The Interrogator and the Interrogated: The Questioning Process in Philippine Courtroom Discourse

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Courtroom interaction in judicial settings differs from ordinary conversational discourse in that it is based on institutional modes of talk. As such, it is the lawyer that controls the topic and decides who can talk and when the question and answer exchange may commence and end. This paper investigates the questioning process in Philippine courtrooms, specifically the typology and structure of the lawyers' questions and the turn-taking system between the interrogator and the interrogated that show how power is enacted and legitimated in the discourse genre of direct and cross-examinations. Selected court proceedings served as corpus of the study. Most of the materials were sourced from RTC Branch 80 in Malolos City in the Philippine province of Bulacan, which is classified as a Special Court for Drug Cases. The court was included in a pilot project conducted by the Committee on Linguistic Concerns of the Supreme Court of the Philippines in 2008 which directed the use of Filipino in courtroom proceedings.

Keywords: Interrogator, Interrogated, Questioning Process, Philippine Courtroom Discourse

1.0 Introduction

With the introduction of Forensic Linguistics as a new field of Applied Linguistics in the 1990s, courtroom interaction has increasingly become an interesting area to study. However, unlike ordinary conversations, the structure of courtroom discourse differs in that it is based on institutional modes of discourse where courtroom players observe rules executed by the court's jury, or in the case of the Philippines, by the court's judge(s) and/or lawyers.

One contentious issue in the legal setting is the place of English (as well as other languages) in a country's legal system, which impacts on the pacing of court proceedings and the rendering of decisions by the court's jury or judges. Another is the variety of English used. These are critical components especially in countries where English is the language of controlling domains like government and law. It is to be noted that the paradigm of World Englishes closely affects the use of public discourses. Thus, verbal encounters in the courtroom should be properly studied as there are restrictions observed most especially if the said domain is guided by institutional norms. Most likely, if a judicial system employs English, then legalese will take its rightful place in the legal process.

In the Philippines, English remains to be the language of legislation and of the court. Being in a multi-lingual country, people may experience some challenges as a result. There have been some minor attempts by noted legal experts to introduce the use of the country's national language into the judicial system, such as the translation done by Judge Cesar Peralejo who worked on Filipino versions of the Revised Rules on Civil Procedure, the Revised Rules on Evidence and a legal dictionary as well as a judicial decision rendered in court by Jose dela Rama in response to an appeal written in Filipino by journalists prosecuted for libel (Reyes 2007 in Powell, 2012).

Very few lawyers, though, have attempted to carry out legal proceedings in

the national language except for a pilot project conducted by the Committee on Linguistic Concerns of the Supreme Court of the Philippines starting in 2008, which directed the use of Filipino in court proceedings in at least six regional trial courts in Malolos in the province of Bulacan (ie., Br. 81, Br. 6, Br. 21, Br. 80, Br. 9, Br. 17) and one municipal trial court in the town of Guiguinto in Bulacan (ie., Branch 79). However, it was only Regional Trial Court (RTC) Branch 80 in Malolos, a Special Court for Drug Cases under the supervision of Judge Ma. Resurreccion Ramos-Buhat, that pursued the project.

Known as a staunch supporter of the Filipino language, Judge Buhat translated a well-known rape case in 1994 on the People of the Philippines vs. Leo Echagaray (personal communication with Adelina Ramirez, 29 November 2012) which culminated in the death penalty by lethal injection of the suspect in 1999, the first death penalty ever imposed after 23 years. However, with the untimely demise of Judge Buhat in July 2012, RTC Branch 80 reverted back to the use of English as it did in the past. Indeed, this confirms Powell's findings (in Low and Hashim, 2012) that Filipino has made limited inroads into the country's legal system.

This paper examines the structure of courtroom discussions carried out in both English and Tagalog with the corpus taken from RTC Branch 80 in Bulacan. The purpose of this paper is to show how courtroom talk is carried out with emphasis on the questioning process that characterizes courtroom interaction in the discourse genre of direct and cross examinations. How power is manifested in the structure of courtroom talk and in the questioning process is highlighted in the analysis of the typology of questions used, the structure of the questions raised, the turn-taking system as well as silence in the courtroom.

