Conley and O'Barr (1990) point out that "by controlling question form, the lawyer is able to transform the cross examination from dialogue into self-serving monologue" (p. 26).

The ultimate aim of the lawyer at this point is to be able to pin the accused or witness to the wall. Danet (1980) describes questions as 'weapons' that serve to test or challenge claims made by the accused or witnesses, and 'vehicles' to make accusations and as Luchjenbroers (1997; 1993) puts it, yes-no questions are asked in order to confront, attack and discredit the witness.

Counsels always look for ways of discrediting the witness and the law allows this. Keane (1996) admits that the law of evidence indicates that there are

several legal means of cross-examining in order to discredit the witness. Heffer (2005) claims that one tool for doing this is to build a picture of the witness as a narrator who is unreliable and deficient. He claims that a witness could be discredited by casting doubt on his capacity to tell the truth; owing to the quality of his/ her memory or powers of perception, her incomplete knowledge of the facts, or a general mental incapacity. Also, a witness's testimony can also be challenged by questioning his/her honesty, as indicated by his/ her inconsistent statements, mistakes and omissions in evidence, and any other matters showing a general reputation for untruthfulness. Finally, his/her propriety can be called to question by trying to find out if he/she is reprehensible, as shown by previous misconduct and convictions. Lawyers could go to any length trying to discredit a witness' testimony during cross-examination by looking for loop-holes and inconsistencies between the witness's testimony in court and his/ her previous statements in police interview and under examination (Garner, 1999).

Discourse and critical discourse analysis

With closely related new disciplines emerging in the humanities and the social science, there are now several ways of doing discourse analysis such as ethnomethodology, conversation analysis, sociolinguistics and ethnography of speaking. Although all these disciplines had different backgrounds, objects and methods, the last decades have witnessed an overlap and integration of these disciplines into Discourse Analysis. At the end of 1970s, another direction of

research emerged in the study of discourse: Critical Discourse Analysis (CDA) (Wodak & Meyer, 2009).

Since the birth of CDA in early 1990s, there have been varied views as to what CDA actually is. Some argue that it is a theory (Foucault, 1996); others such as Jager and Maier (cited in Wodak & Meyer, 2009) and Fairclough (1995b, 1992, 1989) see it as a methodological tool for analyzing data. As a theory, CDA raises several concerns bothering on power inequalities in discourse and the subsequent domination of one group by another. Key concepts such as power, ideology, hegemony and dominance form the basis of CDA as a theoretical framework. Wodak and Meyer (2009) sum up the characteristic principles of CDA as having “the common interests in de-mystifying ideologies and power through the systematic and retroductable investigation of semiotic data (written, spoken or visual)” (p.3). The interest of this research does not lie in CDA as a theory; nonetheless, the issues of power and ideology which are paramount to this study will be examined. On the other hand, CDA as an analytical tool for analyzing texts and talk is adopted for this study, drawing on Fairclough (2001) three-dimension of analyzing text. Consequently, the issue of ideology has been discussed in detail under theoretical framework and the notion of power is discussed below.

The notion of power

Power is one of the central doctrines of CDA. It exposes the discrepancies in language use which often positions some members of a discourse community

as more powerful than the others. Wodak and Meyer (2009) do not only recognize the concept of power as central to CDA but describes it as the analysis of language use of powerful participants who are responsible for creating inequalities. Van Dijk (1998) states that the power of dominant groups may be integrated in laws, rules, norms, habits, and as a general consensus, and thus take the form of what Gramsci (1971) calls “hegemony”.¹² He asserts that a central notion in most critical work on discourse is that of power, and more specifically the social power of groups or institutions. He gives seven presuppositions of power among which are that power is a property of relations between social groups, institutions and organization. He, therefore, defined social power in terms of the *control* exercised by one group or organization (or its ‘members) over the *actions* and/or the *minds* of (the members of) another group, thus limiting the freedom of action of the others, or influencing their knowledge, attitudes or ideologies. Van Dijk (1998) explained that for social power and dominance to be effective, they are often organized and institutionalized. Lastly, he asserts that there is nothing like total authority in the hands of the powerful rather, he argues that dominance is often gradual and may be met with resistance or counter-power.

Power is manifested in different ways and in discourse, people have different kinds of power and they exercise this power in diverse ways, especially when social power is involved. Van Dijk (1998) distinguishes different types of power according to the various resources employed to exercise such power. Thus, groups have (more or less) power if they are able to control the acts and minds of members of other groups. Fairclough (2001) argues that the notion of power is not

absolute because dominated groups may more or less resist, accept, condone, comply with, or legitimize such power, and even find it "natural". Fairclough (2001) reiterates the fact that power is not the exclusive property of one group of people, rather, in discourse, people have different kinds of power and exercise it in different ways, and these may change dynamically as a response to the behaviour of others.

Judicial power

Aikins, (2000) defines judicial power as "The power which a court of competent jurisdiction has to determine controversial issues between two parties to a suit before it for decision, to pronounce judgment and enforce its decisions" (p. 56). A working definition as used in Section 71 of the Australian Constitution and adopted from Aikins (2000) states:

The powers which sovereign authority must of necessity have to decide controversies between its subjects; whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action (p. 56).

For any institution be it political, social, economic or religious to have the power to dominate people, requires some legal or civil backing. The law courts as social institutions are no exceptions. The power that courts exercise are vested in them by legislative instruments which empower the judiciary, the third arm of

government, not only to set up courts of different jurisdiction to hear cases brought before them, but also to appoint judges and magistrates. Article 125 of the 1992 Constitution of Ghana specifies the source of judicial powers as emanating from the people, showing that justice belongs to the people and it is only being kept in custody on behalf of the people. This means that power can only be exercised through the consent of the people who recognize such power otherwise; it may be administered coercively and by brute force.

Review of Empirical Studies

This section discusses studies previously carried out on courtroom interaction. Rather than proceed on a geographical location-based approach, I adopted a theme-based approach to avoid the repetition of topical issues treated by different researchers across different cultures in the extant literature. A review of studies on elicitation-response pairs in churches, politics and courtroom is first undertaken, followed by a review of studies on the communicative function of cross-examination. Also reviewed are studies that highlight power relations in the courtroom and some studies based on the theories used in this study. The section ends highlighting the justifications of the present study.

Studies on elicitation and response strategies

All forms of human interactions are always almost characterized by one form of elicitation and response of one kind. Elicitation and response does not always mean asking someone a question and expecting a reply. In an

investigation into the general pattern of discourse in English- Medium Christian Pulpit Discourse (ECPD), Taiwo (2006) investigates the various ways pulpit preachers elicit responses from their congregation. Using a combination of grammatical and pragmatic categories, he identifies three major elicitation types: the use of interrogative, declaratives and imperatives. Three sub- types of elicitation methods are: gap filling (e.g. *that great song says...; who is like thee...?*) Others are Polar question (e.g. *are you with me?*) and *Wh-question* (e.g. *Jesus said: "go ye into the world and preach what?*). He also identifies various forms of responses; one is speech, (vocal utterances); another form is the response that comes as mental behaviour. This is done when preachers make statements or ask questions, which demand no verbal response or physical action. The context, he points out, helps the hearers to interpret the expressions as ones that require them to respond by reflecting on what they have heard. Responses may also be physical actions (that is, the speaker makes the hearer to act or behave in a particular way). Although Taiwo's study is rooted in religion, it provides insightful direction for the current study in the area of response-elicitation styles. Whereas the data for his study consist of pulpit messages given by some Christian preachers in denominational, non-denominational and interdenominational services in South-Western Nigeria, the current study is an investigation into the discourse of courtroom cross-examination and the data consist of official court transcripts of trial cases in Ghana.

On his part, Bijeikiene (2004) conducted a qualitative study based on conversation analysis of equivocation and challenges to equivocation in the

proceedings of a special parliamentary commission at the Lithuanian Parliament. The study, which is based on Bavelas et al.'s (1990) theory of equivocal communication, quotes Bavelas et al.'s (1990) definition of equivocation as “non-straightforward communication, which also appears ambiguous, contradictory, tangential, obscure, or even evasive” (p. 43). He found that respondents who are mainly politicians equivocate by making reference to the failure of memory, by claiming that the question has been answered, by attacking the questioners or the content of the question. Other strategies that respondents resort to are ambiguity, ignoring the presumption of relevance and cutting the question into decontextualized meaningless fragments (p. 46). Bijeikiene (2004) also discovers that questioners have devised various means, mild and aggressive, in challenging equivocation. He identifies repeating the question in order to specify it and appealing to the respondent's conscience or sense of duty to give the required information as some means by which questioners challenge equivocation. Other ways questioners challenge equivocation, he points out, are openly pointing out the respondent's equivocation and the strategy which allows the questioner to deny the respondent of his basis of equivocation. On the whole, apart from the fact that Bijeikiene (2004) bases his study on political discourse as against the current study that is based on legal discourse, his study differs from that of the current one in terms of the theoretical framework and the data. While data for this current study comprise official transcripts of courtroom cross-examination like Taiwo (2006), Bijeikiene's (2004) is taken from the proceedings of a special parliamentary commission appointed by the Lithuanian Parliament to investigate

possible threats to national security. On the other hand, both studies bear some semblance to the current study in that they are both interested in the elicitation and response strategies that are employed by both questioners and respondents in a discourse just like this one.

Another study that highlights one form of response strategy is that by Choi (2010). Choi examines how appeal to memory is used as an interactional resource in couples therapy. This study contributes to the understanding of the social epistemology of memory; that is, how the display of not remembering relates to issues of knowledge and how it is assessed and understood with respect to the local interactional projects made relevant in therapy. Data for the study are analysis of transcribed audio- and video-taped couples therapy sessions leading to the discovery that clients' displays of not remembering opened up a range of practical epistemic and rhetorical issues such as enabling the creation of new 'participation frameworks' in which the client's spouse could display first-hand knowledge. The study also brought to the fore relevant issues of accountability and blame for not remembering important relationship events as well as indexing an avoidance or *resistance* of conforming to the therapeutic agenda. Lastly, it deflected against the interpretation that one may have a certain interest in not remembering.

Studies on communicative functions of cross-examination

As an important segment of courtroom interaction, cross-examinations ought to help determine the truth by making the interaction between counsel and witnesses smooth and information-seeking. Chang (2004) rather shows that the

opposite is the case. He claims that the purpose of questioning in Chinese criminal courtrooms is not to obtain information; rather it is to persuade. He points out that five patterns of questioning, invoking Chinese cultural notions of shame and morality, are used to extract confessions and remorse from defendant. They are as follows: repeating key questions, invalidating excuses or accounts, asking unanswerable questions, supplying answers and paraphrasing or restating defendants' responses. The study revealed that rather than using questions as tools to obtain information, they are used as tools of luring defendants and witnesses to confess or plead guilty. He argues that cross-examination has goals of confusing the person on the stand, leading him to admit fault or divulging information.

Another study that emphasizes the communicative function of cross-examination is Joel (1996). The author examined the role of negative questions that are asked by lawyers during cross-examination. He notes that lawyers engage in 'legal double-talk'. He explains that lawyers use negative questions during cross-examination to trap witnesses into statements that they cannot later contradict. In explaining the far reaching effect of this type of question, Joel (1996) states that affirmative replies to negative questions in the courtroom may be construed as denoting affirmation of the entire question, whether it is positive or negative, rather than its content. He also found out that this question type is often passed over during the trial, and feared that its effect can be far reaching, depending on how it is analyzed later in legal transcript form. He accuses both lawyers and judges as accomplices in allowing such questions to be asked.

In a similar vein, Brannigan and Lynch (2005) attest to the fact that prosecutor cross-examination puts constraints on witnesses' testimony. They found out that the defendant responds to this dilemma by giving delayed and qualified responses, expressing apparent confusion about the questions, and agreeing with the prosecutor in only a hypothetical and minimized way. This resembles the findings of Cooke (1996) whose Aboriginal people tend to appear confused and would rarely respond to questions with more than a monosyllable answer.

Although assumptions about "truthfulness" are necessarily involved in everyday social interaction, individuals rarely try explicitly to "test" one another's credibility. The trial court, and particularly the cross-examination of witness testimony, is one social occasion where such "testing" of credibility is done. This study which analyzes the cross-examination of a defendant accused of perjury used ethnographic interviews and transcribed tape recordings of testimony as data for the study. The researcher finds out that the prosecutor's cross-examination strategy places the defendant in "the witness's dilemma"—an untenable choice between claiming to have acted "unreasonably" or agreeing to the prosecution's accusation. These responses are, in turn, reflexively exposed and framed by the prosecutor and other court participants as attempts to evade accusation. Credibility is thus assessed in reference to the "reasonableness" of *both* the witness's explanations of past events and his or her comportment on the stand when those explanations are challenged.

Erikson et al. (1978) study the effects of powerful and powerless speech styles on speech effectiveness in a court setting from a socio-linguistic perspective. Their findings reveal that people in higher-status position tend to use more powerful speech style variation associated with their social status, whereas those with lower status tend to use powerless speech style in the renditions in the courtroom.

Luchjenbroers (1991) examines some sociological factors that act as scenario constraints on the discourse of courtroom, focusing on setting, rule of conduct and the role of the individual as embedded within the social context and how these interact with power relations. She concludes that a variety of factors affect the discourse of courtroom interaction and these, she claims, have dire consequences for the type of discourse produced. In a similar vein, Jelinch (1997) examines features of power relations of courtroom discourse which are compared to those of everyday equal and symmetrical conversation from a sociolinguistic standpoint. Data for the study comprise excerpts from a Texas lawsuit appeal which illustrate rules of court talk in contrast to normal conversation. Her findings revealed that courtroom interaction has little or no reciprocity and that the judge and lawyers control turn-taking. Witnesses are restricted to answering only the questions asked. Foreign and archaic forms can obscure proceedings to the jury and public. Potential consequences of misunderstanding necessitate a high level of explicitness; an imbalance of power results from attorneys' use of questions to avoid assumptions that would be normal in ordinary conversation.

Similarly, Jannery (2002) investigates the process of turn-taking. The main aim of her thesis is to show that lawyers have a considerable control over a witness testimony. Data for the study was based on Dr. Harold Shipman's Trial. Though the study is on turn-taking practices in the courtroom, it differs from the present study in that turn-taking practices are not the focus of the present study. However, it provides insight into some courtroom practices that are beneficial for the present study. In a single-case study on lay people as cross-examiners, Tkacukova (2010) did a linguistic analysis of the libel case between McDonald's Corporation v. Helen Steel and David Morris litigants. (tried in the UK High Court between June 1994 and December 1996). Findings of the study showed that lay litigants-in-person need help.

In a study on power relations in President Bush's state of the union speech, Rudyk (2007) in investigating the manipulative use of language used Fairclough's three dimension CDA approach to analyze the speech. His study, "A multidisciplinary approach to manipulation" elicits discursive, cognitive and social dimensions of manipulation looked at the approach to language as a unity of forms, meaning and function. His findings indicate that the analysis of the text of President Bush's State of the Union Speech shows signs of manipulation at the levels of syntax, semantics and pragmatics. This study resembles mine in that both hers and mine employed Fairclough's (2001) three dimensional approach of analyzing discourse and both studies drew on ideology as a theoretical framework. However, while Rudyk's (2007) study is on political discourse, mine is on legal discourse.

The Relationship between Previous Studies and the Present Study

In sum, the literatures so far reviewed have proved to be beneficial for this study. First, the literature reveals that elicitation in courtroom could take different forms which indicate that it is not only through questions that information is drawn from a witness. Even though some of the studies on elicitation and responses are rooted in other domains like religion, politics and pragmatics, they provide a directional insight for this study. Secondly, the studies reveal the divergent views emerging on the function of certain kinds of responses found in courtroom cross-examination. This once again provides a useful insight for this current study. So far, all the studies reviewed are conducted outside Ghana and all, except Rudyk (2007) used different approaches other than CDA. Rudyk's study is different from this study as his data is based on President Bush's state of the union speech whereas the data for this study is mainly official court transcripts.

Summary of Chapter

The theory of ideology is characterized by the fact that power resulting in the domination and oppression of the vulnerable in a discourse is usually covert. This hidden nature of power is what aids in its sustenance. Also, Grice's Cooperative Principle, aided by the four maxims – Quality, Quantity, Relevance and Manner furnish us the understanding that for successful communication to occur, there is the need for the submission of all those engaged in the communicative act to be informative, truthful and relevant to the point.

CHAPTER THREE

METHODOLOGY

Introduction

The purpose of this chapter is to present the methodological procedures employed in the present study. This includes the research design, the description of the specific domain of the study and background information about the research site. Also addressed are the data collection site and procedures, sampling techniques and methods of data analysis. The difficulties encountered in the data collection stage and the attempts that were made to overcome them are also discussed in the latter part of the chapter.

Research Design

The qualitative research design is employed for this study. The qualitative research approach, according to Leedy and Ormrod (2005), focuses on phenomena that occur in natural settings and it involves studying those phenomena in all their complexity. In the view of Cresswell (1994), "A qualitative study is defined as an inquiry process of understanding a social or human problem, based on building a complex, holistic picture, formed with words, reporting detailed views of informants, and conducted in a natural setting". Qualitative design is characterized by the fact that it is naturalistic, descriptive,

interpretative, and explorative, among others. Sample is small, non-random and it usually involves interviews, observations as against inanimate instruments such as scales, tests and survey which characterize quantitative research design. The goal of qualitative research is to discover patterns which emerge after close observation, careful documentation, and thoughtful analysis of the research topic. What can be discovered by qualitative research is not sweeping generalizations, but contextual findings. The process of discovery is basic to the philosophic underpinning of qualitative approach (Cresswell, 1994). Altheide (1996) posits that qualitative research “is to understand the process and character of social life and to arrive at meaning...types, characteristics, and organizational aspects of the documents as social products in their own right, as well as what they claim to represent” (p. 42).

Different kinds of qualitative research abound, the traditional ones include: ethnography, case study, phenomenology, biography and grounded theory (Cresswell, 1994) linguistic analysis and conversational analysis among others. However, more recent kinds of qualitative design have emerged and these include discourse analysis (DA) and critical discourse analysis (CDA). Although DA provides opportunities to consider the relationships between discourse and society, between text and context, CDA has the added advantage of considering the relationship between language and power (Fairclough, 2001b), especially, in institutional discourse. This therefore, informed the researcher’s choice of CDA over DA.

This study uses the CDA approach in analyzing the data. This design is crucial to the study since it seeks to investigate how language is used to enact power imbalance in courtroom interactions.

CDA as a Methodological Approach

CDA is a method for examining social and cultural modifications that could be employed in protesting against the power and control of an elite group on other people (Fairclough, 1985). It was first developed by the Lancaster School of Linguists of which Norman Fairclough was the most prominent figure. Among others, Ruth Wodak also has made a remarkable contribution to this field of study owing to her Discursive Historical Approach (DHA). CDA draws from several disciplines in the social sciences and humanities including critical linguistics. Fairclough (2001) developed a three-dimensional framework for studying discourse, where the aim is to map three separate forms of analysis onto one another: analysis of (spoken or written) language texts, analysis of discourse practice (processes of text production, distribution and consumption) and analysis of discursive events as instances of sociocultural practice (Fairclough, 2001). Particularly, he combines micro, meso and macro-level interpretation. At the micro-level, the analyst, considers the text's syntax and metaphoric structure. The meso-level involved studying the text's production and consumption, focusing on how power relations are enacted. At the macro-level, the analyst is concerned with inter-textual understanding, trying to understand the broad, societal currents that are affecting the text, being studied. CDA does not limit its analysis to

specific structures of text or talk, but systematically relates these to structures of the sociopolitical context by drawing attention to social and political inequality, power abuse and domination. Its usefulness as an analytical framework has been recognized not only in the humanities, but also the social sciences (van Leeuwen, 2006). Szmigin et al. (2008) and Hackley (2003) have found CDA as an invaluable tool and have thus adopted this approach in their research for a number of years.

Justification for Using CDA in the Analysis of Courtroom Proceedings

Although the current focus of CDA had its genesis in ‘critical linguistics’ (McHoul & Grace, 2003), it has evolved to the stage where it has been adapted to, and applied by, many other disciplines including the social sciences. Discourse analysis has typically been associated with linguistics (Elliott, 1996) and, traditionally, studies in linguistics have relied on the different types of qualitative methods such as content analysis, ethnographic analysis, and conversational analysis in order to analyze texts. While these methods have proved useful, their shortfall lies in the fact that they fail to delve into a deeper level, such as exploring the use of language in its construction of the object and the use of power in, and as an output of, this construction (Buchanan, 2000).

One major justification for using CDA in this study is its eclectic nature which allows the researcher certain freedom in the formulation of new perspectives that help to translate the theoretical assumptions into instruments of analysis. According to Hackley (2003), CDA assumes social constructionist

ontology in that it accepts the role of language and social interaction in the production of power relations.

Another major justification for using CDA is that CDA analyzes naturally occurring data which guarantees high reliability. This means that under CDA, data collection procedure is highly reliable since it is not elicited experimentally in response to any research thus, making it contrived (Herring, 2001). CDA provides opportunities for considering the relationships between discourse and society, between text and context, and between language and power (Fairclough, 2001; Luke, 1995, 2002).

The Structure of Courts in Ghana

Since Ghana's independence in 1957, the Court system, headed by the Chief Justice, seems to have demonstrated extraordinary independence and resilience. The Court Act of 1971 defined the structure and jurisdiction of the Courts which established the Supreme Court of Ghana, the Court of Appeal (Appellate Court) with two divisions-ordinary bench and full bench, and the High Court of Justice, a Court with both appellate and original jurisdiction. The act also established the so-called inferior and traditional Courts, which, along with the above courts, constituted the judiciary of Ghana according to the 1960, 1979, and 1992 Constitutions. Until mid-1993, the inferior courts in descending order of importance were the Circuit Courts, the District Courts (Magistrate Courts) grades I and II, and Juvenile Courts. Such courts existed mostly in cities and large urban centers. In mid-1993, however, Parliament created a new system of lower courts,

consisting of circuit tribunals and community tribunals in place of the former circuit courts and district (magistrate) courts. The traditional courts are the National House of Chiefs, the regional houses of chiefs, and traditional councils.