2.0 Review of Related Literature

Research shows that power in the courtroom is best exemplified through language as it is used in cross examinations in criminal trials executed by lawyers who have the power and the means to inhibit the suspects and witnesses from divulging their own stories. Gibbons (in Gibbons & Turrell, 2008) avers that cross-examination is a verbal battle between the lawyer and the witness, in which lawyers have the upper hand since they are in control of the questioning process (p. 116). Conley and O'Barr (1998 in Ehrlich, 2010) have argued that the interactional control of questioners (i.e., lawyers) is most pronounced during cross-examinations when the use of the leading questions allow cross-examining lawyers to impose their (i.e., their clients') version of events on evidence (pp. 267-268). Gibbons (2003 in Ehrlich, 2010) adds that one way by which cross-examining lawyers manage to construct a version of events during questioning that serves the interests of their own clients is by "include[ing] elements of this desired version…in the questions" (p. 268). Likewise, Heffer (2010) claims that lawyers can also mold or influence interpretation through the wording of their questions. Gibbons (2003 in Powell, 2012) also expressed that lawyers manipulate evidence in order to produce favorable reconstructions of events (p. 243). Indeed, questioning is a defining feature of courtroom testimony since witnesses and suspects are repeatedly questioned or interrogated by lawyers to elicit responses during the direct examination and re-elicit answers to check the consistency and accuracy of their accounts during the cross-examination.

Woodbury (1984 in Ehrlich, 2010) defines control as the "degree to which the questioner can impose his [sic] own interpretations on the evidence" (p. 268). It

can be noted that question-types can be placed in a continuum of "less controlling" to "more controlling."

From this typology, it can be deduced that the type of answers expected is related to the degree of coerciveness of the different question types. For instance, Tkăcuková (2010) categorizes the cross-examination question types into "open" and "closed" questions. Open questions are *wh*-questions whereas closed questions are *alternative*, *yes -no*, *declarative*, and *tag* questions. These questions relate to their syntactic structure as well as the type of answers expected. According to Huddleston and Pullum (2002 in Tkăcuková, 2010), *yes-no* questions are generally regarded as least coercive since they offer limited possibility for witnesses to digress, unlike *tag* and *declarative* questions which are considered more biased towards a confirmative answer and so are more coercive (p. 336). Hobbs (2003b in Tkăcuková, 2010) supports this point that such types of questions offer an important advantage to counsels and that they are perceived as statements helping to change the questions into evidence. *Tag* questions and *declarative* questions can become a powerful tool that enables counsels to give evidence on behalf of witnesses, reducing the latter to the role of minimal responders (p. 336). Woodbury (1984) and Berk-Seligson (1999 in Tkăcuková, 2010), consider the *tag* questions to be the most coercive since they have an additional pragmatic meaning (p. 336).

It should be noted that the question-answering systems can also induce more problems to many non-native English speaking countries that follow the *agreement -disagreement system* instead of the *positive-negative system* in which an answer confirming the assumption of the questioner is always in the positive to signal agreement, as opposed to a negative answer that expresses agreement with that assumption. For those who are used to following the *positive-negative system*, they have difficulty interpreting *yes-no* responses in the *agreement-disagreement system* unless the *yes* is followed by a full clause to clarify what the person answering the question intends to say (Kachru & Nelson, 2006, p. 43).

On the whole, Tkăcuková 2010 explains that cross-examiners are tasked to challenge the credibility of the witness, propose an alternative approach to the events, and persuade the audience. From the narrative perspective, Heffer (2010) cites two objects to cross-examination: to dismantle the story co-constructed during examination and to present alternative versions of the facts (p. 209).

According to Brennan (1994 in Holt & Johnson, 2010), the linguistic features of cross-examination questions include the following: a.) use of negatives; b.) juxtaposition of topics that are not overtly related; c.) nominalisations; d.) multifaceted questions; e.) unclear questions; f.) embedding and much more (pp. 21-22).

Another characteristic of legal talk relate to questions in court trials which involve the system of turn-taking. It has been noted that lawyers may manipulate power in the turn-taking process apart from their ability to control to a certain extent the nature of the witnesses' responses through their questions. Atkinson and Drew (1979 in Holt and Johnson, 2010) state that at certain points during the proceedings, the judge and the lawyers have long turns where no one else contributes (during opening and closing speeches and in summing up), whereas the examination of witnesses proceeds through a series of question and answer exchanges. Although there can be a considerable number of people present, there are rules on who can talk and when (p. 23). This structure limits the opportunity for the suspects and witnesses to speak and give more

information as they can be charged with 'contempt of court'. Any attempt to do so, even if not done deliberately to defy authority, can be used against the interrogated. For in the courtroom, suspects and witnesses can and should talk only when they are ordered to do so. Likewise, if the suspect and the witness refuse to reply and simply observe silence, contempt of court may likely be imposed upon them. As Solan (in Cotterill, 2002) states: "Lawyers are not under oath, and sometimes abuse this position of power by their own violations of the cooperative principle, and by bullying" (p. 192). When to speak and when not to speak is a situation controlled by the powerful group, in this case, the judges and/ or lawyers. The suspects and witnesses simply await command for them to talk in such verbal encounters or public discourses. The amount of information is also dictated by the type of questions asked of the suspects and witnesses. Clearly, the instance just cited is an example of power asymmetry. Solan expresses an ironic statement about lawyers, that while they have a special duty to the legal system to be forthright, their conduct is not appropriate for perjury persecution (p. 193).