The traditional courts are constituted by the judicial committees of the various houses and councils. All courts, both superior and inferior, with the exception of the traditional courts, are vested with jurisdiction in civil and criminal matters. The traditional courts have exclusive power to adjudicate any cause or matter affecting chieftaincy as defined by the Chieftaincy Act of 1971.

The Judicial Service of Ghana 2009/10 Annual Report describes the reforms taking place in Ghana's Judicial Service, which includes the setting up of specialized courts under the High Court. These include: the Fast Track Division, Economic Crimes (Financial) Court, Commercial Court, Human Rights Court and Industrial (Labour) Court which are established to enhance the justice delivery system in Ghana. Also, Regional Tribunal with specialized criminal jurisdiction which have the status of High Court and Alternative Dispute Resolution (ADR) and Mediation meant to help resolve disputes outside the courts are part of the reforms. Other courts that are established as part of the reforms include Family Tribunal and Motor Courts.

Two main systems of trial exist: the Adversarial and Inquisitorial. The adversarial system is one which involves the giving of oral evidence by witnesses and the testing of that evidence through cross-examination, a system referred to by Maley (1994) as "the trial of strength" (p. 33); whereas the inquisitorial system has to do with inquiring into the matter before the court so as to establish the

truth. Maley (1994) gave a basic distinction of the two system: “In the adversarial system, the judge and the jury are arbiters and such; they do not pose questions and seeks answers. They only weigh such material that is put before them, but they have no responsibility for seeing that it is complete” (p. 33). With the inquisitorial system on the other hand, the judge is in charge of the inquiry from the start. Maley (1994) further states: “He or she will of course permit the parties to make out their cases and may rely on them to do so, but it is for him or her to say what he wants to know” (p. 33).

Research Sites

Data for this study were gathered from two research sites – the Judicial Service Court Complex in Cape Coast and in Accra. First, The Judicial Service Court Complex in Cape Coast which houses Circuit Court One and High Court One was the first to be visited. The Cape Coast Court Complex lies to the south of Cape Coast, and is situated very close to the Cape Coast Castle. This court complex houses nine courts – six high courts two of which are specialized courts (commercial), two circuit courts and two district courts and . It also accommodates several offices for different categories of the judicial service staff ranging from: the regional registrar, the high court registrar, deputy court registrars, and a host of others. The court complex is selected for a number of reasons. Among these is the fact that it houses nine courts of varied jurisdiction ranging from high courts to district courts which makes accessibility easier and more convenient to the researcher since she resides in Cape Coast.

The Commercial Court Complex in Accra is situated within the premises of the Supreme Court, which is part of a larger court complex that accommodates several courts including Commercial Court 'A'. The choice of Commercial Court 'A' in Accra was borne out of the fact that the commercial court in Cape Coast was newly established and had not started full operation as at the time of data collection. Therefore, the researcher had to go to Accra where the commercial courts have been fully operational since March, 2005.

Sample Size and Sampling Procedure

Data for the study involved 50 official transcripts of courtroom cross-examination proceedings. These comprised 20 from Circuit Court One in Cape Coast, 30 (15 each) from the two other courts - High Court One, Cape Coast and Commercial Court 'A' in Accra. The choice of the two courts in Cape Coast was borne out of the fact that both courts handle both criminal and civil cases. Initially the data was also to have been collected from District Court One in Cape Coast, but this became impossible as the officials of the court were not willing to assist, thus necessitating the researcher to turn to Accra for assistance. The reason for collecting data from the three courts was not for the purpose of comparing data obtained, but because it was difficult getting all the transcripts needed for this study from one court. Due to the sensitive nature of the data, court officials are reluctant to release transcripts to anyone who is not a party to the case in question. Therefore, giving out so many transcripts at a time was virtually impossible.

Also, abandoning my initial plan to collect some of the transcripts from District Court One in Cape Coast was because the court does not have any recording and transcribing machine that are available to the other courts from where data have been taken. Since the researcher was forbidden from recording the court proceedings, these recording devices installed in the courts were very helpful and reliable, as they captured the exact proceedings that took place in court thus ensuring that the data for this study are actually naturally occurring data. This, the researcher finds more appropriate than the handwritten transcripts compiled from notes taken by the magistrate or the researcher herself, as some essential aspects of the trial (cross-examination) may be left out.

Sampling Method

The main data which comprise official court transcripts were selected via a combination of both purposive and quota sampling procedure. Purposive sampling was used to ensure that only the relevant documents (proceedings of cross-examination conducted by lawyers) are obtained. The purpose was to ensure that only the transcripts that will yield the most information relevant to the study are selected. This procedure is in line with Leedy and Omrod (2005), who point out that qualitative researchers more often engage in purposeful sampling, which involve that they “select only those individuals or objects that will yield the most information” (p. 145). So, official transcripts from direct examination, re-examination and documents of other segments of courtroom discourse such as writ of summons, evidence-in-chief, re-examination, and judgment are

purposefully excluded in the samples collected for this research. In line with this, and to ensure representativeness with respect to the variables accounted for in the transcripts such as type of courts and their location - High Court One and Circuit Court One in Cape Coast and Commercial Court 'A' in Accra; the type of cases covered are both criminal and civil; the parties involved are counsels for prosecution and defense, defendants and witnesses. The type of witness involved is lay witness and this is because lay witnesses in court are subject to intimidation more often than expert witness and the police testifying as witness. Tkačuková (2010) claims that lay witnesses are often intimidated because of the basic principles of the adversarial system where witnesses' statements, cross-examination, and confrontation with a defendant are rife. The lay witness has personal knowledge of the underlying facts of the case. They testify to perceptions, facts and data, grounded in their own experience. Expert witnesses, on the other hand, have special knowledge or skill gained by education, training or experience. As such, some expert witnesses appearing in criminal cases are professionals in medical, mental, or forensic fields. Thus, they could testify about their opinions whereas lay witnesses are forbidden from doing so (Nemeth, 2001). Also, only cases presided over by circuit and high court judges are sampled.

While this corpus could be said to be strong in representativeness, it is weak in terms of its representation of the communicational context since it comprise official court transcripts derived from proceedings recorded with the court's own recording device (Heffer, 2005, pp. 52-8). Consequently, certain paralinguistic features such as interruptions, turn taking cues, overlapping,

intonation and hesitation markers such as false start, clearing of the throat and pauses which are essential in the enactment of power relations are not captured by my data. This limitation notwithstanding, the reliability of the data cannot be doubted since they are legal documents that have been certified by both the judges and the court registrars as true proceedings that took place in the different courts. Fraser (2010) argues that courtroom transcriptions play an important role in many parts of the legal process as they provide not only lasting public record of courtroom proceedings, but also provide a convenient reference to evidence gathered via formal processes. Fraser (2010) asserts that the accuracy of courtroom transcripts is accepted as a cornerstone of the legal process, because they are seldom questioned by either defence or prosecution. In a similar vein, Bloomfield cited in Hymes (1964) asserts that the written form of a literary work is the most preferred choice. He argues that: “the Standard Language is most definite and best observed in its written form, the Literary Language” (p. 393).

Data Collection Procedure

The data collection was in three stages: observing proceedings of court trials, getting official documents (transcripts of proceedings) and administration of interviews. There were initially three options available to the researcher with regards to the procedure for data collection. One option was to visit the courts; observe and record the proceedings and take down notes of the proceedings. Another option was also to visit the courts observe proceedings and take down notes. The third option was to visit the courts, observe proceedings and apply for

the transcripts of proceedings from the courts. The last option was deemed plausible for three main reasons. First, the option of recording the proceedings was denied the researcher. Second, taking notes of the proceedings would mean that a lot of valuable information would not be captured as it would be virtually impossible for the researcher to write at the same speed with which the utterances are being made. This would definitely affect the quality and reliability of the data that will be collected. More so, the data taken in this form would not be authentic as the courts would not agree to certify them since they cannot be sure of their accuracy.

The data collection for this study started when a letter of introduction was obtained by this researcher from the Head, Department of English, University of Cape Coast to the Central Regional Registrar, Ghana Judicial Service, in Cape Coast. When the letter was submitted to the Regional Registrar, he immediately introduced me to the registrars of the various courts under him and instructed that they provide me with the assistance that I needed.

Soon after the introduction was done, I went all out to negotiate access, develop trust and established rapport with all the staff of the Judicial Service - the judges, registrars, the court clerks, secretaries and recorders of the various courts. Subsequently, my request to observe the court proceedings was granted and the judges accorded me special privilege by offering me a seat beside the recorders to enable me observe the proceedings from a vantage position. The judges also granted me the privilege of meeting with them in their chambers after each session to clarify any issue that was not clear to me.

Since I was forbidden from recording the court proceedings, I had to apply for official court transcripts from the two courts I visited in Cape Coast. The two registrars for the high courts and circuit courts respectively were very willing to let me have the transcripts, but there were some challenges that I had to grapple with. The transcripts were not as forthcoming as I expected. They trickled-in as a result of the constant breakdown of their recording machines and printers. It took a little over six months for me to collect 40 transcripts from both courts. Through constant visits to the courts and because of the goodwill that I had built over the months, I was able to collect these official transcripts from the two courts.

With regards to the court in Accra, a senior member of the Department of English, University of Cape Coast introduced me to the Registrar of the Commercial Courts' Division, Accra who agreed to help me obtain some transcripts from one of her courts. Due to her busy schedule, it took about a month to get the transcripts ready for me. After making official payments for them, they were certified by the registrar and delivered to me.

As soon as I gathered the official transcripts which were to form the main data for my study, I interviewed a lawyer and a defendant to find out if their personal experiences in the courtroom will corroborate the story that the transcripts will tell. The purpose of the interview was not to confirm whether the perceptions of the lawyers and defendant are accurate or true reflections of the situation, but to ensure that the research findings accurately reflect their perceptions. As Stainback and Stainback (1988) put it, the purpose of corroboration is to ensure the validity and reliability of the study.

Several attempts to get some of the lawyers to grant me interview failed because they were reluctant to have me videotape the interviews. Finally, I found Mr. Ekow Appiatse, a Barrister and Solicitor, who consented that I videotaped the interview (See Appendix I). The Interview was conducted on 13th March, 2010 at 9:30 a.m. in his residence at Abura, Cape Coast, Central Region of Ghana and it lasted for 30 minutes. The next task was to interview some litigants and witnesses. After several attempts to get those who would permit me to record the interview, I finally found one defendant who pleaded anonymity and who permitted me to do an audio recording of the interview (see Appendix II).

Validity and Reliability

The validity of this study was enhanced in three ways: First, the researcher used the triangulation method which involves the use of multiple methods of data collection, namely observation, interview and the use of official documents for this study. Cresswell (1994) asserts that triangulation is strength in research. Secondly, all the courts visited had been installed with computer recording devices that captured the entire proceedings as they occurred and simultaneously transcribed them; the reliability of the data was high, as adulteration of information was minimized and loss of information was almost eliminated. Also, the researcher sought the opinion of two of her colleagues, Isaac Mwinlaaru of the University of Cape Coast and Bernard Duho of the University of Winneba in identifying the categories from the data before the final coding was done.

Thirdly, scholars attest to the reliability of official court transcripts in spite of a few setbacks associated with the editing of material by court secretaries. Tkacukova (2010), for example, cautions that there is no need to overestimate it. Also, Heffer (2005) concludes that: “In an overwhelming majority of cases the language presented in transcripts was accurate” (p. 58) Eades (1996) shares similar sentiment when she posits that court transcripts are valuable source for the analysis of question types.

Method of Analysis

In analyzing the data, the researcher adopted the three dimensions or of CDA which Fairclough (2001) suggested: description, interpretation and explanation. He posits that the description stage is concerned with formal properties of the text while the interpretation is concerned with the relationship between text and interaction. The third stage, explanation, deals with the relationship between interaction and the social context.

As there is no single “right” way to analyze data in qualitative research, the researcher adopted Leedy and Ormrod’s (2005) suggestion and Cresswell’s (1998) data analysis spiral. This researcher started the analysis by scrutinizing the large body of materials, perusing them several times in order to make sense of what they contain whilst she jotted down a few points that suggest some possible categories and interpretation at the margins. Next, the researcher organized the data and divided them into grammatical categories. She then described the data by identifying general themes and subthemes which she coded via Strauss and

Corbin's (1988) Grounded Theory, using different colours and symbols according to categories, bearing in mind her first and second research questions. After counting of these categories, she started analysing the data, beginning with the description of the data then interpretation. Lastly the explanation of the data were done in chapter four with the researcher summarizing the data by using tables and figures to encapsulate more of the material at a glance. In the course of analysing the data, the researcher made an attempt to find out what differences in elicitation and response strategies exist with respect to the three categories of courts from which data were collected. The search did not yield any significant differences. This venture had to be abandoned because the researcher thought that this could form the basis of an independent study which will involve doing a comparative analysis of the kind of strategies used by different courts and intend to add this to the recommendation in chapter five.

Coding

Coding is the process of examining the raw qualitative data in the transcripts and extracting sections of text or units (words, phrases, sentences or paragraphs) and assigning different codes or labels so that they can easily be retrieved at a later stage for further comparison and analysis, and the identification of any patterns. I used different colours to distinguish one grammatical category from the other and to further distinguish one sub-category from the rest (See Appendix V). After the coding was completed, I counted each

sub-category and the categories and found their frequencies and percentages. These were represented in tables and graphs for analysis of data in chapter four.

Difficulties

When the researcher submitted her introductory letter given her from the Department of English, University of Cape Coast to the Regional Registrar, Ghana Judicial Service in Cape Coast, she was told that it was against the Judicial Service's policy to allow anyone outside the court to record courtroom proceedings. I was, however, allowed to witness the trials, but was not allowed to do any recordings neither was I allowed to obtain a copy of the recordings done by the court staff. I had the option of witnessing the proceedings and applying for transcripts from the courts. However, a major difficulty arose due the frequent breakdown of the recording machines and printers at both the high and circuit courts thereby slowing-down the process of data collection. Also, the delay in data collection was due to the vacation that High Courts in Ghana had embarked upon between August and October, 2010 and the sensitive nature of data which makes some officials of the service reluctant to release them. Lastly, the expenses incurred in the course of data collection were quite huge and surprising.

Summary of Chapter

In chapter three, the methodology used for this research has been discussed. The research design adopted was the qualitative method, with specific reference to (CDA). The CDA approach was used because it provided the

researcher with the necessary tools for analyzing discourse that has embedded power relations. As a methodological inquiry, CDA helped the researcher to obtain naturally occurring official court transcripts obtained from court trials. The research site, background of the research site and the sample size were discussed. The chapter also described the data collection approaches and sampling technique used in collecting the data. The data were gathered between September, 2010 and March 2011. In order to reinforce the claims arrived at, the triangulation method of data collection was used. In addition to that, the researcher also sought the opinion of her peers in identifying categories before coding was done.

CHAPTER FOUR

RESULTS AND DISCUSSION

Introduction

This chapter presents the analysis and discussion of the data. Particular attention is given to the various strategies used by counsels to elicit information from litigants and witnesses during courtroom cross-examination as well as response strategies used by defendants and witnesses being cross-examined and their functions. Also, attention is given to how these strategies promote power imbalance during cross-examination. The discussion is done per the research questions and the two-pronged theoretical framework, namely, ideology and Grice's Cooperative Principle. The chapter is made up of four sections. The first three parts of the chapter specifically provide answers to the three research questions. In the final part of the chapter, a comprehensive summary is provided. The analysis is done in relation to the research question.

Description of Elicitation Strategies

Research question 1: *What elicitation strategies are employed by counsels in courtroom cross-examination and what functions do they perform?*

In line with Fairclough's 1995 three-tier model of doing CDA, this section is divided into two parts. The first part gives a vivid description of the various

elicitation strategies used by counsels during cross-examination while the second part deals with the explanation and interpretation of these strategies.

Three main types of elicitation strategies used by counsels during cross-examination were identified and they are interrogatives, declaratives and imperatives, as illustrated in Figure 1 below:

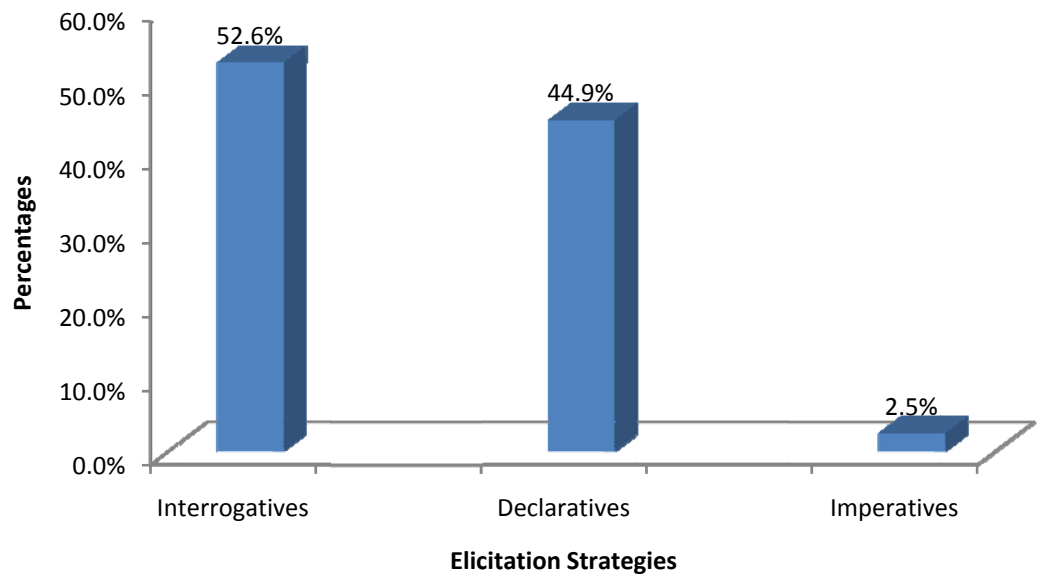


Figure 1: Elicitation Strategies in Courtroom Cross-examination

Figure 1 presents the various elicitation strategies identified in 50 official courtroom transcripts obtained from three courts in Ghana namely Circuit Court One and High Court One, both in Cape Coast, as well as Commercial Court ‘A’ in Accra respectively. The chart highlights the elicitation strategies under three categories namely interrogative, declarative and imperative.

Interrogatives

In institutional talk, such as courtroom discourse, questions play a vital role in promoting and maintaining power imbalance. This confirms the view of Drew and Heritage (1992) that questions are used to enact institutional roles resulting in the professional often leading the lay person through question-initiated sequences, creating interactional asymmetry. This confirms Taiwo's (2006) assertion that interrogation constitutes a common approach to discourse control and sustenance. Four types of interrogatives were identified in the data: Wh-questions, yes-no questions, question tag, declarative yes-no questions and declarative + wh-questions. Table 1 shows the distribution of the four different types of interrogatives identified in the data and some examples.

The most commonly asked questions are the declarative type questions which represent 41% of all the questions asked. This is followed by yes-no questions which represent 36%, wh-questions 22% and question tag 1%.

Table 1: Types of Interrogatives in Courtroom Cross-examination

Types	Examples
Wh-question	<ol style="list-style-type: none">i. Where is the land in dispute?ii. What provisions of the constitution are you talking about?
Yes-No question	<ol style="list-style-type: none">i. Did he ever stay in Nigeria?ii. Was your installation at the direction of the Holy Spirit?
Question Tag	<ol style="list-style-type: none">i. Once you have a contract you should know the terms of the contract, shouldn't you?
Declarative Question	<ol style="list-style-type: none">i. Now before you started this work did you receive any contract?ii. Mr. Blay, before you were the business Development Officer of the Daily Guide, what work did you do?

Declarative questions

Declarative questions are in two parts. The first part is usually a statement and the second part a question. For example, *She returned the money to her mother, am I right?* The statement that precedes the question serves as a preamble to the question. The counsel gives some background information or narration, with 'yes' or no question serving as a 'tag'. Two types of declarative questions

were identified in the data - declarative yes-no questions and declarative wh-question. The declarative Yes-No question bears strong resemblance to yes-no question: “It is identical in form to a statement but for the final rising intonation” (Quirk & Greenbaum, 1973, p.195). Declarative yes-no questions are assertive in nature in that the speaker makes an assertion which is then followed by a yes-no question. Extracts (1, 2, 3, 20 – 27, 50 and 52) are culled from the transcripts of a court case between XY (A) and XY (B) over non-payment of a contract sum. (See appendix IV for key to “CRC”, “COC”, “HC” and “SN”; MR. “X”, MRS “X”, “R”, “XY” and letters of the alphabet A,B, C,D, etc).

(1)C: And particularly in clause 60.8, when the employer receives your invoice which he never did, he vets the invoice to ascertain whether that is the actual payment due you, am I correct?

R: That is correct. (COC: SN.RPC246/2009; 26/04/10).

(2)C: So, the fact that the final account shows a figure of 515 does not necessarily mean that is the money the employer would have paid you under the contract, am I correct? (COC: SN. RPC246/2009 26/04/10).

The first part of examples (1) and (2) show that the questioner has a foreknowledge of the subject matter and then uses this knowledge to his advantage by asking question that Jowitt (1959) refers to as leading question. The two examples stated above are questions that suggest to the witnesses the answers that the counsels desire to be given. This is in line with Grice’s maxim of manner which stipulates that how something is said is more important than what is said.

Here, the counsel is asking not because he seeks to be informed or educated about the subject matter, but because he seeks confirmation or denial from the respondent in order to prove or disprove what he already knows. Ideologically, this indicates dominance on the part of the counsel who tries to use the power vested in him as the second most powerful participant in the courtroom to intimidate the counsel (Doty, 2010).

Also, the declarative + wh-question identified in the data is the one that ends with wh-questions. One may argue that this kind of question should be treated as a wh interrogative question since the second part begins with a Q-word. Even though the second part of the question is a wh-question which may elicit an open-ended response, its antecedent, the declarative is leading; therefore constraining the respondent from giving long, winding narrative. So, the manner in which the question was asked no doubt compelled the respondent to give a yes-no or short answer. The following examples illustrate this.

(3)C: *At the time of the completion of the contract how much was the expenditure on the works De Simone did?*

R: \$23,544,000. ((COC: SN. RPC246/2009; 14/06/2010)

The statement that precedes the question in a declarative wh-question like declarative yes-no questions, often contain an assertion. A look at the structure of example (3) shows that the statement: *At the time of the completion of the contract* that precedes the wh-question *how much was the expenditure on the works De Simone did?* is an assertion which gives an indication that the counsel has more information about the subject matter than the witness is aware of.

Yes-No question

The second most common type of question asked by counsels is the yes-no question which represents 36% is. “Yes-no questions are formed by placing the operator before the subject and giving the sentence a rising intonation (Quirk & Greenbaum, 1973)”. They are also referred to as closed questions because the set of possible answers is closed containing just two members - yes or no.

Examples (4) and (5) below are taken from a case between XY(C) and XY(D) in which XY(C) sued XY(D) over the theft of some important parts of its truck that was recently cleared from the port.

(4)C: Is that area exclusive to APS or for other stevedores operators who must also discharge their goods? (COC: SN. OCC16/07; 12/03/2008)

R: I would not know because during our transaction it was that place they put the truck. (COC: SN. OCC16/07; 12/03/2008)

(5)C: Apart from APS are there other stevedore operators in the port?

R: Yes. (COC: SN. OCC16/07; 12/03/2008)

Examples (4) and (5) above illustrate the fact that yes-no questions are asked because counsels expect, in most cases, a yes for response. Harris (as cited in Penz, 1996) states that this type of question limits the appropriate answer. She also notes that “the questions that can receive a minimal answer ‘yes’ or ‘no’ tend to receive this kind of answers in asymmetrical discourse situations (Penz, 1996. p.112)”.

Question tag

Question tag is another type of leading question due to its manipulative nature. Question tags are said to be declarative statements with postponed tags through which speakers seek agreement with the content of the statement (Schiffrin, 1987).

(6)C: *You have admitted that the Constitution was compiled at the time when Matapoly Moses was alive, didn't you say so? (HC: SN. E12/14/2010; 05/05/2010)*

(7)C: *So you are entitled because you are the son of an Akaboha, aren't you? (HC: SN. E12/14/2010; 05/05/2010)*

These four examples (6, 7, 8 & 9) are drawn from the case between MR X(A) versus MR X(B) in a Cape Coast High Court to determine who should lead the Musama Church after the death of its leader, show how coercive question tags are. As seen from the cross-examination of the plaintiff by the counsel for the defendant, the question tags suggest that the speaker has certain assumptions and inclines towards a certain answer. Tsui (1992) and Penz (1996) argue that questions tags are always conductive and never neutral. This suggests that tag questions are the most predictable among other types of questions because they direct the answer towards 'yes'. Although most scholars consider question tags to be the most coercive type of questions as they have additional pragmatic meaning (Berk-Seligson, 1999; Pozner & Dodd, 1993; Woodbury, 1984, and Danet 1980) and therefore are the most preferred choice for cross-examiners, my data yielded

fewer tag questions than other types of leading questions. As is shown in Table 2 above, tag questions constitute only one percent of the total questions asked. This may be due to the fact that the taglines in most of the statements are dropped, thereby reducing them to mere declaratives.

Wh-questions

Wh-questions which are usually formed with the aid of one of the following Q-words: who, whom, whose, what, which, when, where and how (Quirk & Greenbaum, 1973) are strongly avoided in cross-examination. Here are some examples.

(8)C: *What role did Akatitibi play in your installation?*

(9)C: *What provisions of the constitution are you talking about? (HC: SO. E12/14/2010; 05/05/2010) for both (8) and (9).*

As shown on Table 1 above, the data yielded fewer wh-questions which represent only 22% of interrogatives. This finding agrees with the advice given by Nations (2011) to counsels forbidding them from using questions beginning with “Why” and “How” as these, he asserts have the tendency to “handover entirely to witness” (pp. 88-89).

Declaratives

In discourse, elicitation does not always refer to questions but sometimes statements can also elicit responses. Leech and Svartvik (1985) state that declaratives are statements that do not demand response; however, in

conversation, statements often elicit response. Danieleiko (2005) attests to this fact when she noted that questions in a context of talk shows are not restricted to interrogative forms only. Likewise, Taiwo (2006) upholds this view when he discovered in his study on Response Elicitation on English-Medium Christian Pulpit that even statements can elicit responses. He explains that when two or more people are engaged in a conversation, the participants speak in turns. The addressee, according to him may understand a statement to mean that he must give a response in order to keep the conversation going. The views stated above indicate that statements like questions can also elicit responses.

Like talk shows and Christian discourse, questions in cross-examination take different forms. Apart from interrogation, declaratives and imperatives are also used to elicit responses from litigants or witnesses. Elicitation may mean “to provoke a reaction: to cause or produce something as a reaction or response to a stimulus of some kind (Bloomsbury, 1999, p. 610). Counsels use declaratives strategically to elicit responses from defendants and witnesses through the type of sentences they employ and through the use of active voice. The chart below shows the types of sentences that are used in cross-examination and their percentage occurrence.

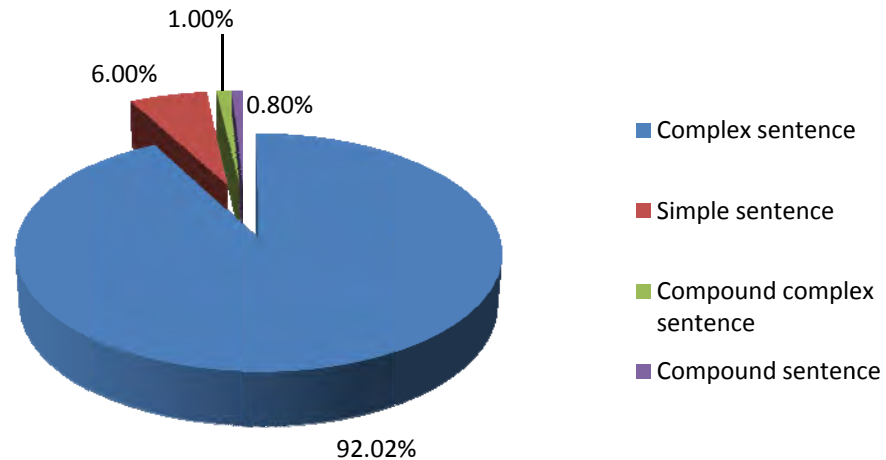


Figure II: Types of Sentences Used in Courtroom Cross-examination

Four types of sentences were identified in the data and they are complex sentences representing 92.2% followed by simple sentences (6%), compound-complex sentence (1%) and compound (0.8%).

Complex sentence

The most occurring type of sentence found in the data is complex sentence (92.2%) as shown in example (10) a case involving XY (K), a bank and MRS X(A) over monies mistakenly paid into the latter's account and which she was purported to have fraudulently withdrawn and used up. Also, examples (11,12 & 13) are drawn from a case involving MR X(I) and MRS X(B) who are laying claim to a property left behind by a deceased relative.

(10)C: I'm putting it to you that this EDIF thought is an afterthought because for two years you never came out with anything (COC SN. BFS/292/08; 25-03-10).

(11)C: *I put it to you that your evidence that Sikayena gave the property to Stella De-Graft Duncan is also false (CRC: SN. LS. 21/02; 24-10-2006).*

R: *It's correct.*

Complex sentences are units containing dependent clauses or dependent and conjoined clauses and one or more independent clause(s) (Downing & Locke, 2006). The subordinate clause of a finite dependent clause is normally signalled by means of subordinating conjunctions such as: when, as soon as, because, since, etc. or by a 'relativiser' such as which and that. Example (10) for instance, contains three clauses: *I'm putting it to you* (main) *that this EDIF thought is an afterthought* (dependent) *because for two years you never came out with anything* (dependent.) In this sentence, the clause *that this EDIF thought is an afterthought* is embedded as a constituent of the superordinate clause *I'm putting it to you*. Semantically, the *you* in the main clause is the receiver and subordinate to the agent *I*. By extension, the *you* represent the witness while the speaker (agent) is the counsel. The witness is positioned as a dishonest person as the third clause *because for two years you never came out with anything* seems to suggest that the witness is dishonest with regards to a latter testimony.

Simple sentence

The second most occurring type of sentence that the data yielded is simple sentence (6%) as exemplified in the examples below.

(12)C: *This Lydia Duncan (deceased) was a sister of D.D. Duncan. (CRC: SN. LS. 21/02; 24/10/2006).*

R: *Yes*

(13)C: *You are not a truthful witness. (CRC: SN. LS. 21/02; 24/10/2006).*

Simple sentences consist of one clause. They are short, straightforward and apt as can be seen in examples (12) and (13). Both examples have the simple structure of SVC.

Compound complex sentence

Compound-complex sentences are sentences that are both complex and compound at the same time. Their occurrence in the data set is very minimal as its occurrence is just 1% of all the sentence types found in declarative forms of elicitation. The sentence below is an example.

(14)C: *When you took the vehicle to the defendant, you travelled a day after out of the country and you told the defendant you were travelling outside the country (COC, RPC/292/07; 12-5-09.*

This extract which is culled from the transcript of a trial case between MR X(F) versus MR X(G) contains three clauses. The first two clauses which together form a complex one is joined to the third clause by a coordinating conjunction giving the sentence a compound-complex status.

Compound sentence

Compound sentences are the least occurring types of sentence that the data yielded. Below is an extract culled from the transcript from a court proceeding involving a man who purportedly slaughtered his wife on their farm.

(15)C: You sharpened the cutlass and you slaughtered the victim. (HC: SN. BI 13/2010; 17-06-10)

This excerpt taken from the suit between the “R” versus MR X(C) who slashed his wife with a cutlass shows that one of the sentence types used by counsel is the compound sentence which contains two or more independent clauses and they are usually joined together with coordinating conjunction such as ‘and’, ‘but’ or’. Example (15) has two independent clauses:[*you (S) sharpened (V) the cutlass (O)*] and [*you (S) slaughtered (V) the victim (O)*] (HC:SN. BI 13/2010; 17-06-10).

Use of active voice in declarative sentences

In all the transcripts analysed, counsels employed active voice in their use of declaratives. The following examples which are drawn from the case between XY (E) and MRS X(C), who was accused of tampering with the chassis of her car in order to evade taxes, illustrate this.

(16)C: And your reasons or intention for tampering with the chassis was to evade payments of taxes and customs duties. (COC: SN. OCC/30/08; 03/12/08)

(17)C: Yesterday, you told the court that you submitted exhibit J to the 3rd defendant.

Evading taxes and customs duty was your reason or intention for tampering with the chassis’ is the passive form of the sentence (16). With the

active form, the witness is put on the spotlight and portrayed as someone dubious and dishonest thus, painting a negative picture of him. If on the other hand, the passive voice had been used, then the identity of the witness would have been obscured. Conversely, (17) would have read: *The court was told yesterday that you submitted exhibit J to the 3rd defendant* if the counsel had used the passive voice. Again, the position of the witness as the subject is emphasized whereas if the passive voice had been used, the identity of the witness would have been shielded.

Imperatives

The third major type of elicitation strategies employed by counsels in cross-examination is imperatives. Though commands are apt to sound abrupt (Quirk & Greenbaum, 1973) their occurrence in the data analyzed is minimal as they represent only 2% of the elicitation strategies identified. Two types of imperatives were identified and they are command and declarative + command. The frequency of occurrence of declarative + command is so insignificant that much attention was not given to it in this analysis. Commands such as examples below were observed in the data:

(18)C: *Look at your exhibit F, look at it carefully. COC SN OCC/30/08; 03-5-08*

(19)C: *Turn to the second page, who deposes this affidavit.*

Danileiko (2005) refers to imperatives as action-eliciting questions and they require the performance of action by the addressee (Illie, 1999). Sentences in Examples (18) and (19) above perform action-eliciting function and are intended

to make the addressees act in a certain way. In other words, these questions are requests to perform certain actions.

Declarative + command

Another form of elicitation strategies used by counsels is the declarative plus command. In this case, counsel gives a statement providing background information and issuing command thereafter; as exemplified in (20).

(20)C: *Now consequently, in exhibit 2 which is an email from prenir to yourself, the port handling charges and the bank refunds were deducted from the total payments made to De Simone Ltd. Look at the last page of exhibit 2 is it there or it is not there? (COC: SN. RPC246/2009; 14-06-2010).*

(21)C: *This is the letter you wrote to GHAPOHA, read the letter. (same as in 20)*

From Example (20) above, the counsel displayed to the witness that he had in-depth knowledge of the subject matter as is expected of him (Heward-Mills, 1988) and is aware of the transactions that have taken place earlier on. By so doing, he perhaps wants to block all possible loopholes that can lead to the situation where the witness will want to take a non-compliance stance.

In sum, three main categories of elicitation strategies were identified in 50 official court transcripts obtained from three courts in Ghana and analyzed.

Functions of Elicitation Strategies

This section discusses the function of the elicitation strategies that were employed by counsels during cross-examination. In all, six main functions of

elicitation strategies used by counsels during cross-examination were identified: constraining witness/defendant's responses, discrediting witnesses and their testimonies, luring defendants and witness, confusing defendants and witnesses, stamping their authority and seeking confirmation to their proposition.

To constrain witnesses/defendants' responses

In enacting power asymmetry in the courtroom, counsels try to control the type of responses they expect witnesses and defendants to give. In order to put a tight rein on witnesses/defendants, counsels expect yes-no or short responses from them. The most potent weapon often used by counsels to achieve this feat include question tag, yes-no questions and complex sentences.

The use of yes-no questions is meant to constrain the responses of defendants and witnesses as exemplified in (4) and (5) on page (72). Owing to the coerciveness of this type of question, a narrow range of answers – either yes or no is preferred. This is affirmed by Fuller (2003), who asserts that yes-no questions give a narrow range of possible answers and this, she argues ranges from simple yes-no reply to that which is easy to deny. The following extracts which are follow-ups to Examples (4) and (5) on page (72) illustrate counsels' preference for yes-no responses.

(22)C: You are a very experienced agent so please tell the truth, now I repeat the question, that area inside the port are you telling this court that that place is earmarked by GHAPOHA for APS alone?

R: It is earmarked for delivery of truck and other moveable vehicles for handover to the respective agent for final delivery.

(23)C: I am putting it to you that your client imported the vehicle because he wants to sell the vehicle?

R: That is correct”.

(24): Apart from APS are there other stevedore operators in the port?

R: Yes.

(25)C: Can you name at least one

R: Express Maritime is one of them.

(26)C: And these other stevedore companies if they discharge vehicles they also use the same place?

R: Yes.

(27)C: From your experience is it that at any particular point in time you can have vehicles on that area having been discharged by different stevedore operators all put at that same area?

W: Yes. (Extracts 22 to 27 taken from (COC: SN. OCC16/07; 12/03/2008)

The responses to examples (4) and (5) on page (72) and Example 22 flout the maxim of quantity which forbids speakers from giving information more than what is required. In the cases under investigation, the witness intentionally opts out of observing the convention of courtroom discourse by indicating his unwillingness to cooperate, a situation that Grice (1975) and Fairclough (2001) refer to as resistance. The response to (23) is closer to what the counsel expects, but he is not yet satisfied and so several follow-up questions are asked until

defendant is coerced into giving “yes” responses which finally satisfied the counsel. From the interaction between the counsel and the witness, it is clear that by asking a yes-no question in (4) on page (72) the counsel expected a “yes” to his question and since such an answer was not forthcoming, he persisted by repeating the question. Similarly, the preferred answer to question (22) was not given and so, the counsel becoming slightly agitated repeated the question again: *“I am putting it to you that your client imported the vehicle because he wants to sell the vehicle?”* And the response is *“That is correct”*. Still hoping to get the preferred answer, a follow-up to the last question elicited the preferred response. Repetition of the question several times is an indication of power and dominance. By having the question repeated, the witness gave the preferred answer and this confirms Richman’s (2002) assertions that the counsel makes the witness go back over some of the terrain covered during direct examination, forcing the witness to concede "facts" inconsistent with the previous narrative.

Question tags are also used to constrain respondents’ responses, as shown in Example 30 below.

(28)Q: *She was on her way to the farm when you assaulted her, wasn’t she?*

R: *No. (HC: SN. BI.13/2010; 17-06-10)*

In the example above, the counsel manipulates the witness’s response through the statement that preceded the tag. And as can be seen, the response is simply “no”. Example (28) shows how the counsel tries to constrain the defendant’s contribution by way of direct attack “She was on her way to the farm when you assaulted her” then he asked for confirmation “wasn’t she?” Here, the

counsel displayed power and authority, showing that he controls the discourse. This is evident in the manner in which he chose to put the question across. We could see a deliberate violation of the maxim of manner in the way the question is framed which leaves the defendant with no option rather than replying yes or no. If, on the other hand, the question had been *Where was she when you assaulted her?* Then the defendant would have had the opportunity to give a further explanation. Here, the counsel decided to opt out of observing the maxim of manner through his unwillingness to apply it. He does this in order not to leave room for evasiveness or lengthy narrative; perhaps the counsel might have thought that putting the question in a different way might not elicit the desired response from the defendant. If for instance, he decided to ask the question this way: “What did you do to her on the way to the farm?” the defendant will be able to give a lengthy answer without really giving the desired response.

To discredit witnesses/defendants

One other function that the elicitation strategies employed by counsels perform is that of discrediting the witness so that his or her testimonies will not be looked upon favourably by the judge. They often do this through the use of complex sentence patterns which are heavily-laden with embedded clauses such as the examples below

(30)C: *I put it to you that you are a suborned witness. (CRC: SN. LS.28/93)*

(31)C: *And that the vehicle you handed over the defendants was not the vehicle he had bargained for. And that you told untruth about the vehicle to the*

defendants with the assistance of Eddy Kofi. (COC: SN. RPC/292/07; 12-05-2009)

(32)C: Your evidence here that the defendant has frustrated you from developing the land is false. (CRC 1, Cape Coast; LS21/2002; 20-8-2009).

Dominance and control of witnesses and defendants are enacted through enhancing their negative properties by syntactic means, for instance, in highlighting their guilt. In Examples (30) a case between MR X(D) and MR X(E) over a piece of land and (31) a case between MR X(F) versus MR X(G) over a dishonoured cheque, there are deliberate attempts to highlight agency “you” as deceitful, and a liar, thereby, tarnishing their reputation and bringing out their guilt. The second clause in (30) *that you are a suborned witness is attributed to the agent “you”* who is being accused of having being hired to come and testify falsely before the court. Here, the witness is referred to in topical position of the clause and not as implicit agent or in passive sentence in which agents are de-emphasized, but in active voice where he is portrayed as reprehensible, deceitful and guilty. Again, since the verb “is” that controls the noun phrase *your evidence here that the defendant has frustrated you from developing the land* is a relational one, the complement “false” is attributive and, therefore, refers back to the defendant’s evidence. By implication, the counsel is accusing the defendant of telling a lie. As in (30) and (32), in almost all the relational clauses found in the data, the attribute is assigned to the witness or a statement made by him and the attribute is normally derogatory.

By so doing, counsels are casting doubt on the truthfulness of defendants and witnesses' testimonies; what van Dijk (2006) calls "negative character representation". The counsel's elicitation strategy takes the form and format of ideological discourse which van Dijk (2006) described as "emphasizing our good things and emphasizing their bad things" (p. 360). This act is an indirect way of the counsel calling on the judge or jury to disregard the witness's testimony as untruth. This is in line with Nations' (2011) assertion that one goal of cross-examination is to prejudice the opponent's case. By so doing, the counsels have blatantly opted out of discourse as via their methods of elicitation which flouted Grice's maxim of manner and which emphasizes the need to be orderly. By throwing decorum to the wind and attacking the integrity of witnesses, counsels fail to fulfill their part of the bargain stipulated by Grice whose cooperative principle is to ensure that communication is carried out in a maximally efficient, rational, co-operative way.

To lure witnesses/defendants to confession

Subtlety of ideology often takes the form of cognitive manipulation where counsels try to elicit preferred responses from witness through deception. This is one of the functions that counsels' elicitation strategies tend to achieve. When counsels are confronted with hostile witnesses or defendants and it is obvious that these may refuse to cooperate, they try to resort to deceptive means to obtain their preferred responses. One strategy that stands out in the data is trying to be friendly and speaking in a manner devoid of accusation as exemplified below:

(33)C: So after that meeting, after you had accepted that monies had been mistakenly paid, you then like a true Christian wrote to the bank admitting that and proposing a payment plan? (COC, BFS 292/08).

(34)C: But in this case all that we are saying the report says is that all internal organs are well perfect. (HC, KC/15, 09; 4-7-2009)

At times counsels disguise the motive for seeking information from witnesses in order to elicit the preferred responses. So, they feign friendship with the witness and try to win his or her trust, a strategy that has the potential to make the witness or defendant lose guard. In Example (33) for instance, a case of fraud involving XY (K) and MR X (P), the counsel interacted with the defendant like a friend and pretended to downplay his guilt by reminding him of being a true Christian. This no doubt may have a soothing effect on the defendant who may not be aware that the counsel is trying to lure him to give a confession. The defendant might not be aware of the counsel's motive otherwise, he would refuse to cooperate with him, thereby breaking the chain of power inequality. This is in consonance with Fairclough (2001) who posits that: "If one becomes aware that a particular aspect of common sense is sustaining power inequalities at one's own expense, it ceases to be common sense and may cease to have capacity to sustain power inequalities i.e. to function ideologically" (p.71).