With regard to the structure of Philippine courtroom discourse, a local study conducted by Santos (2006) analyzed the triadic verbal exchanges among the lawyers, the witness, and the court interpreters during courtroom interrogation in a multilingual context. The corpus consisted of audio-recordings of courtroom questions asked by lawyers and responded to by the witnesses in the trial of 13 different criminal cases from Branches 14, 15, 16, 17 of the 9th Judicial Regional Trial Courts in Zamboanga City. The study revealed that the modal auxiliaries *can* and *could*, interpreted either as *pabor, pwede ba,* and *mahimu ba* in the local language were used as a softening device or as an indirect request. Of the three question types, *wh* questions predominated the direct examination followed by *bi-polar* questions. Finally, lawyers from both the prosecution and defense panels rarely used *open-ended* questions.

3.0 The Corpus

The corpus subjected to analysis for this purpose consisted of selected criminal and civil cases taken from RTC 80 in Malolos, Bulacan, the only regional trial court in the Philippines that ever used Tagalog in its courtroom proceedings. RTC 80 is classified as a drugs court headed by Presiding Judge Ma. Resurreccion Ramos-Buhat from April 2006 to July 2012, the year of her untimely demise.

In 2008, the Committee on Linguistic Concerns of the Supreme Court of the Philippines directed the use of Filipino in court proceedings in several Bulacan courts, including RTC 80. In the pilot scheme, one municipal trial court and several regional trial courts were involved in the project but it was only RTC 80, under the leadership of Judge Buhat, that persisted with the project. After her demise, the court reverted back to the use of English in hearing their cases.

It is worthy to note that in the Philippines, the language of the law is English and very few people ventured into adopting Filipino as the medium in litigation. Since this has remained to be the scenario through the years, court interpreters are present in courtroom interactions to translate English utterances into Tagalog, the mother tongue or major language used in the place. In our study, the official transcripts in Tagalog had their translations done in English and encoded in italics. For the English corpus, no editing was done even for the glaring errors. Words, phrases, sentences coded in red signify that they were not heard in the audio-recording but were found in the official transcripts.

The corpus of the study included both

audio-recordings and official transcripts of selected cases heard from 2009 to 2012 at RTC 80. Four written transcripts were used, two of which were direct examinations while the other two were cross-examinations.

It should be noted that video-recordings were not permitted by the court. The researcher had to rely on the audio-recordings of at least two cases lent by the court as well as the official transcripts of one civil case and one criminal case. This is one limitation of the study. However, it is not an isolated case since the same happens in trial courts all over the world. Audio-recordings, more so video-recordings, are not allowed in court proceedings even in other countries.

Finally, while drug cases were heard in Tagalog in RTC Branch 80 in Bulacan, proceedings in civil cases continued to be conducted in English in the same branch. Thus, in this study, courtroom discourse refers to discourse in the courtroom conducted in both English and Tagalog.

4.0 Results and Discussion

This section focuses on a discussion of the research problems starting with the questioning process which deals with the typology of questions in the courtroom and sentence structures that include the analysis of direct and indirect reported speech and *and*-and-*so* prefaced questions. The question -and-answer sequence or turn-taking system is likewise investigated along with silence as observed in the courtroom.

4.1. Typology of Questions

It is crucial to analyze at this point how the questioning process is carried out in the courtroom that is, the types of questions utilized in direct and cross-examinations as well as how the turn-taking and sequencing operate in the discourse of courtroom players. Such an analysis would show how manipulation is played out and achieved. Researchers have argued that the interactional control of the questioners (i.e., the lawyers) is best manifested during cross-examination when the use of leading questions allow cross-examining lawyers to impose their clients' version of events on evidence (Conley & O'Barr 1998 in Ehrlich, 2010). Gibbons (2003 in Ehrlich, 2010) claims that the questioning is based according to a questioner's ability to include "elements of the [ir] desired version of events" in questions (p. 268). Indeed, as cited earlier, for Woodbury (1984 in Ehrlich, 2010), control refers to the "degree to which the questioner can impose his [sic] own interpretations on the evidence" (p. 268).

The language used in the interrogation process takes on a crucial role as it may accelerate or decelerate the flow of the questioning process. In the case of Philippine litigation, some lawyers claim that the use of Tagalog or Filipino expedites the whole legal process. Judge Buhat avers that:

> *Using Filipino captures the attention of the litigants. They manage to easily understand everything. It also lessens the time spent on trials because there are no more translations. There is more silence in my court because everybody understands what is going on and everybody listens. (Inquirer.net, 20 August 2009)*

This claim was corroborated by Justice de la Rama, a retired Court of Appeals associate justice, who stated that:

> *The use of Filipino in court proceedings would expedite the handling of cases because translators would no longer be needed. Using our national language will also allow the litigants to fully understand what is happening in the court.*

> *Transparency inside the court can be achieved more by using our national language. (Inquirer.net, 20 August 2009).*

Indeed, Buhat and De la Rama's claim can be further substantiated by court proceedings done in the past until before the untimely demise of Judge Buhat in 2012 where official transcripts (or *Katitikan*) showed the smooth exchange of question-and-answer sequence between the interrogator and the interrogated. In this study, it should be noted that the language used in criminal cases such as those dealing with drugs made use of Tagalog while civil cases employed English. In an interview with one of Judge Buhat's staff, it was noted that there was difficulty in using Tagalog in civil cases since English terms do not have one-on-one correspondence in Tagalog (personal communication with Adelina Ramirez, 19 October 2012). However, in the analysis of the typology of questions, only one framework was used for the analysis of courtroom proceedings carried out in English and Tagalog.

In the analysis of the typology of questions in Philippine legal proceedings, Tkăcuková's taxonomy of questions was employed. Questions are classified according to *open* and *closed*. Open questions are *wh*-questions while closed questions are *alternative* (or choice), *yes*/*no*, *declarative*, and *tag* questions. In the Tagalog sample for direct examination, out of the 60 questions asked of the witness by the counsel, there were more of the closed questions in the form of *yes-no* at 31 and open questions in the form of *wh* at 29 instances but the difference is not marked. For the English corpus analyzed for the direct examination, out of the 47 questions in the extract, open questions in the form of *wh* were identified at 32 instances and closed *yes-no* at 15 instances. It appears then that open questions were employed as the lawyer co-constructed the narrative of the witness and not much to control the information sought. The lawyer posed questions to elicit testimony to presuppose the truth of what the witness was saying and not to challenge or weaken it (Ehrlich, 2010). Few closed questions were utilized since the goal was to establish the credibility of the witness.

It should be noted that in the 2nd extract of the direct examination, the question asked by the counsel used the modal *do* answerable by *yes* or *no*. However, when translated by the courtroom interpreter, the question used the *paano* structure which is the direct translation of the interrogative question *how.*

Counsel**:** This P177,400.00 Miss Witness, do you know how this [uh] amount was arrived at?

Interpreter: *Pano narating yung P177,000?*
(Alam mo ba Miss Witness kung paano narating ang halagang P177,400?)
(Did you know how the amount of P177,400 was arrived at?)

As regards the first extract for the cross examination having a total of 26 questions, there were more closed questions employed at 16 instances while open questions were counted at 10 instances. However, for the closed questions, apart from *yes-no*, there were also a few instances of declarative and alternative questions as illustrated in the following examples:

Declarative: Now this alleged transaction between alyas XXXX and the poseur buyer happened inside the alley where the house of alias XXXX is located?

Alternative or Choice: Was that the asset who acted as poseur buyer or another asset?

Similar to the 1st sample, the 2nd sample of

cross-examination revealed more closed questions at 30 instances and open questions at 10 instances for a total of 40 questions. Apart from *yes-no* questions, alternative and declarative questions were also employed as illustrated in the extracts below:

Declarative:

1) So you will admit that you had no part in the terms and conditions contained in this *"Kasulatan sa Pagkakautang?*

2) So you will admit that that receipt of the amount does not refer to any agreement of sale of a parcel of land owned by the defendant?

Alternative or Choice:

1) Which is which now, Madame Witness, did you sign, or did you not sign that receipt?

2) So Madame Witness, which document were you referring to, Exh. "A" or Exh. "C".

According to Archer (2010), *wh* questions are often resorted to when questioning witnesses. These questions are restrictive in nature lessening the chances for the witness to narrate freely. Archer 2010 claims that the framing of questions is a strategy. They appear to be open-ended but in reality allow a tight control over testimony (p. 191).

Another characteristic of courtroom interaction is the use of questions that elicit *yes* or *no* confirmatory answers. However, in the example below, the witness employed descriptions or explanations to disconfirm the lawyer's version and not yielding to the lawyer's power. This strategy, however, is found only in the cross-examination of a civil case analyzed but not in the criminal or drug case.

Extract 1:

Q: Where, where was it signed?

A: It was prepared by XXXX, and notarized by…

Q: Where was it signed by the defendant XXXX?

A: I was not present then. I think it was signed in her house or at the house of XXXX.

Q: So you were not present then when this document was signed by the defendants, is that what you mean?

A: It was presented to me, then I signed it. It was a long time ago, 1990.

Q: You said that you signed it. Your signature does not appear in this document, is it not?

A: I want to see that document.

In the preceding extract, the witness, in her effort to contradict the lawyer's own version of the story, did not answer the question about the place where the document was signed. She further added that she was not even present at the time of the signing and that the whole proceeding happened a long time ago, making her response to the query quite uncertain. When the last question was thrown her, she readily gave a directive "I want to see that document."