This quote shows that if defendants and witnesses know where a seemingly harmless conversation with the opposing counsel will lead them, they will be on their guard. Example (34) may give one the impression that the counsel is just passing a comment that may go unnoticed. There is need to take note of the

use of the pronoun 'we' which denotes inclusiveness. The counsel perhaps used it to appeal to comradeship in the defendant as if extending a hand of friendship to him; a device intended to make him relax and lure him to divulge information that will go against him. This is because the workings of ideology are most effective and successful when they are invisible to the other party in the discourse. And just as Fairclough (2001) noted, such "invisibility is achieved when ideologies are brought to discourse not as explicit elements of the text, but as the background assumptions (p.71). This shows that information that are provided by counsels during cross-examination may appear to be devoid of the aggression and force which often characterize assertions and accusations, but may be equally devastating. This is because it may be difficult for a witness or defendant to determine the extent that cross-examination could go. A practicing lawyer in Cape Coast, who was interviewed, referred to this as 'cross-examination being at large'. He asserts that it is difficult for a witness to know where a counsel may be heading during cross-examination and this is in line with the workings of ideology. This is confirmed by Wodak (1987) who argues that manipulation recipients are unable to understand the real intentions or to see the full consequences of the beliefs or actions advocated by the manipulator, especially when the recipients lack the specific knowledge used to resist manipulation.

To confuse witnesses/defendants

One other function that counsel's elicitation strategies perform is to use complex sentences to attempt to confuse witnesses and defendants so that they give contradictory responses that. The examples below illustrate this:

(35)C: *I put it to you that your evidence that Sikayena gave the property to Stella De-Graft Duncan is also false*

R: *It's correct. (CRC, LS21/02; 20-8-2006).*

(36)C: *Your evidence here that the defendant has frustrated you from developing the land is false.*

R: *It's correct. (CRC, LS21/02; 20-8-2006))*

In examples (35) and (36) a case involving several parties who are laying claim to a property left behind by a deceased relative cited on page 78, the counsel deliberately attempts to confuse the witness. The strategy used by the counsel to elicit information from the witnesses violates the maxim of manner among which states that the speaker should speak in such a way as to avoid obscurity of expression. The fact that the counsel chose to bury an embedded clause *that Sikayena gave the property to Stella De-Graft* within another embedded clause *that your evidence* is a deliberate attempt to obscure the message he is passing on to the witness; an indication of obfuscation of meaning and what van Dijk (2006) refers to as negative manipulation. This deliberate attempt to obfuscate the meaning of his message is one of the counsel's ploys to confuse the witness so that he will give contradictory response that will adversely affect his testimony.

The implication of this type of structure is that witnesses and defendants are bound to be confused and that is exactly what has happened.

The witness's confusion is evident in his responses to Examples (35) and (36) in which instead of disagreeing with the counsel's proposition by saying 'it is not correct', he rather affirmed it by saying 'it is correct'. This is surely as a result of what van Dijk (2006) refers to as "Illegitimate hindering or biasing of the process of discourse comprehension" (p. 366). He explains that this takes place when efficient understanding of discourse process in our short-term memory is hampered and when a speaker intentionally uses complex syntax, abstruse lexical items and many more difficult operations. On the other hand, less complex syntax favours understanding and this, no doubt, accounts for the confusion displayed by the witness in his responses.

To establish counsels' authority

One variable that determines unequal power relations between two participants in a discourse is the ability of one of the parties to issue commands while the other complies and the ability of powerful participant to display knowledge that the less powerful one lacks. The examples below are evident of this assertion.

(37)C: Tell this court the name of that family she belongs to.

R: Anona family. (CRC, LS.21/02; 24-10-2006)

(38)C: Look at exhibit A is the plot No. on the exhibit 2

R: Yes, plot No. 325. (CRC 16, C1/13/09); 2-3-2010).

(39)C. *I am putting it to you that the wound you saw in the picture was caused by a cutlass that was swung heavily. HC: SN. BI.13/2010; 17-06-2010)*

In order to make their authority felt, counsels may issue commands and make strong assertions. Examples (37) and (38) above show that counsels have the power to issue commands while defendants and witnesses are obliged to comply with these orders. In Example (37), the addressee, the witness, is the compliant and in the response, he did as was ordered by telling the court the name of the family that she belonged. Here, the relationship between the counsel and the witness can be likened to that of master-servant or parent-child or better still, teacher-student relationship. The call for action by the counsel signifies power while the act of compliance signifies subordination, as Fairclough (2001) notes.

Another way counsels try to establish their authority during cross examination is through the use of complex sentences used to enact certain speech acts such as assertions. In ideology, one source of power is knowledge. In the courtroom, counsels exhibit power by virtue of their specialized training which places them among the “Symbolic elite” (van Dijk, 2006). Counsels use assertions to stamp their authority, as is demonstrated in example (39), a case of murder cited on page 82 in which the counsel show that he has knowledge of how cutlass inflicted wound looks like. He is not asking the defendant to tell the court whether the wound he saw in the picture is as a result of a cutlass that was swung heavily or whether it was accidental.

The counsel rather makes an assertion, showing to the defendant that from his previous knowledge about wounds inflicted by cutlasses, the wound in the

picture may not have been an accidental cut which could have been a surface cut or only a scratch, but it is as a result of a calculated and intentional cut which in his opinion was a deliberate act. Assertions resemble epistemic modality in that the speaker makes an assumption based on prior knowledge. By making assertions, counsel tries to prove to the defendant or witness that he is more informed than the witness could imagine. This is enough to unnerve and intimidate the witness to the extent that his testimony before the court can be affected negatively

To seek confirmation

One function that elicitation strategies used by counsels perform is to seek confirmation to counsels' proposition. This is achieved mainly through complex sentences and sometimes simple sentences, as shown in the example below:

(40)C: Then it is a fact that the disputed land is attached to this building where you live.

R: Yes, it is attached to it.

(41)C: These traders well have their wares right in front of the house.

R: Yes, it's correct.

Counsels' propositions are usually short stories that have been structured and reorganized by counsels doing the cross examination. They are witnesses or defendants' stories that have been hijacked by the counsel so that the witness or defendant no longer have the opportunity to tell his or her story, but rather becomes a respondent who is required to confirm or disprove the story.

Response Strategies

This section answers the second research question

What response strategies do defendants and witnesses adopt during cross-examination and what function do they perform?

This section is divided into two parts. In the first part, the response strategies employed by defendants and witnesses are described while the second part deals with the explanation and interpretation of these strategies.

Responses are indispensable pair to elicitions, especially in cross-examination. Since different strategies have been adopted by counsels to pin down defendants and witnesses in cross-examination, so also, defendants and witnesses have adopted different strategies of responding to these elicitions in order to wriggle themselves from the trap set by counsels. Altogether, 16 types of response strategies were identified in the data as is shown in Table 2.

Table 2: Response Strategies in Courtroom Cross-examination

Strategies	Frequency	Percentages(%)
Explanations	914	29.6
Denials	155	5.0
Narratives	76	2.5
Compliance	24	0.8
Polite agreement	271	8.8
Polite disagreement	85	2.7
Affirmative/ agreement	725	23.4
Non-affirmative disagreement	249	8.1
Refutals	112	3.0
Counter assertions	208	6.7
Counter questions	34	1.1
Evasiveness	39	1.3
Non-committal statement	94	3.1
Appeal to the failure of memory	37	1.2
Appeal to ignorance	67	2.2
Total	3092	100

Offering explanation

The most common occurring response strategy is the offering of explanation which represents 29.6% of the data set. In discourse, giving information or explanation could be bi-directional. Information can flow from top

to bottom as from a powerful participant to a less-powerful one who is providing information based on some special knowledge he or she possesses which the other party do not have (Fairclough, 2001). It can also be from bottom to top as from a subordinate offering information or explanation in response to questions asked. The data revealed the latter which shows that witnesses prefer to offer explanation to elicitation from counsels during cross-examination as demonstrated below:

(42)C: How did you know when work was to proceed?

R: We were given forms by the client, Zain, which we tendered in the evidence at the last hearing. (COC: SN. OCC/30/08, 21-12-10)

(43)C: My question actually is, was there a written contract or any form of documentation telling you what you ought to do?

R: As I said earlier, we were not given any written documentation but we were amply briefed and given these forms to undertake the assignment. (COC: SN. OCC/30/08, 21-12-10)

Excerpts (42) and (43) culled from a case between XY (G) and XY (H) over a piece of land, clearly show that witnesses and defendants prefer to give explanations as against single-words or short responses often favoured by counsels. In this case, defendants and witnesses flout the Grice's principle of quantity in communication because they tend to give out more information than is required, an act that hinders successful communication (Celce-Murcia & Olshtain, 2000).

Narratives

One form of responses given by witnesses or defendants in the data set is narrative. Narratives are given by defendants and witnesses in order to state their own side of the story without counsel's interference. They are ways counsel, especially the opposing party, wish to momentarily relinquish control by letting them (defendants or witnesses) tell their own stories (Lind & O'Barr, 1979). They tell their stories as subordinates who are trying to impress on the judge or jury their innocence by presenting a story that helps to bolster the credibility of their testimonies and their own integrity, thus, seeking to win the sympathy of the judge. The following is an example drawn from the case between MR X (D) and MRS X (B) over a land dispute.

(44)C: *I suggest to you that one Kobina Yeboah was appointed caretaker after death of 2 (two)?*

R: *I remember Kobina Yeboah sent for me and my brother Dechi and asked me if he had been invited home, what was he to do. Dechi then informed him that he was caretaker of the house and room he had come to occupy being Ato Ahoma's room contained the documents covering the four land so he was to search for same and give same to Dechi. Dechi then inform him that the family would formally tell him what he was to do and we also told Dechi that he found the documents the very day he arrived and they were on the table. (CRC: SN. LS 28/93)*

Not only do narratives enable witnesses or defendants the opportunity to state their case, but it also provides them a leeway to be evasive. Example (43),

for instance, shows that the witness is trying to evade answering the question directly. The question that was asked by the counsel requires either a confirmation or denial for an answer, but this witness failed to respond appropriately, by flouting Grice's maxim of quantity, which demands that a speaker's contribution to successful communication should not be more informative than is required, the witness preferred to give a long narration. Perhaps his reason for doing this is either to confuse the counsel and judge or to make them lose track of the main point under investigation.

Compliance

Another form of response that the data yielded, even though its occurrence in the data set is quite small (0.8%), is compliance. One characteristic of superior-subordinate relationship and a property of ideology is the ability of the powerful participant in a discourse to issue commands or orders and for the subordinate to carry out this order (Fairclough, 2001). Here are a few examples of compliance as a form of response.

(45)C: Could you show from the exhibit that is exhibit D which found APS liable?

R: Yes, (reads exhibit D). (CRC: SN. OCC16/07; 12-03-2008).

(46)C: Now take a look at this document.

R: Witness looks at the document. (CRC: SN. OCC16/07; 12-03-2008).

Compliance as a form of non-verbalized response shows the complier's willingness to be subordinate to the person giving the order as exemplified in (45)

and (46) above, a case of stolen items. In both cases, the witness carried out the orders of the counsel.

Polite agreement

Polite agreement, which recorded 8.8% in the data set, is a strategy used by defendants and witnesses to show that they agree with certain propositions that are put across by counsels during cross-examination and in doing so, most often, they respond in the affirmative by saying ‘yes’ or ‘it is correct’ or ‘it is true’. At other times, they answer in the affirmative and add a courtesy marker ‘please’ or ‘My Lord’, as observed in the excerpts (47 & 48) below drawn from a case of stealing involving “R” versus MR X(Q).

(47)C: Aikens in his statement said that he had acquired the land on ebusua sharing bases is that not the case. (CRC: SN. CC7/82/07; 20-08-2009)

R: Yes, my lord.

(48)C: Now were you told the family was a Royal family in your investigation did it come to fore that the family was a Royal family?

R: Yes, my lord. (CRC: SN. CC7/82/07; 20-08-2009)

Here, witnesses acknowledge the fact that all their responses must be directed to the judge and so they recognize the need to address him “My Lord” or “My Ladyship”. Two forms of affirmative statements were identified in the data: those that have the honorific title “My Lord” as a tag and those without the honorific title. The latter is discussed under resistance.

Polite disagreement

Polite disagreement recorded 2.7% of the data set. Like polite agreement, they are responses that show that the defendant or witness does not agree with the counsel's proposition, but this disagreement is done in a polite manner. The following examples culled from the trial case between XY (A) and XY (B) over non-payment of contract sum testified to this:

(49)C: Mr. Amankwah, to the extent that on the 22nd of February, 2010, the project manager wrote to De Simone Ltd in respect of the same defects of sprinkler heads that had not been rectified are you aware?

R: No, my lord (COC: SN. RPC246/09; 14-06-10)

(50)C: Would you agree with me that all this while you have been acting on mistake as regards to Implex Projects?

R: No, my lord (COC: SN OCC16/07; 12-03-08)

Defendants and witnesses also succumb to the bullying of counsels through polite disagreement such as the statement: "No, my lord". In Examples (49 and (50), both respondents are being reprimanded for carelessness in the discharge of their duties, yet, their responses do not show that they were angry and disrespectful. They humbly answered by saying "No, my lord".

Denials

The use of denials as a response strategy represents 5.0% of all the responses identified in the data. Denial is the act of asserting that an allegation is not true. Denials can also be a sign of powerlessness. This is because in an

interaction, the less powerful participant will want to deny an allegation in order to avoid punishment from the more powerful one. Hence, there is the need to tell a lie in order to avoid negative consequences of one's action. In the courtroom, when counsels launch attacks on the integrity of the defendant or witness, the reasonable thing to do is to deny the allegation.

(51)C: When this incident was started by A1 it was you who kicked the complainant down? (CRC: SN. D8/44/04; 10-06-2004)

R: It's not correct.

(52)C: Take a look at this letter; has De Simone received this letter?

R: I have not seen it before (COC: SN. RPC246/09; 14-06-10)

In Example (51) a case of assault involving MR X(M) versus MR X(N) who is being accused of kicking the complainant. This accusation, if proved to be true, will certainly attract some form of sanctions. So, in order to avoid the punishment, the accused denied the allegation. Although, witnesses are expected to give only truthful testimonies, counsels too are expected to observe the maxim of quality by making allegations that are based on the truth and not on hearsay or assumptions.

Counter-assertions/questions

Counter-assertions are statements made by defendants and witnesses to counter the assertions and accusations levelled against them by counsels during cross-examination. Their intention is to absolve themselves of these accusations

as shown in (53), a theft case between MR X(N) versus XY(I) and (54), a fraud case between “R” versus MR X(O).

(53)C: Accused has not stolen any money from the said cabinet.

R: He stole. (HC243/08; 16-8-08)

*(54)C: You did not take part in the exercise which resulted in the production of
The Report Marked Exhibit B.*

R: I took part and I was part of the team. (CRC: SN. D2/72/2005; 08-07-2005).

Counter-assertions, with the occurrence rate of 6.7% in the data are viewed as defences against counsels’ elicitation strategies which are designed as weapons meant to incriminate witnesses or defendants. As one of the witnesses interviewed stated, “when you are accused by counsel, it is as if your whole credibility crumbles beneath you and so the reasonable thing to do is to fight back by countering the statement made by the counsel”. This confirms Gibbons (2003), who argues that only minimal co-operation can be expected on the part of the witness as counsel is trying to discredit his/her testimony. So, the vivacious nature of cross-examination does not call for any gentility on the part of both parties. As Heward-Mills (1988) states, both parties do all they can to outdo the other.

Refutals

One other strategy employed by defendants and witnesses in this study is refutals. Bloomsbury (1999) defines refute as: “To deny an allegation or contradict a statement without disproving it or to prove something to be false or

something to be in error through logical argument (p. 1580). In the data set, 3% of all response kinds used by defendants or witnesses are refutals as is shown in extract (55) and (56) culled from a suit involving “R” and MRS X(E) over a theft case .

(55)C: *Did you indicate in your statement that accused’s husband sends items down and at times she give some to you?*

R: *I did not say that. (CRC: SN. CC7/22/2009; 10-03-2009)*

(56)C: *I put it to you that you stated accused has given you stolen items?*

R: *I did not say that. (CRC: SN. CC7/22/2009; 10-03-2009)*

In the examples above, the witness refuted the counsel’s accusations by saying “I did not say that”.

Affirmative /non-affirmative

The monosyllabic word - the affirmative ‘yes’ with its variants ‘it is so’, ‘correct’, ‘that’s true’ and ‘that is correct’ occurs several times in the data representing 23.4%. This indicates that counsels expect a confirmation of their proposals or question with a ‘yes’ response as is evident in the following examples drawn from a theft case between MR. X(K) and “R”.

(57)C: *You are aware that AI works under A2.*

R: *Yes*

(58)C: *You know that by way of administrative procedure AI takes instructions from A2. (Both from HC/134/10; 23-9-09)*

R: *Yes*

The affirmative response, mostly preferred by counsels, is seen as one of the most potent weapons they can use to pin the unwary defendant or witness who may not have fully grasped the demands of a question asked, but may respond yes to tricky questions when indeed he meant no. The affirmative ‘yes’ found in the data appears to be performing two functions – (1) the confirmation of a proposition which could signify subordination and (2) as a means of resisting assertions and accusations. The examples above show that in all cases, the prosecutor is seeking confirmation from the witness who in turn supplies the answer yes. This is in agreement with Connor-Linton’s (as cited in Penz, 1996) claims that yes or no answer indicates that one of the participants of the conversation has more power than the other.

Disagreements/affirmatives without the politeness markers indicate resistance, as is exemplified below:

(59)C: I am suggesting to you that the defendant completed, fixed the locks and hitches from own evidence?

R: No, so far I said he fixed 22 instead of 33. (COC: SN. RPC401/2009).

(60)C: And therefore the defendant in this matter does not owe the amount endorsed on the writ of summons which the amount is \$516,061.65 to De Simone?

R: I don’t agree to that. (Both from COC/215/10; 27-6-10).

The examples above indicate witnesses’ unwillingness to allow counsels to intimidate them; thus, their disagreement over the various propositions put forward by counsel. It is certainly only someone who is an equal that can make

such strong statements as those in Examples (59), a case in which the plaintiff, MR X(L) seeks to claim the sum of 7,000 Ghana cedis from the defendant, XY(G) over its inability to deliver work contract to him. Also in (60), a case between XY (A) and XY(B), the witness's response, "I don't agree to that" like that in (59), suggests resistance rather than subordination; as witness refuses to address the judge properly thereby failing to acknowledge his/her authority.

Appealing to ignorance

Claiming to be ignorant of some of the issues being debated is one form of responses that defendants and witnesses employed in the data analyzed as can be seen in the examples (61) and (62) culled from a case in which the plaintiff, XY(J) is claiming damages from the defendant, XY(K) for wrongful termination of contract.

(61)C: I am putting it to you as a matter of business that So Energy in agreeing to let Dee's and Dee run the Ring Road Service Station without paying a deposit was its way of solving all the issue coming from Ashalebotwe.

R: I have no idea about this. (COC: SN. RPC/190/09; 08-07-2010)

(62)C: As we speak today, Dee's and Dee has not written to So Energy to say that you are no longer representing them, I'm putting that to you.

R: I don't know about that. (COC: SN. RPC/190/09; 08-07-2010)

Examples (61) and (62) show witnesses' response and in all cases, they claimed ignorance of the issues at stake.

Appealing to the failure of memory

Also used strategically, is the response form which enables defendants and witnesses to appeal to the failure of their memory. This strategy, which counsels find to be problematic, occurred 37 times (1.2%) in the data. This is the appeal to the failure of memory, as is exemplified in the examples below:

(63)C: In your evidence you said you had discharged goods in accused's house on eight occasions. Tell the eight occasions?

R: I cannot remember the 8 dates but I remember that of July. (CRC: SN. CC7/22/2009; 10-03-2009)

(64)C: You failed to say someone hit the face of PW1 in your evidence-in-chief.

R: I forgot. (Both extracts from HC/65/09; 25-8-09)

The two examples above indicate defendants' and witnesses' unwillingness to sometimes cooperate with counsels as they both claimed that their memory failed them. Sometimes, it may be difficult to determine the authenticity of this claim as it could be that witnesses are either lying or telling the truth. In (63) and (65) below, a case of theft involving the "R" and MRS X(E), the witness claimed he could not remember the eight dates but remembered that of July.

Evasiveness

Another response strategy identified in the data is evasiveness. As exemplified below, defendants and witness resort to being evasive in their

response to questions asked. Example (65) a case of stolen items show that the witness is not willing to give a straight-forward answer.

(65)C: It is a fact that the evidence you gave to the court is different from what you gave to the police?

R: I was not asked. I was asked questions and I answered them.

(66)C: So in short you want this court to understand that you are giving evidence as the lawful Attorney for the said medical doctor.

R: He stated in his letter, I have a copy here that the nature of this work will not make it possible for him to come down that is why he asked me to be present on his behalf. (Both extracts from HC/230/09; 23-1-10)

Examples (65) and (66) show that the witnesses were determined not to give a yes or no answer to the questions asked.

Non-committal statements

In order not to incriminate themselves, defendants and witnesses also choose to give responses that are non-committal, as shown in the examples below.

(67)C: So I am suggesting to you that the bags belonging to the plaintiffs were tampered with in New York before they got to Ghana?

R: My lord, I cannot confirm no deny.

(68)C: So you are not in the position to tell the number of hours that the plaintiff has to stay?

R: I am not in a position to tell. (Both extracts from COC 67/09; 4-1-09)

Closely related to evasiness are non-committal statements that are given by witnesses or defendants as is shown in Examples (67) and (68) is a suit over missing items aboard an airline between MRS X(F) versus XY(L). In (67) the respondents claimed she was not able to confirm or deny the counsel's allegation of some bags that were tampered with in New York before they got to Ghana. As the manager of the airline in Ghana, one would expect that she would have conducted her investigation to know whether the allegation was true or not, but she decided to play it safe by not confirming nor denying it. In this case, it would be impossible for her to be implicated in the case.