Extract 2:

Q: Do you mean to say that prior to the receipt of this amount there was already an agreement to sell lands to you?

A: Yes, because at that time she needs money, and she told me…

Counsel 2: There is no question.

A: I am just explaining my part, sir.

Court: You wait for the question, Madame Witness.

In extract 2, the witness's answer was immediately followed by an explanation which the counsel immediately interrupted by saying that there was no question raised. But this did not stop the witness from further speaking, claiming that she was just explaining her part. While she is trying to enact resistance of power in the courtroom, her desire to do it was finally put to a stop when the judge politely retorted, giving a directive: "You wait for the question, Madame Witness."

Thus, in the Philippine courtroom, a witness may get the chance to resist power in the interrogation process but would not necessarily achieve success since ultimately, it is the voice of the court or the judge that will prevail. Exchange of utterances between the interrogator and the interrogated gets terminated upon the instruction of the judge. This is favorable to the interrogator.

In general, though, a direct examination is carried out in a friendlier manner than cross examinations. It is described to be supportive and cooperative to the witness's claims. In cross examinations, the questioning is more aggressive, adversarial, and antagonistic at times, leading to coerciveness. Since a cross-examination is carried out by the opposing side when the examination of the witness is complete, the cross-examiner finds ways to disprove or destroy the witness' earlier claims, sounding combative to create an atmosphere of fear and hostility. As mentioned earlier, Heffer (2010) claims that there are two objectives of cross-examination: a.) to dismantle the story co-constructed during examination and b.) to present alternative versions of the facts. These can be achieved through the framing of the lawyer's questions in terms of form, content, and management (p. 209). According to Heritage and Clayman (2010), a common pattern is for the lawyer to proceed from relatively factual to more interpretive questions that will have direct bearing on the guilt or innocence, employing question forms that exert increasing pressure for a confirmatory response (p. 178).

There were also instances when the answers of the witness consisted of two parts: the first part providing the information needed and the second part providing an explanation or expansion:

Counsel: *Sino po sa inyong grupo ang nakaka-alam ng bahay o lugar [kung] saan matatagpuan si alyas* XXXX?
Who among the members of your group know where XXXX lives?)

Witness*:[Bale po ma'am di] Yun [lang] pong asset namin [ma'am] ang nagturo [at] sinamahan lang po kami [noong] [nung] mga Brgy. Tanod [kasi] Sila po ang lubos na nakakaalam.*
*(*Ma'am, it was only our asset who led us to the place of XXXX and the BarangayTanod simply accompanied us. They were the ones who were familiar with the place).

The intimidation strategy is likewise employed and is often found effective. Even when insults are levied or hurled at the suspects and/or witnesses, they do not adopt a defensive counter-strategy as in the examples below:

Counsel: But she is **insisting** that she has a signature on that receipt, your honor, but the one offered your honor, there is no signature of the witness.

Witness: Maybe it was not…I don't remember. I did not sign that or I was not asked to sign that paper by XXXX who prepared that.

Counsel: Which is which now, Madame

Witness, did you sign, or did you not sign that receipt?

Witness: I do not remember. I did not sign that because that was notarized. Can it be notarized without the signature of the …

Counsel: It was not notarized, your honor. **The witness is telling a lie**. That is not notarized.

Witness: I admit that I do not have a signature here, maybe I did not sign. Maybe, I do not remember.

In the sample extract above, cross-examination was done for the purpose of presenting an alternative version. As such, the new version could result in the discrediting of the witness and putting the arguments of the prosecuting lawyer on greater ground during the course of the cross -examination.

As confirmed by the extracts below, in lawyer-witness interaction, witnesses cannot engage in free narration. They are expected to answer only those questions raised by the counsel.

1) Counsel: And this does not refer to a sale of a portion of a land owned by her, is it not? Just answer my question.
   Witness: On the first part, it was not a sale but a contract of indebtedness.
   Court: Madame Witness, please refrain from making any statements when you were not asked yet of any question.
2) Counsel: So you will admit Madame Witness that you were not the one who prepared the receipt and you were not present when this receipt was executed?
   Witness: Is that a receipt? That is not a receipt. There was a document, a receipt…
   Counsel: I am just asking you this particular document which is a receipt for the amount of P12,480.00 under date May 19, 1990…

In both extracts, the witness was instructed by the counsel to answer only the question, no explanation needed. It appears that the lawyer was simply waiting for a categorical 'yes' or 'no' answer. In the first extract, the exchange of utterances was terminated when the judge herself instructed the witness to wait for the question, implying that the witness should refrain from further speaking if not asked. Similarly, in the second extract, even if the witness answered the lawyer's question with another question attempting to enact resistance, she did not succeed when the lawyer immediately cut off her statement.

Another feature worth noting in cross -examinations is the use of a question labeled as *leading*. A question is leading if it suggests to the witness the response that the examining counsel desires, and which the other party disputes or challenges as seen in the example below:

Counsel 1: At that time, how much was the total price you already paid to XXXX involving these three (3) transactions?
Witness: P119,600.00, [ma'am] [the total].
Counsel 1: So [uh] by that time, was the total purchase price of the lot…
Counsel 2: Leading your honor.
Court: Rephrase the question.

How far the counsel can go in dominating the courtroom has been discussed explicitly. However, it should also be noted that in the Philippine courtroom, the judge also has his/her own share of exercising control over both the counsel as seen in Extract 1 and the witness as seen in

the examples below:

Extract 1:

Counsel (Defense): So you did not see him in the act of …

Counsel (Prosecution): Already answered, your Honor, please.

Court: Sustained.

Extract 2:

Counsel: How, how much per square meter?

Witness: P70,000.00 for the five hundred fifty (550) square meters, ma'am.

Court: The question is how much per square meter?

Witness: *Ano po kasi yun eh* 70,000 pesos po yung 550 square meters. *(For the 550 square meters, it's P70,000).*

4.2 Sentence Structure

4.2.1 Direct vs. Indirect Reported Speech

Philippine courtroom interaction between the counsel and the witness makes use of reported speech. Toolan (2001 in Holt & Johnson, 2010) claims that direct speech pretends to be a faithful verbatim report of a person's words while in indirect speech, the speech of the reported speaker is not simply reproduced but 'instead the narrator's words and deictic orientation' are foregrounded as the reported speech becomes subordinate to the main reporting clause (p. 31).

In the judicial context, more weight is given to direct speech as it is important for the witness to give an accurate account of what was really said and what really transpired. The use of direct reported speech is even more critical in cross-examinations. It lessens the probing done by the counsel when the responses appear to be closer to the actual words said rather than when the witness relies only on hearsay, and is simply making a report of someone else's account. Witnesses therefore have the duty to report faithfully to the court what really transpired. This claim is illustrated in the example below:

Counsel: *Noon po bang pagkagaling 'nyo sa Brgy. Hall papunta doon sa eskinita, talagang doon lang sa [may] labas ng eskinita magkakaroon ng transaksyon, ganoon po ba?*
(When you arrived at the Barangay Hall on your way to the alley, is the transaction to take place only at the entrance of the alley?)

Witness: *Opo. (Yes.)*

However, the second set of utterance below obviously points to the lack of accuracy on the part of the witness with the use of indirect reported speech "Ang **sabi lang** po ng *asset* namin [ma'am] ay magkikita **raw** po sila sa tabing kalsada." It shows that the witness does not have any first-hand knowledge or direct experience of the event that occurred. The use of *raw* implies that the information is coming from someone and not from the speaker himself and the use of *lang* implies that it is the only thing that the *asset* or *informer* knows.

Counsel: *Pano po] [uh] [Naalala, nalaman niyo ho ba [uh:3.0] kung nagkaroon ng usapan itong asset ninyo at yong target niyo bago kayo nagpunta [dun] sa eskinita?*
(Did you learn that a transaction is to take place between your asset and the target before you went to the alley?)

Witness: *Ang sabi lang po ng asset namin [ma'am] ay magkikita raw po sila sa tabing kalsada.*
*(*Our asset simply told us that they will see each other near the street.)

In the English extract, what is striking is the translation done by the courtroom interpreter which obviously speaks of the indirect involvement of the witness.

Counsel: [uh] Likewise [uh] Miss Witness,

XXXX denied that [uh] this is her signature appearing on Exh. "A". What can you say about that?

Interpreter: *Sabi **daw** ni XXXX hindi mo rin **daw** pirma yan, eh.*
(XXXX said it is not also your signature.)

While the counsel phrased the question in a way that should make XXXX the agent of the action, the translated version however, made it appear that XXXX was no longer the focus. With the use of *daw* in the sentence which is a reporting article, the information given is no longer first-hand but second-hand, thus lessening the impact of the action. *Denied* as used in the first sentence means *renounce, revoke, nullify, disprove* or *disown* which all have strong meanings hence giving the impression that the witness is dishonest. In the second sentence, such strong impact is no longer felt with the use of *daw,* referring to something that has been said or quoted by another person. Thus, the interpretation could have been better if stated:

"*Hindi mo lagda iyan batay sa sinumpaang salaysay ni* XXXX."
(This is not your signature based on the signed affidavit of *XXXX.)*

It is also important that the witness is able to recall details of the event. In the example below, it shows that the witness does not have the ability to recall details and therefore his responses are considered as weak evidence.