Functions of Response Strategies

Each of the 15 response strategies employed by defendants and witnesses are used to perform various functions such as submitting to counsels' control, resisting power and avoiding self-incrimination as shown in Figure III below.

Response Categories in Courtroom Cross-Examination

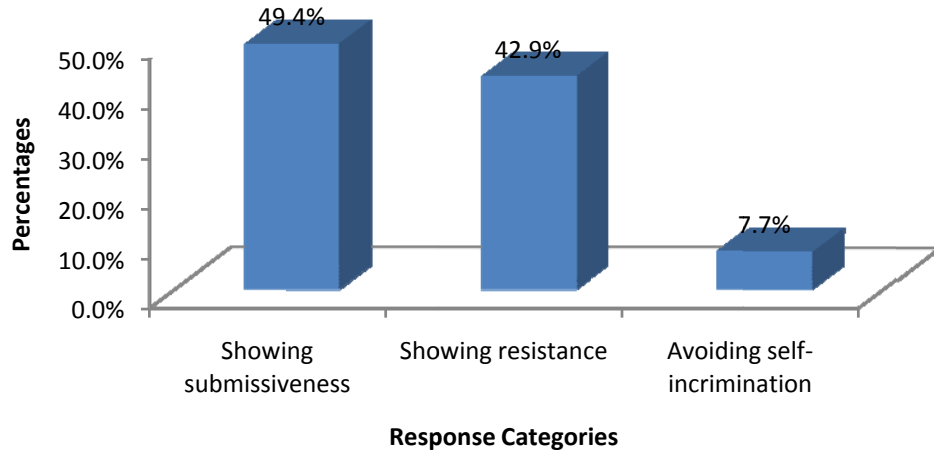


Figure III: Response Categories in Courtroom Cross-examination

To show submissiveness

One function of the defendants and witnesses' responses in the data analyzed is that they position them in the subject position and presents them as submitting to counsels' control. Fairclough (2001) defined subject as someone who is under the jurisdiction of a political authority, and hence passive and shaped (p.32). In cross-examinations, witnesses and defendants try to reproduce aspects of social structure internalized in their member resources which tend to shape the amount of information that they should give. As revealed in the data, witnesses take advantage of certain situations to give out more information than is required because they want to as much as possible state their case so as to win the

sympathy of the trial judge as is exemplified in Examples (69) a case of default in paying contract sum.

(69)C: *Was that invoice ever raised to the employer for payment?*

R: *No, my lord. I said earlier on that this certificate was given to us to raise this invoice for payment, then there was this attachment of an email saying there is an over payment therefore this invoice that we have to raise to claim this amount is neither here no there and to raise to claim this come in and we didn't understand because it was a big surprise to us because after the preparation of the final accounts, it had been signed by all parties including intercity and then the project manager had gone ahead to issue part of the amount due the contractor where you have to raise our invoice and then this attachment came. So that is where there was a deadlock that we could not raise the invoice .*

(70)C: *Now please tell this court so what exactly did you do? (HC, FBS/154/09; 27-5-2009).*

As is noticed in Example (69), the counsel asked a question that demanded yes or no as response. The witness gave the preferred answer “No my lord”, but went on to give a long, windy narration of disjointed incidences with irrelevant details. These unwarranted details prompted the counsel’s second question *Now please tell this court so what exactly did you do?* Grice (1975) has claimed that for communication to be successful information should be given in the right quantity and it must be relevant to the issue at stake. Similarly, Clark et al. (1996) hold that compliance with the maxims of quantity and manner would demand that

speakers produce minimal and non-ambiguous expressions. Narratives are avenues where defendants and witnesses are given opportunity to state their own side of the story without counsel interference. They are ways counsel, especially the opposing party, wish to momentarily relinquish control by letting them (defendants or witnesses) tell their own stories (Lind & O’Barr, 1979). They tell their stories as subordinates who are trying to impress on the judge their innocence by presenting a story that help to bolster the credibility of their testimonies and their own integrity.

Another form of response strategy that positions the defendant and witness in a subordinate position is polite agreement and disagreement as shown in examples (72) drawn from a case involving the supply of sub-standard goods between XY (L) and MR X(P).

(71)C: You said when you last gave evidence in court you admitted and if I may read to this court that the architectural drawings you presented were not of the best quality? (CRC, RPC 435/09; 18-5-2010).

R: Yes, my lord.

(72)C: Would you agree with me that all this while you have been acting on mistake as regards to Implex Projects?

R: No, my lord (COC: SN. OCC/31/08)

Polite agreement or disagreement with the politeness marker such as “please” and the honorific title “My Lord” not only confirms or denies counsels’ propositions, but they also indicates total submission to the authority of the court which is headed by the judge. Erikson et al. (1978) classify “please”, “thank you”

as characteristics of what they call “powerless style of speaking” (p. 267). They argue that some of these courtesy markers occur in the speech of lower-power witnesses.

Example (71) above shows that even though the defendant is being reminded of a shoddy architectural work he had done, in his humility and acknowledgement of the judge’s presence, he still attaches ‘my lord’ to his response. In the same vein, Example (71) the defendant also had the courtesy to add “My Lord” to his response even though he was being indicted for making mistakes in all the transactions in relation to Implex Project. These instances indicate that witnesses and defendants submit to the control and dominance of counsel in the courtroom, especially during cross-examination; thereby construing complicity and reciprocal power relations (Foucault, 1979) and therefore, accepting their positions as subordinates on the court’s hierarchy. Fairclough (2001) refers to them as social subjects who are “passive and shaped” (p. 32). Alvermann et al. (1977) also refer to this as discursive practice which involves spoken and unspoken rules and conventions that govern how individuals learn to think, act, and speak in all the social positions they occupy in life.

Also showing the acceptance of defendants and witnesses as subordinate in the discourse of cross-examination is the fact that they often deny allegations levelled against them by counsels.

(73)C: *It is a fact that you had promised the PW1 in the presence of the police that you are going to be a witness for the complainant?*

R: *I never gave a promise. (CRC/35/10; 24-3-10)*

(74)C: When this incident was started by A1 it was you who kicked the complainant down?

R: It's not correct. (HC/254/09; 16-7-09)

Co-equals would not simply deny such allegations, but would be furious. In Example (73), the witness reneges on his promise to testify on behalf of PW1. (see Appendix for key to PW1). When confronted, he denied ever giving any promise. Also, in (74), the accused person is being accused by the counsel of having kicked the complainant. This accusation, if proved to be true, will certainly attract some form of sanctions. So, in order to avoid the punishment, the accused denied the allegation.

Also, by complying with the orders or the counsels, defendants and witnesses acknowledge and submit to the authority and control of counsels as is demonstrated in Examples (45) and (46) on page 97 and 98 respectively.

To resist counsels' authority

Next, resistance is used as a means of trying to balance the unequal power relations among the participants in a discourse. Fairclough (2001) states that power and resistance are found together in all points of the web of power relations. Resistance, he further claims, works against power, and shift the tensions and creates new alliances and fractures. Fairclough (2001) states that power is not the prerogative of the more powerful participant in a discourse; rather, it is a shared property of all. Indeed, the vulnerable in a discourse also exercise power and they

do so in five ways: through the use of silence, ambiguity, incoherence, deviation and resistance (Fairclough, 2001).

From the data analyzed, it was observed that some responses given by defendants and witness constitute resistance. These are expressed in several ways such as countering assertions and accusations, refuting accusations and dropping politeness marker.

One way defendants and witnesses resist counsel talk in cross-examination is by countering counsels' assertions and accusations. The data showed that counsels make a lot of assertions and accusatory statements and they claim these are used as strategies to force witnesses or litigants to speak the truth. They accuse respondents in order to discredit their case; and as a result, litigants/witnesses also try to counter these assertions and accusations, with the intention of absolving themselves of the accusations levelled against them. Here are some examples:

(75)C: *Accused has not stolen any money from the said cabinet.*

R: *He stole.*

(76)C: *I am therefore suggesting to you that the disputed building had not been transferred by the executors to any person.*

R: *It is clear so I cannot answer.*

(77)C: *And your whole action of reporting is due to Eb. Kow Bediako all because of the land matter.*

A: *Not him. How could he do that? (CRC: 15/07)*

The examples above show that litigants and witnesses are not always cowered into submission by accusations and strong assertions made by counsels. In Example (75) which is a theft case. We observe that the witness gave a rebuff *He stole* to the assertion made by the counsel who claimed that the accused had not stolen any money from the cabinet. Also, in Examples (76) we notice counter-assertion made by the witnesses: *it is clear, so I cannot answer* to the assertions and accusations respectively. Similarly, in (77), the defendant asked a counter-question *How could he do that*. Asking a counter-question is an outright indication of resistance which shows that the defendant is defiant and has decided to dam the consequences of his/her behaviour. In all cases, it is clear that the counsel is trying to construct a different version of the witness's story and as Drew (1990) states, the witness may resist, and when this happens, the defendant may also decide to opt out of cooperating with the counsel by deliberately flouting the maxims of quality and quantity as he is required to be both truthful and to give the right amount of information respectively to aid the process of communication. In the two cases under review, the witnesses indicated their unwillingness to cooperate thereby resisting the counsels' powers and control.

Witnesses often refuse to add a courtesy marker to their responses when they are resisting counsel's allegations. They often respond either in the affirmative or in the negative by using the monosyllabic word 'yes' or 'no' with their variants 'it is so', 'correct', 'that's true' and 'that is correct' for yes and 'it is not so', 'not correct', 'not true' and 'not so' for no respectively.

(78)C: *You are aware that AI works under A2.*

R: Yes

(79)C: *You know that by way of administrative procedure AI takes instructions from A2.*

R: Yes (Both extracts taken from HC, SCC/83/09; 12-9-09)

In the courtroom, there are laid-down conventions which every participant in the discourse must adhere to (Gibbons, 2003). Foucault cited in Fairclough (2001) refers to such conventions as “orders of discourse” (p. 23). One of such conventions is the use of appropriate address terms for judges in the courtroom. Taylor (1993) claims that the courtroom is set up to enhance the authority of the judge or the system of justice he or she upholds. Being at the apex in the court’s hierarchy, the judge is addressed ‘My Lord’ or ‘My Ladyship’ by all present including the lawyers (Heward-Mills, 1988). The two examples show that the witness is not willing to acknowledge the authority of the counsel and the judge as he deliberately drops the honorific title “My Lord” in his responses. This is a clear indication of resistance stemming out of anger or frustration due to the type of elicitation strategy used by the counsel. One of the witnesses interviewed stated: “When counsels ask provoking questions or make strong claims and accuse you directly, you tend to forget that you are standing before a judge and you unconsciously retort by saying yes or no before you are aware of it”.

To avoid self-incrimination

In the course of trial, a defendant or witness may be faced with the dilemma of giving evidence that is likely to incriminate him or herself. Merriam-Webster Online Dictionary (2011) defines self-incrimination as the act of giving of testimony which will likely subject one to criminal prosecution. The need to avoid self-incrimination as stated in US Legal (2010) may be the reason why the 5th Amendment to the United States' Constitution made provision for the protection of individuals against self-incrimination. The amended clause states that no person may be forced to testify against himself. In the American Bar Association (ABA) Section of the Antitrust Law, witnesses and defendants are urged to affirmatively invoke this clause which they termed "fighting clause" in order to claim its benefit. The data for this study revealed that witnesses and defendants used various strategies to try to avoid self-incrimination. They lay claim to cognitive lapses and they also equivocate.

Laying claim to cognitive lapses

With regards to laying claim to cognitive lapses, the data showed that in most cases, defendants and witnesses refused to give an affirmative yes or no type of answers to questions asked by counsels. Rather, they appeal to ignorance and to the failure of their memory. Firstly, they sometimes appeal to the failure of their memory. Examples (80 & 81), a case of missing items are proof of this.

(80)C: In your evidence you said you had discharged goods in accused's house on eight occasions. Tell the eight occasions?

R: I cannot remember the 8 dates but I remember that of July. (CRC: SN. CC7/22/2009; 10-03-2009)

(81)C: How long thereafter the incident.

R: I can't remember. (CRC: SN. CC7/22/2009; 10-03-2009)

Sometimes, it may be difficult to determine the authenticity of claims as this because it could be that witnesses may be lying or they may be telling the truth as seen in (80) where the witness claimed he could not remember the eight dates but remembered that of July. Owing to the fact that much information that is not stored in the long term memory is easily lost according to Brown (1958), it may be true that the witness in Example (80) finds it difficult to remember all the eight dates and as Loftus (1975) explained, many memories occurring in everyday life involve complex, largely visual, and often fast-moving events. In Example (81), the defendant claimed he could not remember how long thereafter an incident took place. Again, it may be an attempt to tell a lie as his statement may be an after-thought and on the other hand, it may be that he is telling the truth. This is confirmed by the defendant interviewed by this researcher when asked whether he was sincere on the occasions he claimed he could not remember something. He responded by saying: "At times am sincere about the fact that I can't remember; at other times I lied. I lied because if I decided to say the truth about all I knew, then I would spoil my case". Appealing to the failure of memory is identified by Bijeikiene (2004) as a way politicians try to equivocate. So, apart from using it as a way of showing cognitive lapses, appealing to the failure of

their memory could be a way by which witnesses and defendants try to equivocate in order to avoid conflict situations that could lead to self-incrimination.

Another strategy often used by witnesses to avoid self-incrimination is appealing to ignorance. In philosophical parlance, appealing to ignorance is regarded as one of the fallacies of analogy. (Korcz, 2011) explains that the fallacy of appealing to ignorance occurs when someone uses an opponent's inability to disprove a claim as evidence of that claim being true or false. As a result, many witnesses and defendants resort to the strategy of appealing to ignorance as shown in the examples below.

(82)C: Since you were actively involved in sales of operation at a point in 2005, can you tell the court by volume, how many pieces of BG products were sold?

R: I have no idea. (COC OCC/31/08)

(83)C: Last year, that is from January to December of 2008, can you assist the court of the volume of BG products that you sold?

R: I have no idea.(COC OCC/31/08)

The extracts above involving a case of supply of sub-standard goods, show how a witness who had earlier on claimed he had been the sales assistant for a company known as Sardave for between 10 and 12 years and claimed he knew everything about the operations of the company, yet, claimed he had no idea about the volume of sales of one of their major products. The witness surely

knows that giving away information on the volume of sales would implicate his employer, who apparently is the defendant in this case and as a means of avoiding a conflict situation, he had to appeal to ignorance; knowing that there was no way the court could determine whether his claim was right or wrong.

Going by Grice's maxim of quantity and quality, and as confirmed by the defendant interviewed, it seemed that the witnesses quietly and unostentatiously opt to violate the maxim of quality intentionally perhaps for the purpose of escaping sanctions. Apart from some extreme cases where devices such as Functional Magnetic Resonance Imaging (fMRI) are used to detect falsehood in witnesses (Amaro & Barer, 2005), it is impossible for the counsel or judge to know if witnesses are lying. Appealing to the failure of memory and appealing to ignorance are identified by the courts as weapons used by witnesses to escape self-incrimination and the antidote to this, according to Richman (2002), is to call for an inquiry into such assertions.

Equivocating

The other way witnesses and defendants try to avoid self-incrimination is by equivocating. Bijekiene (2004) defines equivocation as an intentional avoidance of giving a straightforward reply. In a similar vein, Bavelas et al. (1990) explain equivocation as "nonstraightforward communication, which also appears ambiguous, contradictory, tangential, obscure, or even evasive "(p.28). They try to justify the reason why people are slippery and try to equivocate. Bavelas et al. (1990) also claim that a specific communicative situation makes a person equivocate. Namely, if in a certain situation all available alternatives of a

reply might have negative consequences, but a reply still has to be given, a person will try to say nothing “while saying something” (p.57), i.e. he or she will equivocate. They call such situation as avoidance-avoidance conflict. Defendants and witnesses are found to equivocate a lot by using different equivocation devices such as evasiveness and giving non-committal responses. These classifications are based on some examples of equivocation identified by Bijeikiene (2004), Bull (2003) and Bavela et al. (1990) who identified appealing to the failure of memory, evasiveness and non-committal responses respectively as ways politicians try to equivocate. Although these examples are based on political discourse, these classifications are also relevant to legal discourse because as Wodak (1995) points out, “Social phenomena are too complex to be dealt with only by one field” (p.206).

Witnesses try to evade responding to counsel’s questions as is exemplified below.

(84)C: It is a fact that the evidence you gave to the court is different from what you gave to the police?

R: I was not asked. I was asked questions and I answered them.

(COC, BDS/298/10; 23-6-10)

(85)C: Now take this statement, is this the statement you took from the complainant?

R: The complainant wrote the statement himself.

The responses given by the witness in examples (84) and (85) involving a case of stealing cited on page 109 are attempts by the witness to evade answering the

questions put before him, what Bavela et al. (1990) describe as non-straightforward communication. The response to (84), “I was not asked. I was asked questions and I answered” could be said to be a deliberate attempt by him to obscure the truth about the evidence he had earlier on given to the court. The purpose for doing this may be to avoid incriminating himself. This assertion is confirmed by the defendant interviewed by this researcher who claimed that the best way out of a difficult situation is to try to evade answering the question. He explained: “Evading an incriminating question is the natural thing to do when you are cornered. Otherwise, you may be committing a ‘legal suicide’.” This indicates that the witness has decided to opt out of the discourse by refusing to give the relevant response that is demanded by the counsel, thus failing to cooperate in the exchange.

Also, witnesses prefer not to commit themselves by saying something that will incriminate them and so they give non-committal responses, as shown in the examples (86 & 87) in a case of missing items aboard an aircraft.

(86)C: *So I am suggesting to you that the bags belonging to the plaintiffs were tampered with in New York before they got to Ghana?*

R: *My lord, I cannot confirm nor deny. (COC: SN. RPC303/2009; 25-02-2010))*

(87)C: *So you are not in the position to tell the number of hours that the plaintiff Has to stay?*

R: *I am not in the position to tell. (COC: SN. RPC303/2009; 25-02-2010))*

Closely related to evasiness are noncommittal statements that are given by witnesses or defendants. Bull (2008) equated noncommittal political discourse to Hamilton & Mineo's (1998) definition of equivocation which he gave as: "intentional use of imprecise language" (p.3). As is shown in examples (86), the respondent claimed she was not able to confirm or deny the counsel's allegation of some bags that were tampered with in New York before they got to Ghana. As the manager of the airline in Ghana, one would expect that she would have conducted her investigation to know whether the allegation was true or not, but she decided to play it safe by not confirming nor denying the allegation thus, trying to avoid communicative conflict (Bull, 2008). In this case, it would be impossible to implicate her in the case.

The discussion on avoiding self-incrimination shows that witnesses and defendants lay claim to cognitive lapses and they also equivocate. By so doing, they deliberately flout Grice's maxim of quality, quantity and relevance (that is by refraining from telling the truth about a matter, giving the right quantity of information and by sometimes giving irrelevant information). The justification for doing this may be based on the principle of Mental Reservation, a doctrine that was first introduced by St. Raymund of Pennafort, the first writer on casuistry (Knight, 2009). He was said to have quoted St Augustine that: "a man must not slay his own soul by lying in order to preserve the life of another" (p.7). In other words, the doctrine of Mental Reservation justify telling lies or withholding some truth, if telling the whole truth will be damaging to the speaker. Similarly,

Mawdesley cited in Knight (2009) claimed, “some witness will not state positive falsehood, but will conceal the truth or to keep back a portion of it”

In sum, it is clear that avoiding self-incrimination is one function of the response strategies that defendants and witnesses adopt in cross-examination. The purpose may be to avoid punishment that may come as a result of telling a ‘naked truth’ and so respondents try to employ different means of doing this. They try to be slippery by being evasive, by refusing to commit themselves, by claiming to be ignorant and by appealing to the failure of their memories.

Elicitation/Response Strategies and Power Imbalance

This section answers research question three: *To what extent does elicitation and response strategies used in cross examination promote power inequality in the courtroom?*

The issue of power imbalance has been at the fore-front of CDA and many of its proponents have agreed that one of the most devastating form of intimidation and oppression of the less powerful group in a discourse is fostered through embedded language of talk and text (Fairclough, 2001). This kind of power inequality has often led to dominance and control of the less powerful participants by the more powerful ones; especially so, in the discourse of courtroom interaction where legal professionals such as the judge and counsels, occupy the top echelon of the hierarchical ladder of authority. From their elevated position, they are able to wield great power and control over defendants and witnesses who are situated at the lower rung of the court’s hierarchy (Doty, 2010).

In cross-examination, the main actors are the counsels (prosecuting and defence) on one hand and the defendants and witnesses on the other with the judge acting as the director or umpire. Each of these actors contributes in different ways to promoting power inequality during cross-examination. The discussion of this section will be based on three main themes: power, subordination and resistance.

Power

The issue of power play was demonstrated in several ways such as through the elicitation methods adopted by counsels and control devices used by them to manipulate the responses of defendants/witnesses such as: formulation, repetition of question, enforcing explicitness of language and address terms.

Elicitation strategies and power relations

The enactment of power inequality is demonstrated in cross-examination through the elicitation strategies adopted by counsels. To begin with, counsel use various types of interrogatives to wield power in the courtroom and one of these is the declarative question which is most strategically used to limit witnesses' contribution (Jannery, 2002). This type of questions is asked not because counsels need to obtain information from witnesses or defendants; rather, they are often asked because they seek to control the respondents and make them confirm or deny a proposition which has been put across (Jannery, 2002). The declarative yes-no question is very apt in performing this function as it often provides foregrounding in the form of a declarative before the question is asked. The

following example on non-payment of contract sum cited on page 70 is an indication of this.