1) Counsel: *At [noong] [nung] dumating [ho] [po] kayo doon [ay] sino po ang inyong nakausap sa Brgy. Hall ng* XXXX?
*(*And when you arrived there, whom did you talk to at the *Barangay Hall of XXXX?)*

Witness: *Yon pong Desk Officer nila*.
(Their Desk Officer.)

Counsel: *[Alam niyo po ba o] Natatandaan niyo po ba ang pangalan nitong desk officer?*
(Do you recall the name of the desk officer?)

Witness: *Hindi ko na po [matandaan] [ma(.)batid* ma'am].
(I can no longer recall, ma'am.)

2) Counsel: *Sino ho ang sumunod na pumasok pagkatapos na pumasok ang dalawang [uh] Brgy. Tanod na iyon?*
(Who immediately followed after the two Barangay Tanod?)

Witness: *Sunud-sunod na po kami [ma'am mga pulis]*.
(We did, then the police came one after the other.)

Counsel: *Natatandaan niyo po ba kung sino sa inyong mga pulis ang sumunod pagkapasok ng dalawang Brgy.Tanod?*
(Do you recall who among the police immediately followed the two Barangay Tanod?)

Witness: *Hindi na po [ma'am]*.
(I can no longer recall, ma'am).

4.2.2 *And-* and *So-*Prefaced Questions

Another striking feature of questions asked by lawyers is the so-called *and-prefaced* and *so-prefaced* questions. Holt and Johnson (2010) claim that *so-prefaced* questions help construct evidential discourse and evaluate previous utterances by the interviewee. As it is, those involved in serious criminal cases would not be willing to give an extensive account of something that will incriminate them. *So-prefaced* questions allow the interviewer to repeat the discourse of the interviewee thereby enabling the interviewer to process and evaluate the

significance of the developing narrative and produce weighted evidence.

In the Tagalog extracts analyzed, there was only one instance when the word *so* or its equivalent in Tagalog (*kaya, kaya* nga) was used in any of the sentences.

Extract 1:

Q: *Kanina po ang sabi 'nyo ay [pumasok] dumating kayo sa eskinita (.) at ang unang pumasok ay ang mga Brgy. Tanod at pagkatapos ay sumunod kayo. Paano po na ngayon sinasabi ['nyo] [ninyo]na pagdating ninyo sa lugar ay arestado na si alyas* XXXX?
(Earlier you said that when you reached the alley, the first to enter were the Barangay Tanod followed by you. How did it happen that when you reached the place, XXXX had already been arrested?)

A: [*ma'am] Yung unang opera[syon] [tion] po namin sa kalsada [po ma'am] yong po asset namin doon po nagkabilihan.*
(Ma'am, the first operation by the street was with our asset, it was then that the transaction took place).

[Uhhmm]

Q: *Kasi kanina po ay tinatanong ko kayo kung pagkatapos sa Brgy. Hall saan kayo sumunod na pumunta ang sinabi nyo [eh] [uh] [ay] pumunta kayo doon sa [may] eskinita at may pumasok sa eskinita?*
(Because earlier when I asked you where you proceeded after going to the Barangay Hall, you stated that you went to the alley and that someone entered the alley).

A: *Opo* [ma'am].

Q: [**So**] *Ibig mong sabihin ay noong pumasok kayo sa eskinita [ay] tapos na yong sinasabi ninyong bilihan, [ganoon] [ganun] po ba?*
(So you mean to say that when you entered the alley, the transaction had already taken place, is that it?)

A: Opo [ma'am].
(Yes, ma'am).

On the other hand, the use of *and-prefaced* questions in the Tagalog sample helps the counsel support his understanding of the previous utterances and arrange the discourse into a clear crime narrative that approximates the actual happening of the event. Noteworthy is the use of the coordinator "at" for at least 21 times or 35% in the 60 actual exchanges of utterances between the counsel and the witness:

Counsel: **At** *noong [uh] nalaman na po [uh] ng inyong [uh] hepe ang patungkol sa ulat ng inyong asset, ano po ang iniutos sa inyo na gawin?*
(And when your Chief of Police learned about your asset's report, what did he instruct you to do?)

Witness: [uh] *Magsagawa po kami ng buy bust operation* [ma'am].
(To organize a buy-bust operation).

Counsel: ***At*** *yung [pong] mga pulis, mga pangalan ng pulis na kanina ay binanggit ninyo, yun din po ba ang inyong makakasama sa [gagawin ninyong] buy bust operation?*
(And the names of the police you mentioned earlier, were they also the ones who were with you in the buy-bust operation?)

Witness: Opo. *(Yes.)*

Counsel: ***At*** *sino po ang [uh] magpapanggap na bibili?*
(And who was to act as the poseur buyer?)

Witness: *Yun pong asset po namin, ako po yung kanyang back-up.*
(Our asset; I was to serve as

his back-up).