(88)C: *Mr. Amankwah, to the extent that on the 22nd of February, 2010, the project manager wrote to De Simone Ltd in respect of the same defects of sprinkler heads that had not been rectified are you aware?(COC: SN.RPC246/2009; 26/04/10).*

As can be seen, the question is power-laden as it shows that the counsel has thorough knowledge of the subject matter and therefore had fore-grounded his question by providing some background information before asking it. Knowledge about the letter that the project manager wrote to De Simone Limited is used by the counsel as a source of power. Here, counsel seems to be manipulating witness in his role as a member of “dominant collectivity” which is a discursive form of elite power reproduction that is against the best interest of the witness, the dominated one (van Dijk, 2006). As a member of “Symbolic elite” (van Dijk, 2006) who has access to scarce social resource (knowledge) referred to by Bourdieu (1988) as “Symbolic Capital”, the counsel is reproducing power inequality by portraying himself as having more knowledge than the witness could ever imagine that he has, thereby intimidating him (witness).

In example (88), the Gricean maxim of quantity is flouted because the counsel seems to be using his power which is in this case, his knowledge, to harm the witness by saying more than he should because the fore-grounded information has the tendency to intimidate the witness and that could be very damaging to him; an instance of domination and a sign of power. This position is held by

Gibbons (2003), who argues that the more information included in the question, the greater the questioner's control of the information, so the answerer can contribute less new information. This is in line with van Dijk's (1998) proposition power presupposes knowledge, beliefs, and ideologies to sustain and reproduce it which indicate that the counsel, as the most powerful participant in this discourse, is trying to coerce the witness into making submissions that only seek to confirm his proposition.

Dominance and power are also enacted in cross-examination through the use of question tags which are also considered to be one of the most coercive types of questions, and are very notorious for controlling the contributions of witnesses and defendants during cross-examination. Tag questions like declarative questions enable counsels to give evidence on behalf of witnesses and reduce witnesses to the role of minimal responders (Woodbury, 1984 p. 205; Berk-Seligson, 1999). The following example culled from a suit of fraud by false pretense and relating XY (O) versus MR X(R) shows how counsels try to use tag question to manipulate the responses of witnesses.

(89)C: *You knew within you that you were lying when you narrated that story,*

weren't you? (CRC: SN. BFC/90/10; 15-3-10)

This reverse polarity tag question no doubt has constrained the defendant's response to either yes or no. Trying to explain further would be met with objection as it will violate the maxim of quantity (Grice, 1975) which is a strict requirement in this kind of discourse. So the defendant will surely find it difficult to avoid self-incrimination. For example, he cannot claim to have forgotten if he

was lying; neither can he say he had no idea if he was not telling the truth. An unequal encounter between the counsel and the witness is created as the witness is constrained in terms of content as he is expected to give only 'yes' or 'no' for an answer. In terms of relation, he is to give that response as a subordinate because that is what his superior wants of him. So, when the counsel used a declarative sentence instead of interrogative sentence, with a question tag *weren't you?* the effect he expected to achieve was to spotlight the witness in such a manner as to make him appear stupid and dishonest before the court and this has the tendency to prejudice the judge who is capable of giving an unfavourable ruling.

Power is displayed by counsel through the use of declaratives. By means of complex sentences that dominate the data, counsels try to dominate defendants and witnesses by highlighting their negative self while trying to highlight their (counsels') own positive self as is exemplified in the excerpt (90) culled from a case which involves the supply of stolen item

(90)C: And you see from all your evidence, you are mentioning mistake so I'm putting it to you that you were negligent. (COC: SN. OCC/31/108)..

The example above indicates how defendants and witnesses are manipulated, dominated and controlled in the courtroom. Here, by highlighting the agency *You* the counsel is ideologically motivated this time not to obfuscate agency in order to disguise his identity and shield him from guilt, but to spotlight witness and draw attention to his negative character. In this example, the witness is depicted as a negligent person, one who cannot be entrusted with weighty

responsibility. Also, the counsel displays power over the witness in that he chose to present the action process of the sentence as active sentence instead of passive.

A look at the second and third clauses of example (90) {*you are mentioning mistake*} {*so I'm putting it to you*}. Their passive equivalents would be: *mistake is being mentioned (by you)* and *it is being put to you*. In this case, the clauses have become agentless passives that leave causality and agency unclear. So it means that if the counsel had used the passive form of the sentence, the witness as a negligent person would not have been emphasized and so he would not have been presented as stupid, negligent and vulnerable before the judge and all onlookers.

Accusatory statements are statements that appear to be very intimidating and that leave the witness with no room to state his own story. Apart from the constraining nature of these elicitation strategies, they are intended to damage the witnesses' reputation and cast doubt on his testimony. These strategies also do not give room for equivocation, but respondents find themselves in uncompromising situation that could be damaging to their case. This is so considering the fact that social power and dominance are often organized and institutionalized so as to allow more effective control of the less powerful (van Dijk, 1998). This kind of control that is based on accusations is referred to by Doty (2010) as "Demonization" (p. 59). She argues that "accusations seem to disparage the defendant's moral identity and contribute to a sense of powerlessness" (P. 59)

Issuing of commands is often associated with power. It is a speech act that positions the speaker as a powerful participant in a discourse (Fairclough, 2001).

The issuer of a command is in a position of asking something of the addressee, a less powerful participant who is under obligation to comply; one that is referred to by Fairclough (2001) as a “compliant actor” (p. 105). Where there is an imbalance in the power relation between two or more speakers, there is a tendency for the more powerful speaker to give more directives and for the less powerful participant to comply to these directives. This is true of this present study where 2% of the elicitation strategies used by counsels are commands. The following example obtained from the data illustrates this. *Look at the document you are referring to carefully from A to Z. is your name anywhere in the exhibit “H”?* This example is not just an ordinary command, but an interrogative also. This double-barrelled sentence no doubt will prove to be very intimidating.

Closely related to imperative is request. Fairclough (2001) argues that there is obviously close connection between requests and power, in that the right to request someone to do something often derives from having power. But there are many grammatically different forms available for making requests. Some are direct and mark the power relationship explicitly, while others are indirect and leave it more or less implicit. Direct requests are typically expressed grammatically in imperative sentences (Fairclough, 2001; p.46) as is illustrated in (91 & 92) a case of missing items from the Tema Port.

(91)C: *Can you describe to the court those things you said have been stolen is it something you can put in your pocket?*

R: *No. (HC, FSA/215/10; 15-5-10)*

*(92)C: Could you show from the exhibit that is exhibit D which portion found
APS liable?*

R: Yes (read exhibit D)

The examples above are examples of indirect command as the effects of the command appear to have been mitigated by the politeness marker “can”. This is however, not the case because with the interaction between counsels and witnesses in cross-examination, power relations are so clear that it is not necessary for the counsel to be direct. Therefore, the witnesses here understood the sentence to be a command rather than a request.

Control devices and power relations

Aside trying to control witnesses through different elicitation strategies, counsels try to exercise power over witnesses and defendants in diverse ways through the use of formulation, address terms, enforcing explicitness and repetition of the question.

Formulation: Counsels exercise power and control during cross-examination through formulation. Formulation is the act of telling another person’s story from one’s own perspective and demanding that the person confirms it. Fairclough (2001) defines it as “a way of leading participants into accepting one’s own version of what has transpired and so limiting their option for future contribution” (p.114). This, he asserts, is done by either a rewording of what has been said, by

oneself or others, in one turn of a series or indeed a whole episode. Formulation is used for the purpose of control.

In the data, counsels employ this strategy by retelling witnesses' story in short, segmented form as is illustrated below in examples (93 to 97) a case of armed robbery involving "R" versus MR X(S).

(93)C: *You told the court that you have to alight at Eyisam because the driver refused to go on with the journey, is that it?*

A: *That is true, My Lord.*

(94)C: *And that you have spent the night at a mosque?*

A: *That is so.*

(95)C: *When you were arrested the police took you to Eyisam for you to point out which mosque you went to but you couldn't do that?*

A: *That is not correct*

(96)C: *I'm putting it to you that the police on your arrest, when you were brought to Cape Coast, took you in a service vehicle to Eyisam but you couldn't point out whichever mosque you went to?*

A: *They took me to the bush, beat me there and asked me to bring out the gun/weapon on me.*

(97)C: *You could not point out any mosque in Eyisam because you did not go to any mosque to spend the night? (All extracts from HC: SN. CC.46/2009; 15-06-2010))*

The accused's (A) second turn formulates counsel's (C) account – accused 'offers' counsel the conclusion from what he has said that he had spent

the night at the mosque. The counsel appears to be forced to conclude that since he could not take the police to the particular mosque upon his arrest, then it presupposes that he (accused) did not sleep in the mosque as he claimed. From the dialogue, it is evident that the counsel is actually exhibiting power which he wields over the accused. For example, he displayed having knowledge by asserting: 'you told the court', 'when you were arrested the police took you' and allegations such as: 'you couldn't do that' 'you could not point out any mosque in Eyisam because you did not go to any mosque to spend the night?' It is only one having authority over another that will speak in such a way.

On the other hand, the accused is seen struggling to free himself of an accusation (of having committed robbery) and his speech on various occasion shows powerlessness – “that is so My Lord” (showing subordination) and “They took me to the bush, beat me there and asked me to bring out the gun/weapon on me”. These statements of the accused are an example of equivocation resulting out of powerlessness. He is aware that his lie that he went to a mosque in Eyisam had been found out so, instead of giving the right response to the question asked by the counsel, he decided to be evasive. He deliberately opts out of the discourse by refusing to cooperate with the counsel, thereby violating the maxim of quantity which states that contributions being made should not be more informative than is required. So, instead of answering 'yes' or 'no' to the counsel's question he prefers to give an explanation. Also, the accused is seen to be violating the maxim of quality, which urges participant not to say what they believe to be false. Also, by deviating from answering the question as required, this accused person violates

the maxim of relevance since he was expected to make a contribution to the communication that has a bearing on the issue being debated in court. This confirms Fairclough's (2001) assertion that "Formulation may be the prerogative of the powerful" (p. 114).

Address terms: Unequal power relation is further heightened following the address terms that are used during cross-examination. Embedded in counsels' talk are the derogatory designations assigned to accused persons in court which assist in further lowering their status. During cross-examination, legal professionals are given high-sounding titles that show their elevated positions. At the apex in the court's hierarchy is the judge who is addressed: 'My Lord' by all present including the lawyers. The word "Lord" means a person who has great authority over others and the word collocates with other words such as 'almighty', 'creator', 'divine', 'godhead' and even 'Jehovah', 'saviour'. Also, the lawyers address one another as "My learned friend", implying that apart from the judge, they are more knowledgeable than any one present in court especially, the accused person or any witness that appears before the court.

Conversely, during the trial process, defendants often suffer discrimination and intimidation as a result of the title they are given. The accused person is always referred to as such and where multiple accused persons appear in court at the same time, they are labeled A1, A2, A3 meaning accused one, accused two, and so on. The following examples involving a murder case between "R" and MR X(T) exemplify this.

(98)C: *Did you see the accused persons carrying the deceased?*

R: *1st, 2nd and 3rd accused persons were present.*

(99)C: *I put it to you that your statement that A4 slapped the deceased is false?*

R: *It is not true.*

The dialogue between the defense counsel and a witness reveals the derogatory designation assigned to defendants in a criminal case and this title conferred on defendants is described by Doty (2010) as being based on degradation and debasement. The labelling of accused persons not only place them in a disadvantaged position in the interplay of power dynamics, but tramples on their fundamental human rights; it is only someone who has great authority or wields power that is capable of trampling on the right of another (Fairclough, 2001).

Also, power inequality is evident in the use of the pronoun “You” as an address term for defendants and witnesses. The data showed that the pronoun “You” is used over 5,000 times by counsels in addressing defendants and witnesses. In most cases, the pronoun is embedded in clauses such as: *I put it to you* as in Example (99) and *I suggest to you* which are used as subjective projectors (Heffer, 2005). They denote directness and exclusivity as against the pronoun “we” which denotes inclusiveness. The fact that defendants and witnesses are addressed with the pronoun “you” show that they are the ones being put on the spotlight and no one else. The pronoun “You” does not admit any other member, except the defendant or witness. The pronoun “You” goes beyond mere address term, but suggests accusation; it is as if an accusing finger is being

pointed at the defendant or witness which could lead to his being intimidated, therefore, leading to a negative character presentation (van Dijk, 2006).

Enforcing explicitness: Another device that the more powerful participants in a discourse use in putting constraint on the contribution of the less powerful one is that of enforcing explicitness. In courtroom cross-examination, this device is often used when the less powerful participant tries to be evasive and not willing to tell the truth as is seen in excerpts (100 & 101), a case of fraud cited on page 91.

(100)C: *So as a true Christian you had an obligation to pay that money*

R: *Under her condition because after I got to know, it's a blown in my mind and what I've coughed in I don't know how I can cough it out because the refuge is my dad and he is gone so what else can I deliver and I haven't work for a year plus.*

(101)C: *Can you explain yourself better?*

R: *I mean I wished I could pay it but am unemployed at the moment.*

(HC DCC/302/08; 22-2-2008)

In the examples above, the respondent tried to avoid answering the question by being inexplicit and even trying to use inappropriate language (slang) 'it's a blown in my mind and what I've coughed in I don't know how I can cough it out' even though it is obvious from his second response that he knew the right thing to say, but he tries to equivocate by being inexplicit. He is asked to be explicit when the counsel said "Can you explain yourself better"? This

demonstrates power and control. It is because the counsel wields more power than the defendant, that is, why he could ensure explicitness from him.

Repetition of the question: Repetition can also be used to display power. Owsley and Myers-Scotton (1984) found that "underlining"—repeating the previous speaker's words -is intimidation because it indicates that every word is being monitored. In the following example, repetition is used to create aggressive examination style showing how the counsel tries to control the trial proceeding by insisting that the witness answers the question as he is required to. Examples (102) and (103) involving the supply of sub-standard goods demonstrates this.

(102)C: This rolling on of the assets and business rights of the company, as far as you are aware, was the Registrar General of Ghana informed?

R: When we came to court there was a contract between the two companies, Implex Export Service and Implex Project which I tendered in court. So there was an agreement and letter from the MD of Implex Export for the rolling on and the liabilities.

(103)C: My question was has the Registrar General been informed of this rolling on as far as you are aware?

The excerpts reveals that as much as the witness tries to be evasive, the counsel stamped his authority by repeating the question when he said “My question is” and demanding that witness answers it and to the point. This shows

that counsels are alert to put on track witnesses and defendants who tried to digress in their responses.

Subordination

Less powerful participants in a discourse somehow consent to being powerless and help to promote power inequality through their actions and speeches. In the courtroom cross-examination, witnesses and defendants appear to have accepted their socially assigned role as “passive subjects” (Fairclough, 2001, p.) through powerless speech and compliance to orders. The study showed that witnesses and defendants succumb to authority of counsels by denying allegations, complying with directive and equivocating.

Denying allegations

To begin with witnesses and defendants often deny allegations levelled against them and denial too is a sign of powerless speech. Denial, according to Bloomsbury (1999), is a statement saying that a statement is not true or correct. “It is also an opposition to an allegation in a court of law; saying that you did not do something that you are accused of” (p. 506). People seem to deny allegations in order to avoid punishment from their superiors. Failure to deny an allegation may be taken by the trial judge that one is guilty. Denial is one of the forms of responses that witnesses and defendants utilized, as is seen from the data analyzed. The following are some examples:

(104)C: It is a fact that you had promised the PWI in the present of the police

you are going to be a witness for the complainant?

R: I never gave a promise. (CRC QSC/107/09; 226-8-09)

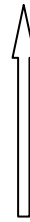
(105)C: *Take a look at this letter; has De Simone received this letter?*

R: *I have not seen it before. (COC,RPC246/2009)*

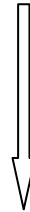
Submission through equivocation

Equivocation is a two-edged sword that is used to show submission and at the same time, as a means to resist counsel's powerful talk.

Subordination



Equivocation



Resistance

Figure IV: Dual Functions of Equivocation

Source: Field data, 2011

Figure 5 shows equivocation in the middle of the spectrum and it gravitates towards subordination on one hand, and towards resistance on the other. This means that equivocation can be used as a means to show powerlessness and at the same time to resist power as shown below:

(106)C: *I'm putting it to you that the Police on your arrest, when you were*

brought to Cape Coast took you in a service vehicle to Eyisam but you

couldn't point out which ever mosque you went to?

R: They took me to the bush, beat me there and asked me to bring out the gun/weapon on me.

The above example, a case of armed robbery cited on page 135 is an indication of evasiveness by an accused person who was charged with armed robbery. In an attempt to avoid corroborating the Police's story of having lied that he went to a mosque to spend the night, this accused person had to equivocate. He no doubt knew that if the case that he lied about going to the mosque were established as truth, the possibility of the court upholding the charge of armed robber against him were high so, in order to avoid being pronounced guilty, he had to equivocate. Equivocation by witnesses or defendants may show powerlessness arising from fear of being punished. As Bavelas et al. (1990) argue, a specific communicative situation makes a person equivocate. This happens when a person is faced with a situation known as avoidance-avoidance conflict. They explain: "If in a certain situation all available alternatives of a reply might have negative consequences but a reply still has to be given, a person will try to say nothing "while saying something" (p.57). So it means that power inequality in cross-examination might be a reason why respondents employ this strategy since defendants are powerless before the court.

Compliance

Power relationships emanating from the structural authority of courts and legal practitioners compel defendants and witness to comply with directives

issued by either the judge or counsel. Their compliance is an act of powerlessness which goes to further deepen the power disparity that exists between these opposing parties. Below are some examples from the data:

(107)C: Now take a look at this document

R: (Witness look at the document)

(108)C: Take a look at page 9 of Exhibit A1. And paragraph 12 and read the acknowledgement.

R: (Witness reads the paragraph) (HC CC/46/2009) 15-6-2010).

The two examples show how unequal power relations are enacted during cross-examination. By virtue of the powers vested in the counsel, he has the authority to issue commands and that the witness is obliged to obey. Refusal to comply with the counsel's order is met with sanctions. Luckenbill (1979) indicates that "power" is a meaningful transaction between two or more parts. He argues that while control emanates from one party who gives the command and sees to their compliance the other party is the target of control and manipulation and he maps out a plan towards compliance.

Resistance

The most highly prized commodity in discourse – power -- is not the prerogative of just one participant in a discourse (Foucault, cited in Penz, 1996, p.14). It is volatile as it can easily be lost to the other party. Fairclough (2001) argues that those who hold power at a particular moment have to constantly reassert their power, and those who do not hold power are always liable to make a

bid for power (p.57). This is true of the present study where from the onset; we find power and dominance in the hands of legal professionals. However, data revealed that the power enjoyed by these legal professionals is not absolute as witnesses and defendants put up some forms of resistance as is indicated in Figure 4 where as much as 46.9% of the responses given by witnesses and defendants suggest resistance. The data for this study showed that counter-assertion and counter-question, length of responses, equivocation as well as disregard for the authority of the judge are various ways of resistance that defendants and witnesses put up during cross-examination. This is exemplified in the examples (109), a case of breach of contract involving MR X(V), whose act of unlawfully dispossessing MR X(W) and others of their share in an assets they all possessed. And (110) involving a theft case at Tema Port cited on page 75.

(109)C: You said you gave them accommodation and the sort of accommodation was bedroom and hall, I am putting it to you that you promised him an accommodation like the one he was living in before you took the business to your place?

R: My lord I want to correct that erroneous impression that I took the business from their premises. (COC: SN. OCC/04/08; 28-01-2009)

(110)C: Is it not that they did that because they are responsible for total security at the port.

R: That may be your opinion. (HC, KFS/210/08; 26-4-2008)

The two separate dialogues above show how defiant and daring some witnesses and defendants can be. In (109) witness was bold to tell the counsel that he wishes

to correct an erroneous idea, a right that he does not possess as his contribution. Then in (110), the witness boldly tells the counsel “that may be your opinion”. Here, a violation of Grice’s maxim of manner is seen and more specifically the sub-maxim of being orderly as the witnesses fail to speak in a manner that shows their willingness to cooperate with the lawyers. In both cases, the witnesses contravene the convention of the court rules where proper decorum and respect for the judge as the most important person in the courtroom is imperative (Gibbons, 2003). They also fail to show respect for the lawyers’ position as the second most important person in the hierarchy of the court (Gibbons, 2003). Conversely, they both failed to realize that their powers and their rights are greatly constrained, as Cotterill (2003) stated, the powers of witnesses are very limited that they have no control over the interaction; rather, they are constrained to the role of providing appropriate responses.

Length of responses: The avoidance of lengthy responses by witnesses and defendants is highly favoured by lawyers (Nations, 2011). One of the purposes of cross-examination is for counsel to ask questions that will elicit yes-no answers or at best, short, straightforward answers. Since witnesses are admonished to answer questions to the point and to add nothing superfluous, (Cotterill, 2003) single-word responses as well as very short ones are mostly preferred by the courts and producing these is an indication of witness’s willingness to comply with the rules of the game. Nations (2011) sums up what the end product of leading questions should be:

The witness is limited to yes or no answers, the testimony of the witness is controlled through avoidance of lengthy answers, the plaintiff's case is advanced through affirmative responses to leading questions, and tightly controlled leading questions are of extreme importance in maintaining control while discrediting or impeaching a witness (p. 24).

The above quote no doubt shows that counsels have high preference for single word answers as well as short answers because they offer the witness the least opportunity to digress.

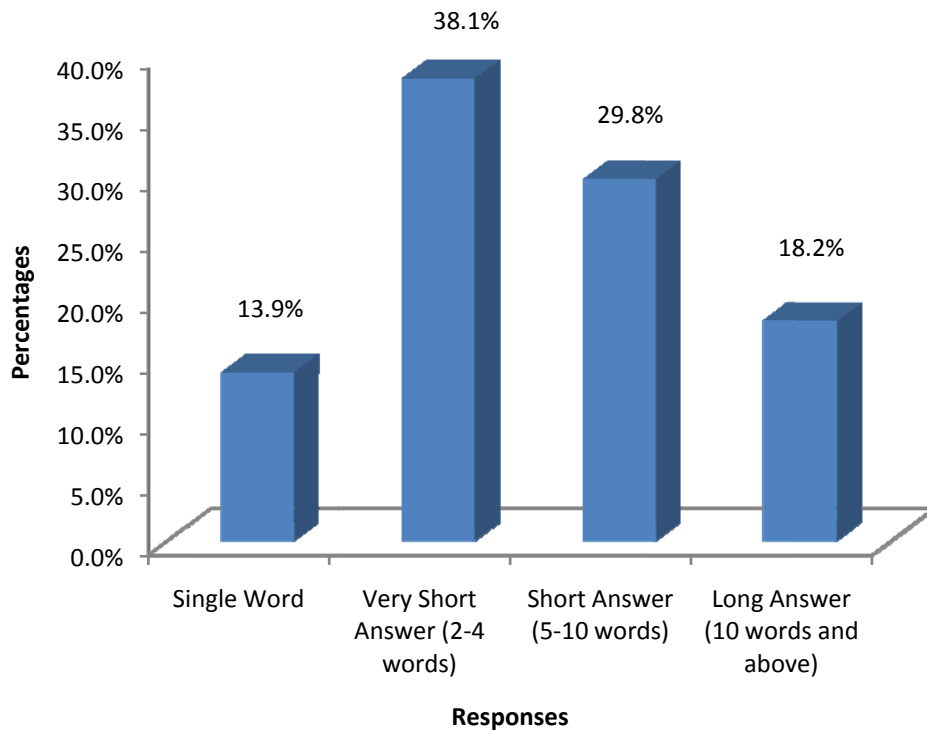


Figure V: Length of Responses

Source: Field data, 2011

Figure 6 above shows the length of witnesses' and defendant's responses which tell us how they are positioned in the power play that occur in the cross-examination segment of courtroom trial session. The chart shows that response length with the most frequent occurrence is 'Very short answers' representing 38.1% of the data set, followed by 'short answers' (29.8%). The third category is the 'long answers' 18.2% and lastly the least occurring response type is the single-word responses which mainly consist of monosyllabic 'yes' or 'no' and (13.9%). My findings contradict Jannery (2002) whose findings revealed that the largest number of replies was made by single-word replies. The fact that single-word responses were the least occurring found in my data is surprising because this response type is the most preferred type of responses by counsels as they believe that 'yes-no' responses put the addressee in a subordinate role in the discourse.

If what scholars say about yes-no as the most preferred response type that counsels expect is to be accepted, then defendants and witnesses failed to meet this expectation. This is in violation of Grice's maxim of quantity which states: "Do not make your contribution more informative than is required". This means that balance is needed so that the right quantity of information needed is neither too much nor too little as Celce-Murcia and Olshtian (2000) argues: "More is too much and less is too little for a successful communication (p. 22). By giving lengthy information when 'yes' or 'no' is required for an answer, defendants and witnesses violate this maxim and this no doubt may indicate that they are trying to defy the powers that be in the courtroom. This also shows that witnesses and

defendants care little about court conventions that empower legal professionals to be source of control - commanding compliance to rules of proper conduct and decorum. (Doty, 2010, P. 14).

Also surprising is the fact that ‘long responses’ which comprise 11 words and above recorded as much as 18.2% and ‘short answers’ which comprise between five and ten words also recorded as much as 29.8%. This is because, as already pointed out, counsels favour only ‘single-word’ responses and ‘very short answers’. Even though ‘very short answers’ are also preferred by counsels, their role as a sign of total submission on the part of defendants and witnesses is debatable. Very short answers are mostly variants of ‘yes-no’ responses such as: *it is true, that’s correct, that is correct, it is not true, it is false and it is not correct*. Even though these variants are equivalent to the affirmative ‘yes’ and non-affirmative ‘no’, their meaning is somehow obscure. They do not carry the same force as ‘yes’ or ‘no’ Using them instead of the simple ‘yes or no’ could be an attempt by witnesses or defendants to obscure the truth of their submissions because one wonders why witnesses would prefer to say *it is true, it is not correct* when indeed they can simple say ‘yes or no’ – economy of words which supports Grice’s (1975) maxim of quantity, a requirement in cross-examination.

This development goes to buttress the fact that the length of defendants and witnesses’ responses tilt towards defiance of convention, rather than submission. This could be so because cross-examination is regarded as the trial phase where evidences is built against the defendant’s submissions in order to eventually determine the kind of judgment he or she is likely to receive. So, it is

not surprising that defendants and witnesses seem to assert themselves and attempt to resist counsel's power over them through the enactment of resistance which is manifested in the form of counter assertions and by failing to sometimes acknowledge the presence of the judge.

Resistance through equivocation: Equivocation is another sign of resistance. As asserted by Fairclough (2001), ambiguity, ambivalence or silence can be useful devices in the hands of less powerful participants for dealing with those with power. Although these forms of equivocation were not very evident in my data, other less obvious, but more devastating forms was identified. These include evasiveness, non-committal statements, appealing to the failure of memory (Bijeikiene, 2004) and claiming ignorance. The examples below show how some witnesses use evasiveness as a means of resisting power and control in cross-examination.

(111C: It is a fact that the evidence you gave to the court is different from what you gave to the police?

R: I was not asked. I was asked questions and I answered them.

(COC, BDS/298/10; 23-6-10)

(112)C: Now take this statement, is this the statement you took from the complainant?

R: The complainant wrote the statement himself.

From the examples above, it is clear that the witness was determined not to cooperate with the counsel and so the responses given by him in examples (111)

and (112) above, are attempts by him to evade through the “intentional use of imprecise language” a form of language defined by Hamilton and Mineo cited in Bull (2008) as equivocation; what Bavela et al. (1990) also describe as non-straightforward communication. The response to (111), *I was not asked. I was asked questions and I answered* could be said to be a deliberate attempt by the witness to obscure the truth by diverting the counsel’s attention from the fact that his earlier evidence does not corroborate with the latter. Also, the response to example (112) *The complainant write the statement himself* does not answer the question which required a “yes-no” answer. It therefore, seems that the witness may be poking fun at the counsel through ideologically motivated responses of anti-language (van Dijk, 2006) and breach of convention (Doty, 2010) which appears to be signs of resistance (Fairclough, 2001).

Summary of Chapter

To conclude, this chapter has presented the discussion of data related to the three research questions – what elicitation and response strategies are employed by counsels and defendants/witnesses in courtroom cross-examination and to what extent elicitation and response strategies used in cross-examination promote power inequality. Elicitation strategies that show power were identified. Also, the different response strategies adopted by defendants and witnesses showed dual roles of subordination and resistance. The role that equivocation plays in cross-examinations has also been identified. In all, the study investigated

how these strategies contributed to the enactment of unequal power relations in courtroom cross-examination.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

Introduction

This concluding chapter has a five-tiered structure. The first section sketchily provides a synopsis of the entire study. In the second section, the key findings of the present study are highlighted. Section three makes a case by drawing conclusions from the assumptions underlying the research. While the next section discusses the implications of the study, the final section of this chapter, and for that matter this thesis, suggests directions for future research.

Summary

This research has been an attempt to investigate the elicitation strategies that are employed by counsels during cross-examination and the response strategies used by defendants and witnesses in courtroom cross-examination and then to show how these promote power imbalance in the courtroom. In this light, the problem the researcher sought to solve in this study was to find out whether or not the elicitations strategies employed by counsels and the response strategies by defendants and lay witnesses helped promote the enactment of power inequality in cross-examination segment of courtroom discourse. This problem led the researcher to formulate three basic questions:

1. What elicitation strategies are employed by counsel in courtroom cross-examination?
2. What response strategies are employed by defendants and lay witnesses in courtroom cross-examination?
3. To what extent do the elicitation and response strategies promote power imbalance in courtroom cross-examination?

In view of the afore-mentioned research questions, the research adopted a qualitative approach that was fine-tuned with descriptive statistics which provided percentages based on which the analysis was done.

On the theoretical level, the feasibility of employing the notion of (a) Ideology (Fairclough, 2001) and (b) maxims of the Cooperative Principle (Grice, 1975) in the courtroom were considered. The former is a term credited to Fairclough (1995b) who posits that ideology is ‘meaning in the service of power’ (p. 14). More precisely, he asserts that ideologies are crucial to the constructions of meaning that contribute to the production, reproduction and transformation of relations of domination (Fairclough, 1992). The latter is a principle believed to ensure successful communication among humans whereby participants are expected to observe a general principle which maintain the rule: “Make your conversational contribution such as is required, at the stage that it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged” (Grice, 1975 p.45)

In addition to the theoretical framework, the literature review also highlighted other themes such as discourse and types of discourse, elicitation and

response strategies in cross-examination, communicative function of cross-examination and CDA.

On the practical level, excerpts from some of the 50 transcripts obtained from three courts in Ghana, comprising both civil and criminal trial cases, were analyzed investigating how the elicitation and response strategies in cross-examination promote power imbalance in the courtroom. The findings are summed up below.

Research Questions and Findings

Based on the analysis and discussion of the data, the following key findings are made with specific reference to the three research questions, starting with the first research question presented below.

What elicitation strategies are employed by counsel in courtroom cross-examination and what function do they perform?

The first research question yielded the following findings:

The study revealed that three major types of elicitation strategies were employed by counsels during cross-examinations. These include interrogatives, declaratives and imperatives, with each of these main strategies yielding several sub-themes.

With regards to types of questions used, it was found that leading questions such as declarative question and yes-no question dominate cross-examinations. However, the use of question tag is rare in cross-examination. The

study also revealed that Wh-questions, also known as open-ended questions, are not often used in cross-examinations.

With regards to declaratives, findings of the study revealed that counsels prefer complex sentences in eliciting responses from defendants and witnesses more than the other types of sentences. As pointed out in the analysis (see Figure 3 on page 76), this is because they want to accuse the witnesses so as to discredit them and their testimonies, constrain their responses, confuse them, lure them to confession among other reasons.

The data analyzed revealed that counsels prefer to use the active voice whilst eliciting responses from defendants and witnesses rather than the passive one. As pointed out in the analysis, the use of active voice is used to highlight the guilt of witnesses or defendants being cross-examined.

The following were observed with regards to the second research question:
What response strategies are employed by defendants and lay witnesses in courtroom cross-examination?

Findings of the study revealed that 16 response strategies were adopted by defendants and witnesses during cross-examination. These strategies yielded three major themes namely subordination, resistance and equivocation. Each of these major themes further yielded sub-themes such as the following: denials, explanation, narratives and polite agreement/disagreement for subordination and then refutals, counter-assertions, counter-questions and affirmative and non-affirmative responses for resistance. The last group- equivocation also has sub-themes such as: evasiveness, appeal to the failure of memory, non-committal

responses and claiming to be ignorant. These strategies identified are novel as none of the previous studies reviewed such as: Jannery (2002), Tkacokuva (2010), Harris (1980) and Luchjenbroers (1997, 1993 & 1991 yielded similar result. Also, the study revealed that many of the responses produced by defendants and witnesses perform the dual functions of subordination and resistance.

With regards to the third research question:

To what extent does the elicitation and response strategies promote power imbalance in courtroom cross-examination?

The study revealed that about 78% of all the elicitation strategies used by lawyers during cross-examination promote power inequality. It was also found out that lawyers exercise great control and dominance over the contributions of defendants and witnesses through the use of control devices such as formulation, repetition, address terms and ensuring explicitness. On the other hand, defendants and witnesses exhibit powerlessness and resistance through the responses they give.

Again, through the study, it was discovered that equivocations in cross-examinations perform two functions. They are either used to resist counsel authority or to submit to them.

Key Findings

1. A major finding of this study is that counsels use leading questions and complex sentences to discredit defendants/witnesses and their testimonies, confuse them, lure them to confess their guilt and constrain their

responses. They also use these complex structures to seek confirmation to their own proposition and to stamp their (counsels) authority.

2. Another key finding revealed that counsels highlight agency through the use of active voice and the personal pronoun *you* in order to emphasize the reprehensibility of defendants/witnesses.
3. The study further revealed that defendants and witnesses use variety of response strategies: some signifying total submission to the control of counsel, others indicative of outright rebellion against counsels' authority and, yet others denoted prevarication.
4. Finally, the study revealed that rather than being docile and passive recipients of power tyranny who are always brow beaten into submission of counsels' control and authority; a situation described by Luchjenbroers "as puppets in the hands of lawyers" (1997, p. 480), defendants and witnesses are very assertive and expressive. This is in spite of the fact that cross-examination is characterized by dynamism and aggression which tend to severely constrain their contributions. This prompted Gibbons (2003) to assert that it is inappropriate to consider them powerless. This is because although they are severely disadvantaged, their tendency to fight against a repressive system which embodies particular ideologies is strength (Fairclough, 2001). Therefore, defendants and witnesses use language to put up stiff resistance in a bid to counter power imbalance that is so much pronounced in cross-examinations.

Implications of the Study

Based on the findings of the present study, the next section discusses two main sets of implications - scholarship and human advocacy.

This study contributes to scholarship in two ways. It has added to the growth of Forensic Linguistics as it contributes to the structure and form of legal language. Forensic Linguistics, under which the present study falls, is a relatively new field of study which is making waves across the academic arena. Research into this area is scarce with Africa recording minimal, if any at all. This study has therefore, contributed significantly to the existing literature in Forensic Literature especially, in Africa where the dearth of research is high and worrying, a fact that was painfully revealed at the Conference of Rectors and Vice Chancellors and Presidents of African Universities (COREVIP held in Stellenbosch, South Africa from May 30th-June 3rd, 2010,

This study has also contributed to scholarship in that it has made possible the discovery that apart from leading questions, counsels exploit the use of complex sentences with embedded clause complexes in eliciting responses from defendants and witnesses during cross-examination. This study has also laid bare the fact that counsels often spotlight the guilt and supposedly wrong doings of witnesses and defendants through the use of active voice and the highlighting of agency that is related to witnesses or defendants. Also, through this study, it has been demonstrated that CDA, as an approach in qualitative research, can be used to analyze text and talk.

Apart from these, this study has made it possible to combine the theories of Ideology and Cooperative Principle in text analysis and the data has lent credence to Fairclough's (2001) claim that one of the workings of ideology is resistance resulting from the less powerful participant in a discourse trying to rebel against power, control and dominance very vehemently. Similarly, the study has also lent credence to the claim that CDA, apart from being a theory, can also be used as an approach in doing qualitative research.

This study also provides a platform on which civil society and academia can collaborate in highlighting human rights issues so as to enhance democratic governance in Ghana. While academia does research and provide data, statistics and give recommendation, civil organizations will find it beneficial applying these recommendations in order to empower individuals and groups that have been marginalized within the power structures of institutions; making them aware of the abusive practices embedded in language that tend to undermine their rights. It will also benefit groups that fight for the emancipation of individuals. Also, it will be of benefit to legal professionals, enabling them to see that the myth surrounding them and the courtroom in which they operate are obstacles to the justice delivery system. This is because one of the main tenets of CDA is to investigate critically social and institutional inequalities emanating from power control and dominance of a marginalized and powerless group by a more powerful one. It is also to help increase consciousness of the role of language in promoting this form of domination which Wodak and Meyer (2009) and

Fairclough (2001) refer to as ideology; with a view towards, emancipation of these powerless and marginalized group.

Recommendations

In the light of the implications, two broad sets of recommendations are made. The first one is with regard to further research and the second (with regards) to practices in the judiciary.

Based on the findings and implications arising from the study, the need for further investigation in any of the following areas is desirable. The first line would be to investigate how resistance are built up and enacted in both criminal and civil cases. Therefore, there would be need to do a comparative analysis of how elicitation and response strategies promote power imbalance in both direct and cross examination as well as how elicitation and response strategies promote power imbalance in criminal and civil cases. Also, a study investigating equivocation in both direct and cross examination as well as in both criminal and civil cases would also be very useful.

Secondly, there is the need to also investigate how metaphors are used in the persuasive talk of lawyers in their interaction with judges and magistrates. There is the need for the judiciary to have a second look at the adversarial system where the practice of testing oral evidence through leading questions and complex sentences is rife; a system that is described by Cossins (2009) as “legitimated bullying”. Elicitation strategies used by counsels in cross-examination should be regulated. There is the need to build an indispensable theoretical bridge between

the elevated and hegemonial language of lawyers and those of litigants and witnesses thereby creating a platform for power negotiation between these two groups.

Secondly, there is also the need for more studies into the responses of litigants and witnesses, which should recommend ways of improving upon them in order to give them better chances of defending themselves in the law courts. This will also make it possible to balance the one-sided studies that have only portrayed the defendant and witness as the defenceless victims of dominance and undue manipulation in the law court.

Re-orienting lawyers as to the need to value human rights above the insatiable urge to win cases should be considered. Also, there is the need for the Chief Justice to mount refresher courses for judges aimed at both educating judges with the expectation that they will become more interventionist, as well as changing professional conduct rules so that they specifically proscribe intimidating and harassing questioning.

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APPENDIX I

INTERVIEW GUIDE FOR LAWYERS

1. What is cross examination?
2. How is it different from other segments of courtroom interaction such as: evidence-in-chief and re-examination?
3. What are the dos and don'ts of cross-examination?
4. What elicitation strategies are adopted in achieving this purpose?
5. What kinds of questions are often asked during cross-examination?
6. What purpose does it serve in the trial process?
7. Is it true that lawyers are urged to ask yes/no questions and avoid questions beginning with WH such as: what, where why, how, when, etc. during cross-examination? If yes, why?
8. It is observed that lawyers are fond of making strong assertions, allegations, accusations and issuing commands during cross-examination. Are these not intimidating and what is their purpose?
9. The mission of the Ghana Judicial Service is to promote the smooth and efficient administration of justice to all manner of persons without fear or favour, affection or ill-will, and thereby creating an enabling environment for good governance. How does courtroom practices specifically cross-examination segment help to promote the administration of justice?
10. What kind of responses do those being cross-examined give and why?
11. Do you think that those being cross-examined sometimes are angered by the type of questions asked?

12. Do some responses given by litigants/witnesses show that they have the tendency to want to revolt against the type of questions being asked? If yes, what do you think could be responsible for that?

Thank you.

APPENDIX II

INTERVIEW GUIDE FOR DEFENDANTS/WITNESSES

1. Q: Do you mind telling me your name?
2. Q: Are you a litigant or a witness?
3. Q: Are you a plaintiff or a defendant?
4. Q: Have you gone through direct examination before? (If yes by
5. Q: Have you also been cross-examined before? (If yes by whom?)
6. Q: How many times have you been cross-examined?
7. Q: What is the experience like during direct examination?
8. Q: What is the experience like during cross-examination?
9. Q: What kind of questions do you dislike the most?
10. Q: Why do you dislike these questions?
11. Q: So, what kind of question would you prefer that the lawyer ask you?
12. Q: Do you mean questions that begin with “Wh” such as: what, when, where and why?
13. Q: Why do you sometimes respond by saying yes and at other times “Yes, My Lord”?
14. Q: I also noticed that sometimes the counsel does not ask you any question but appear to provide you with one kind of information or the other, but you always give responses. Why?
15. Q: I saw you evade some questions several times. Why did you do that?

APPENDIX III
COURT TRANSCRIPTS

**IN THE CENTRAL CIRCUIT COURT OF GHANA HELD AT CAPE
COAST ON MONDAY THE 25TH DAY OF OCTOBER, 2010 BEFORE HIS
HONOUR JUDGE SAMUEL ASARE NYARKO SUIT NO. CC2/2/2011**

CROSS EXAMINATION BY COUNSEL FOR ACCUSED

Q. For how long have you been in the police service?

A. 11 Years.

Q. For how long have you been performing barrier duties?

A. Frequently

Q. Both during the day and night?

A. Yes.

Q. Do you know how to drive a motor vehicle?

A. Yes.

Q. Do you own a taxi?

A. No.

Q. Do you have a friend who owns a taxi?

A. No.

Q. Drivers of taxi cabs do not inquire about the identity of their passengers
before they pick them.

A. Yes.

Q. It is a fact that drivers do not also question passengers whether they are the owners of the goods they were carrying before they pick them.

A. At a certain period of time a driver has to inquire especially after 12.00 midnight onwards.

Q. Is this applicable to all transport businesses or it is applicable to only taxi cabs.

A. It is applicable to all commercial vehicles.

Q. Have you yourself travelled in the night picking a commercial vehicle?

A. Yes.

Q. Where did you pick the said vehicle from?

A. From Cape Coast to Saltpond.

Q. Were you travelling with any luggage?

A. No.

Q. Other passengers joined.

A. No.

Q. Tell this court an occasion you travelled at night and the driver inquired about you what was contained in your luggage.

A. I was not carrying any luggage.

Q. You know as a fact that passengers are not questioned by the commercial drivers before as to the contents of their luggage before they pick them.

A. I do not know but at a certain period they should inquire.

Q. That neither day nor night commercial drivers do not inquire about what their passengers are carrying.

A. At a certain periods of time they ask.

Q. That even if you had found any animal at all in the boot of the car the owner thereof is the one who absconded.

A. Not true.

Q. That your evidence that you signaled the driver of the vehicle to stop and he failed to do so, is false?

A. It is true that he failed to stop.

Q. Where was Lance Corporal Clarence Abada at the time you signaled A2 to stop?

A. He was at the check point.

Q. He was asleep by then?

A. No, he was not asleep by then.

Q. Did he come to the barrier healthy? From your evidence he was sick.

A. He told me he had a drug and he was feeling dizzy and he wants to relax for a while.

Q. But the only time Clarence Abada woke up was when you started to fire indiscriminately?

A. Not true he was awake by then.

Q. Your evidence that A1 came and gave you Thirty Ghana Cedis is false?

A. It is true.

- Q. At the time A1 allegedly gave you the said money where was Clarence Abada?
- A. Clarence Abada was then relaxing on a bench but in the presence of Paul Dagadu and Baba Moses.
- Q. But at the time you allege A1 came to the barrier, Clarence Abada was sleeping.
- A. I cannot tell whether he was asleep or not for he was relaxing on the bench.
- Q. At that time where was Baba Moses and Paul Dagadu?
- A. They were at the check point.
- Q. How far away were you from Baba Moses and Paul Dagadu?
- A. About 3 yards.
- Q. Is it the case that there was neither a hearing distance to what allegedly transpired between you and A1?
- A. Yes, they heard whatever expired.
- Q. But on that day 17/10/10, A1 never had any encounter with you as you want this court to believe?
- A. On 17/10/10, A1 did not have any encounter with me.
- Q. On 18/10/10 at 2:15am as you Allege A1 never had any encounter with you?
- A. On 18/10/10 at 2.15 A1 had an encounter with me.
- Q. At what time did A1 come to pass necessitating the firing of guns by you?
- A. Around 2:25am.

Q. Your evidence that he has sent his children to bring some stolen animals is false?

A. It is true

Q. That it was in furtherance of that he allegedly gave you GH¢30.00 to allow his children to pass without searching them is false?

A. He gave us part of the money to allow us to let the boys pass through the barrier without arresting them.

Q. Your evidence that A1 called A2 and informed him he has cleared the road for him to pass is false?

A. It is true.

Q. In your evidence you said you gave a taxi cab a hot chase by what means?

A. On foot.

Q. A1 claimed to be the bona fide owner of the taxi, is this the case?

A. A1 claimed that the taxi is carrying his animals but he did not say the taxi was owned by him.

Q. But your evidence that A1 said the taxi was carrying his animals is false?

A. A1 said the taxi is carrying his animals.

Q. Has anyone claimed ownership of the taxi cab?

A. I cannot tell.

Q. Your evidence that when you fired the warning shots and the taxi stopped, A1 came out and said he has allegedly given the money to clear passage of that vehicle is false?

A. I did not fire warning shots, I fired at the taxi rather before the driver stopped and A1 then came and claimed ownership of the animals and said it is because of that he brought the money and so we should release A2 to go.

Q. The taxi cab was in the possession of the police whilst A1 and A2 were on board the police patrol vehicle.

A. Yes.

Q. You were the one who drove the taxi cab?

A. Yes.

Q. These animals you made mentioned of were discovered at the Police Headquarters when the taxi cab was searched?

A. They were discovered at the barrier when the car stopped.

Q. But your evidence that you searched the vehicle at the barrier and found out that it contained some sheep and goats is false?

A. It is true.

Q. The only time you searched the vehicle was at the Police Headquarters.

A. Not true.

Q. That even if the vehicle had been searched at the barrier you would have been very, very certain of what such goods the vehicle was carrying?

A. We searched the car at the barrier, but we were not able to count the animals at the barrier as the animals were not tied, but at the headquarters if any of the animals got down it can easily be caught.

Q. Part of the said vehicle at the time you purport to have arrested the said taxi cab did not contain any sheep or goats if you want this court to believe?

A. I am telling this court the truth.

Q. But you are not a truthful witness?

A. I am telling this court the truth.

Q. But the Moree barrier is a thorough gate for road users. People are always walking about to and from around the clock.

A. Up to a certain period of time you will not see anybody?

Q. But the only time A1 came to the barrier was when I heard or had information that his vehicle had been impounded by the police.

A. Not true. A1 was there before the car arrived.

That is all.

Re-examination- Nil

By Court: PW1 is hereby discharged from the witness box.

By Counsel for Accused: We will want to apply for bail.

By Court: The investigator in this case is to find out whether or not A1 has any other case in any other court. This information will assist the court as to whether or not to grant bail. If A1 has any other case, the investigator should also find out the nature of the case. This case is adjourned to 03/11/10 for continuation.

(SGD) S. ASARE-NYARKO

CIRCUIT JUDGE



**IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT
OF JUSTICE CENTRAL REGION HELD AT CAPE COAST ON
TUESDAY 9TH DECEMBER, 2003. SUIT NO. LS 42/99**

Kwame Awuah for 1st and 2nd defendants

Cross-examination by Kwame Awuah for 1st and 2nd Defendants

Q: You say the 1st and 2nd defendants had a temporary structure on the land for a church.

A: I knew they were worshipping there temporarily.

Q: And you know they worshipped there for some years before they started putting up the permanent Structure?

A: When we went there and met them was the only one I know, I don't know when they started residing on the land.

JUDGE: They are residing on the what?

A: They are residing on the land?

Q: You have told the court that when you went there they were putting up a building?

A: Yes.

Q: You have also told the court that you knew that they worshipped before they put up the structure, the permanent structure?

A: Yes.

Q: I am telling you that they worshipped for some years before putting up the permanent structure which you said took you to the place for the first time.

A: That is what, I said that I don't know but when we went there six years ago I met them doing it.

Q: Now the 1st and 2nd defendants told you that they acquired that piece of land from Dunkwa stool.

A: As I said, when we went there for the first time she told us that we should go, when her husband comes she would discuss with him. The second time she repeated the same that we should go and she would discuss with her husband.

Q: Did you even meet the husband from that time till today?

A: Yes, I have met him before but not on the disputed land.

Q: You have never questioned the husband about what the wife said? Is that what you are saying?

A: Because I was sent there as a messenger.

Q: I want to put it to you that the wife told you that they acquired the land from Dunkwa stool.

A: It is not true.

Q: Now, are you aware or you are not aware that there have been letters from the Dunkwa stool to the mission?

A: I don't know.

Q: You said that you are on the Advisory Board?

A: Yes.

Q: I am putting it to you, that is a lie.

A: It is completely true.

Q: Then you ought to have known that the Dunkwa stool has written letters to the Parish Priest.

A: I am an Advisory Board member but not a permanent member, sometimes one is changed and another person is put in his place, so it could be that it was when I left that the letters were brought.

Q: Now are you still a member of the Advisory Board? When did you cease to be a member of the Advisory Board?

A: About six years ago?

Q: Can you tell us precisely which year?

A: 1997.

A: It was 1997 that I left the Advisory Board.

Q: In which month?

A: In January.

Q: In what year did you go to the land with reverend Arthur? He said he went with a reverend and another person, who is that reverend and what is the name of the reverend?

A: He is called Father Joseph Arthur.

Q: Has it ever come to your knowledge that the Dunkwa stool is claiming that land as the grantor of the defendants?

A: That is so, but that time I was not part of the Advisory Board. I just heard it.

Q: Have you also heard that the Dunkwa stool wrote to the Parish Priest?

A: That one, I don't know.

- Q: Have you heard that one?
- A: I have not.
- Q: I am putting it to you that, it was the Dunkwa stool which granted the piece of land building plot to the 1st and 2nd defendants.
- A: If he says so, then I don't know.
- Q: Do you know that apart from the 1st and 2nd defendants building on the land there are other people who have put up buildings on the portion of the land?
- A: Yes.
- Q: And those people put up their buildings before Mad. Oduro and her husband erected the permanent structure?
- A: It is true, but those who started their buildings before Mad. Oduro and her husband started, we ordered them to stop.
- Q: When you went to the land Mad. Oduro had completed their building and they were worshiping in it.
- A: It was temporary structure and not completed building.
- Q: You, since this action started, that is, a few months ago, started erecting fence walls on the land.
- A: Yes, it is so.
- Q: So you agree with me that the fence walls that you have now erected were there before this action started?
- A: It is true; we already had pillars there.

Q: I suggest to you that he can not tell the extent of the land that was allocated to the Mission in 1932.

A: It is so.

Q: Do you know the Catholic Mission acquired the land?

A: I don't know.

Q: I am putting it to you that the mission is stopped from.....

(Ok anyway a question of law)

JUDGE: Mr. Awuah what was your question.

AWUAH: My Lord he said the plaintiff is stopped from.

JUDGE: We will omit that question then, so you may proceed, we will omit that question that you raised.

Q: I am putting it to you that you are not a truthful witness?

A: I am saying the truth.

CROSS EXAMINATION BY MR. OBOUR FOR CO-DEFENDANT

Q: Mr. Appetey who is your grantor, the grantor of the land who is it. Do you know the one who granted the land to the Catholic Mission?

A: I don't know.

Q: Do you know the extent of your land, which is the land of Catholic Church Mission?

A: I have never surveyed the land so I can not tell.

- Q: So you can not tell the court that the area being occupied by 1st and 2nd defendant's forms part of the Mission's land. You can not tell?
- A: It is erected within the boundaries of the Catholic land.
- Q: I suggest to you that you can not tell, because you don't know the extent of the land allocated to the mission?
- A: They have erected pillars on the land, I know, so I should know if the building is within the boundary.
- Q: How did you get to know the land, the pillars that you are talking about?
- A: I had my education at Dunkwa and we had been farming on that land.
- Q: There are at the moment, some other building belonging to some other people within the same area.
- A: It is true.
- Q: I suggest to you that the Dunkwa stool is your grantor, the grantor of the Catholic Mission?
- A: I know that the land belonged to the Dunkwa stool, so definitely it might be for them.
- Q: When the mission of the Catholic Church discovered that somebody was trespassing did they inform their grantor?
- A: We went to the Palace and discussed with the chief. I went with them.
- Q: And what happened at the chief's Palace?
- A: Then the family head told us that they gave the land to them and we should allow them to do their work.

Q: Mr. Appetey, I suggest to you that you are not being creditable to the court.

A: It is not true.

Q: They told you to produce your document of title that was what they told you.

A: Yes, they said so.

Q: Did the Catholic Church produce the document?

A: That one I not aware.

Q: So you don't know, I am suggesting to you that, they never produce any document to the Dunkwa stool.

A: For that one, I don't know.

Q: In addition to your meeting, the stool wrote several letters to the mission to produce the document, and they never did it.

A: Before I left, I did not know they wrote any letters.

Q: From your writ the church acquired the land in 1932.

A: It is true.

Q: It is also true that whoever was occupying the stool at that time is no more, he is dead?

A: It is true.

Q: There is a new occupier of the stool?

A: It is so.

Q: When you met them they told you that, they were not aware of the grant that was why they asked you to produce the document. Do you know who put up the pillars you are talking about?

A: It was erected by the Catholic Church.

Q: When was the pillars put up, do you know?

A: I don't know.

Q: I suggest to you that the pillars were put up by the Catholic Church to suit their own convenience?

A: I don't know.

Q: I suggest to you that the area being occupied by the defendant do not fall within the ambit of the area allocated to the mission.

A: It is not true.

Q: When was the last time you visited the area?

A: I live on the land, not exactly on the land but where they called low cost.

Q: This low cost does it form part of the mission's land? Is it on the area in dispute?

A: Yes, a part is on the Catholic land.

Q: You are also a trespasser you are enjoying it. There is a street marking the Catholic land and that of the defendants and the low cost. There is a tarred road. There are also Catholic schools on the other side.

A: The Catholic has school on both sides.

Q: That is not correct.

A: The time I went there with the Advisory Board is about six years that's what I am talking about.

Q: I suggest to you that they had been on the land many years before you went there, over ten years before you went there.

A: For that one I don't know.

AWUAH: My lord, I will rest here.

JUDGE: This is the end of the re-examination, are you re-examining your witness. Mr. Forson.

FORSON: No my lord.

JUDGE: End of cross-examination, the witness is discharged. I thought you will call another witness.

FORSON: No.

FORSON: My lord, I have closed my case formerly.

K. K. ACQUAYE, JUDGE



**IN THE SUPERIOR COURT OF JUDICATURE, IN HIGH COURT OF
JUSTICE COMMERCIAL DIVISION HELD ON THE 17TH OF
MAY, 2010 SUIT NO. RPC401/2009**

COUNSEL FOR PLAINTIFF: MR. GEORGE AMISSAH

COUNSEL FOR DEFENDANT: MR. KOFI AMOATEY

**BY COURT: CROSS EXAMINATION OF DR. BAIDEN BY MR.
AMOATEY**

Q. Did the 2nd defendant pay for workmanship and for the fixing of the security locks and door locks?

A. It was all included in the 1,500 Ghana cedis.

Q. Do you remember how much he charged you for by way of workmanship for the work on the locks?

A. All he said was the whole amount of work including the material and the labour was going to cost 1,500 Ghana Cedis that is how much we agreed on.

Q. So you did not know how much he charged specifically for work apart from the cost of the locks?

A. Like I said earlier, we agreed on the total of 1,500 for all the works so they were all inclusive

- Q. Now Dr. Baiden, does this 1,500 Ghana cedis include the cost of the hinges?
- A. Yes, my lord.
- Q. So it is not correct that the four security locks, 18 standard locks cost 1,480 Ghana Cedis?
- A. It is correct by then. After he had given the price he gave me a discount.
- Q. You will agree with me or you wouldn't that if you give any discount it will be on workmanship and not on material?
- A. I don't agree because he said he imported the materials himself.
- Q. Now Dr. Baiden, you told this court that you agree with the defendant and the pieces of furniture will cost 7,500 Ghana cedis?
- A. Yes, I did.
- Q. And that the defendant didn't give you the unit cost of each piece of furniture?
- A. That is also correct.
- Q. Now did you ever meet the defendant somewhere prior to contracting or assigning him this job?
- A. The first time I met him was in my house when I asked him to come and see me for some works. So prior to contracting the work, yes we met in my house and I showed him the work.
- Q. And the second time or that was the only time you met him?
- A. I met him several times.

- Q. So after you met him the first time did he give you the quotation there and then?
- A. Yes, he did.
- Q. And what was the nature of the quotation he gave you?
- A. It was verbal.
- Q. And there was no unit price. All he gave was quotation for bulk that is 7,500 Ghana cedis.
- A. That was the conclusion we came to - 7,500 Ghana Cedis.
- Q. I am putting it to you that the defendant gave you quotation for the furniture you ordered from them?
- A. That is not correct my lord, this is the first time I am seeing this.
- Q. I am putting it to you that the defendant gave you the quotation dated 14th January, 2009?
- A. This is the first time I am seeing this and in any case if any one gives you a quotation he will let you sign by it and see that you have agreed to that quotation.
- Q. Dr. Baiden, now how did you describe the queen size bed you wanted ordered from the defendant?
- A. I sent him my email.
- Q. Did you give him specifications?
- A. Yes, in an email.
- Q. Can you tell the court the specifications of the queen size bed you wanted from the defendant?

- A. I sent him a picture of what I wanted the bed to look like.
- Q. Did you indicate the type of material you wanted?
- A. Yes, all my furniture were in manzonia.
- Q. And based on your choice of wood, manzonia, the defendant gave you a quotation of 1,200 Ghana cedis for the queen size bed?
- A. I remember him saying that manzonia is expensive, but all I can remember is we talked of all the furniture I wanted; he gave me a price and we negotiated to 7,500.
- Q. Now do you also recall the type of wood you requested for the built in wardrobes?
- A. I say manzonia wood.
- Q. And based on your choice of wood he gave you a quotation of 1,200 Ghana cedis for a wardrobe is that right?
- A. That is also something I don't remember happened between the two of us.
- Q. And the six wardrobes cost 7,200 Ghana cedis per its quotation. I am putting it to you?
- A. That is not correct.
- Q. Now you said the defendant constructed some wardrobes in the house?
- A. I didn't say he constructed some wardrobes, I said he did some framing.
- Q. Can you describe the finishing of the framing you saw?

- A. To start with, he didn't use manzonia wood, he used ordinary plywood. He then bought a rubberlike material to coat them to look like manzonia that is what he did.
- Q. You mean you used plywood for the frame
- A. Yes he did.
- Q. Now I am suggesting to you that the defendant finished the six wardrobes in the room?
- A. That is not true.
- Q. And that you were not happy with the venire finishing of the wardrobes?
- A. That is also not true. He used leather for the framing and I objected to that approach.
- Q. He used leather for the frame?
- A. Yes he bought a rubberlike material to cover the wood.
- Q. Do you recall giving money to the defendant's workers to buy materials to complete the wardrobes for you?
- A. Yes, I paid Romeo at one point in time.
- Q. How much did you give him?
- A. It was 1,000,000 million or something like that.
- Q. What did you expect Romeo to buy and finish the wardrobes?
- A. One plywood and then the rubber lining to finish the wardrobe.
- Q. Were these all the material you required to finish the wardrobes?

A. Well, at the time that is what he told me but it turned out that, that wasn't even enough I had to pay him more money. He didn't do them well and I had to bring in another person to come and finish the wardrobes.

Q. So the defendant used leather is that right?

A. It was a rubber coating.

Q. And you gave money to Romeo to buy leather for you?

A. Yes I did.

Q. So you used the leather to change the venire on the wardrobe?

A. No, there was no venire on the wardrobe.

Q. Now take a look at this receipt?

A. Yes, my lord I have seen it.

AMOATEY: My Lord, no objection.

Q. So is that the quantity of leather you asked Romeo to buy for your 45 yards?

A. He asked me money to buy leather he did not tell me he was buying 10 he said he needed this amount of money to buy leather.

Q. So how much did you give him?

A. It was 900 Ghana Cedis

Q. Now take a look at this receipt too?

A. Yes, I have seen it.

- Q. Whose name is on that receipt?
- A. My lord, Romeo.
- Q. What are the items that Romeo bought on that receipt?
- A. He bought plywood.
- Q. Would you say that those items are the items you asked Romeo to buy for you?
- AMISSAH: My lord, I am objecting to that line of question.
- JUDGE: It should be expunging.
- Q. Dr. Baiden, I suggest to you that the total cost of materials you gave money to Romeo to buy to complete the wardrobe for you was GH¢7,770.70?
- A. That is not correct.
- Q. Now the total cost of the pieces of furniture claimed was 7,500 is that right?
- A. Yes, my lord.
- Q. Do you recall how much money you actually paid for the pieces of furniture to the defendants?
- A. I paid 7,500 Ghana Cedis.
- Q. I am suggesting to you that you did not pay 7,500 for the pieces of furniture from your own evidence?
- A. I did.
- Q. I am suggesting to you that you paid 6,500 Ghana Cedis for the piece of furniture?

- A. Yes, I think that is what I paid.
- Q. And you also paid 1,500 Ghana cedis for the locks is that right?
- A. No, my lord.
- Q. Can you tell the court how much the locks fixed cost?
- A. What I can tell the court is that he was supposed to fix a number of hinges, but he didn't do that so what I know is he fixed less than 4,500 Ghana Cedis.
- Q. I am suggesting to you that the defendant completed fixing the locks and hinges from your own evidence?
- A. No, so far I said he fixed 22 instead of 33.
- Q. I am also putting it to you that the defendant completely polished and did the skirting in your house for you?
- A. No, he didn't.
- Q. And that the only work the defendant did not do was the fanlight?
- A. There was more than that not just a fanlight.
- Q. Now, you said it in your statement of claim that you agree with the defendant that you were going to complete the house at a certain date. Do you have anything to show to this court that you agree with the defendant that the house must be completed on a certain date that the house will be rented to somebody?
- A. I don't recall saying that I agreed as part of our negotiations, but I told him that I was expecting some visitors from UK in April

that is when he demanded extra 5,500 for him to complete beds and wardrobes in time for my visitors to sleep on.

Q. So it was not a condition of the project that the work must be completed at a certain date?

A. It was at a time because he asked for more money at a time saying that he was going to finish by the end of March.

Q. I am putting it to you that there was no such condition to the contract?

A. There was and that was the basis for paying extra 2,500 after the first 3,500 Ghana cedis.

Q. You are telling the court that you paid extra 2,500 is that right?

A. Yes, I gave him advance of 3,500 I paid him extra 2,500 to finish the work by 30th March.

Q. Does that mean that the cost of the piece of furniture was 5,000 Ghana Cedis?

A. No I said extra advance.

Q. Now, Dr. Baiden, I am suggesting to you that the defendant performed his contract to the contract as you agreed upon?

A. He didn't, not at all.

Q. And that you agreed that you were going to pay for the works to be done for you?

A. No, my lord.

Q. And that the defendant did not offer you credit facilities for the contract?

A. He did

Q. So the defendants did the wardrobes you paid for?

A. He didn't.

Q. And he also did the security locks you paid for in advance?

A. Not completely.

Q. The defendant also did the polishing and the skirting which you did not pay for?

A. I paid for it myself.

Q. I am suggesting to you that you are not entitled to your claim of 10,000 Ghana cedis with an interest and damages from the defendants?

A. I don't I agree.

AMOATEY: My Lord that will be all for him.

JUDGE: Any re-exam?

AMISSAH: My lord no re-exam.

BY COURT: Suit adjourned to 4th of May, 2010.

Commercial court stamp here.

APPENDIX 4

KEY

COC:	Commercial Court
CRC:	Circuit Court
HC:	High Court
SN:	Suit No.
R:	Republic
XY:	Corporate Entities
MR. X:	Male Litigants
MRS X:	Female Litigants
A to Z:	Individual Litigant
PW	Prosecution Witness

APPENDIX 5
COLOUR CODING OF THE DATA

Elicitation Strategies

Interrogatives

Declarative question	colour
Yes-no question	colour
Question tag	colour
Wh-question	colour

Declaratives

Sentence Types

Simple sentence	colour
Complex sentence	colour
Compound sentence	colour
Voicing	
Active	colour
Passive	colour

Imperatives

Command	colour
Declarative + command	colour

Response Strategies

Explanations	colour
Denials	colour
Narratives	colour
Compliance	colour
Polite Agreement	colour
Polite Disagreement	colour
Affirmative/Agreement	colour
Disagreement	colour
Refutals	colour
Counter Assertions	colour
Counter Questions	colour
Evasiveness	colour
Non-committal Statements	colour
Appeal to the Failure Memory	colour
Appeal to Ignorance	colour