With respect to the English sample, out of the 47 question-and-answer exchanges, at least eight or 18% of the counsel's questions began with *and* and six or 13% with *so.* The rest are classified as *wh* questions.

Q: **And** [uh] when was it for the first time that [uh:3.0] XXXX talked to you about the said [uh] P300.00 per square meter [price] of these three (3) parcels of lot?
A: We received a subpoena from [the] Barangay XXXX] for us to appear [in] [at] the said [uh] barangay [office or barangay XXXX], [ma'am] and from there we came to know [that] the price of the lot [was being raised] was being raised to P300.00 per square meter.
Q: **So** when was that when [uh] you were summoned before the barangay?
A: That was in July 8, 1998, [ma'am.]

As for the cross-examination extracts analyzed, *and* questions were identified at five instances and four instances for *so* questions for the first sample which had a total of 26 sets of utterances. In the second sample, *so* questions were found at 16 instances and six instances for *and* questions out of the 45 exchanges of utterances.

Extract 2:

Q: Madame Witness, would you kindly inform this Honorable Court your highest educational attainment?
A: I passed the CPA Board last 1995, Class 1968.
Q: **So** you are an accountant?
A: Yes, sir.
Q: **And** you will admit that all these documents that you presented before this Honorable Court as your exhibits in this case were prepared by you?
A: Yes, sir, but dictated to me by XXXX.
Q: **And** where did you prepare these documents?
A: It was prepared in their house, sir.

Thus, the use of *and-* and *so-prefaced* questions have semantic and pragmatic meanings.

Semantically, *and* and *so-prefaced* questions combine smaller meaningful units to form larger meaningful ones, establishing the relationship between form and meaning. Pragmatically, they recreate the scenes and help present these scenes in a continuous manner.

4.3 Turn-taking System

Atkinson and Drew (1979 in Ehrlich, 2010) point out that the question-answer sequence is characterized by *turn-type pre-allocation,* meaning that the types of turns participants can take are pre-determined by their institutional roles. The turn-taking system operating in the courtroom is quite different from ordinary conversations. In informal conversations where there is power symmetry, there is negotiation and participants may self-select; either they self-select themselves or others. In contrast, legal interaction highly depends on the power relationships among the participants. In the courtroom, lawyers are able to argue and narrate against the witness because they wield power in the turn-taking process.

Moreover, Atkinson and Drew (1979 in Heritage and Clayman, 2010) claim that a special turn-taking system exists in the courtroom organized around questions and answers, with the lawyers restricted to asking questions and the witnesses limited to answering them, as other parties are prohibited from speaking at all except under special circumstances. Compliance with this turn-taking system is monitored and enforced by the participants themselves, with the judge charged with the task of adjudicating procedural disputes. By pre-specifying who

may speak at any given juncture, the system helps to manage the traffic of interaction in a situation where the large number of participants might otherwise lead to a cacophony of simultaneous speech. This sustains a collective focus on a single course of activity (p. 176).

Note the exchange of utterances between the lawyer and the witness and the length of utterances given by each:

Q: *[uh] G. [(Ginoong) Saksi, noong [uh] kayo [ho] ay naglahad sa Hukumang to noong ika-7 ng Hunyo 2010 ay [uh:8.0] sinabi niyo na noong 2008 kayo ay [uh] nakatalaga sa [uh:3.0] DEU ng XXXX Police Station, naalala 'nyo po ba?*
(Mr. Witness, when you narrated to this court on June 7, 2010, you said that in 2008, you were designated at the DEU of the XXXX Police Station, do you recall that?

A: *Opo.*
(Yes.) **[6.0]**

Q: *At sinabi niyo rin na noong ika-21 ng Agosto [taong] 2008 ay [uh] nagpunta sa inyong himpilan ang [isang, ang] inyong civilian asset at [uh:3.0] nag-ulat patungkol sa (.) bentahan ng ipinagbabawal na gamot sa Brgy. XXXX at XXXX, naalala 'nyo po ba?*
(And you also said on August 21, 2008 that the civilian asset went to your station and reported on the sale of illegal drugs at Barangay XXXX in XXXX, do you recall that?)

A: *Opo.*
(Yes).

Q: *Sinu-sino po ang mga kasama niyo sa inyong tanggapan noong panahon na nagbigay ng ulat itong asset na ito?*
(Who were with you in your Office at the time the asset gave his report?)

A: *Si* P/Insp. XXXX *po, si* PO2 XXXX, PO2 XXXX *[at si]* [8.0] PO3 XXXX *po.*
(Police Inspector XXXX, PO2 XXXX and PO3 XXXX).

Q: *At [ang] [uh] ibig mong sabihin ay marami kayong kasama noong oras po na iyon[.] (?) Mga anong oras po ba [uh] dumating ang asset para mag -ulat?*
(And do you mean to say you had companions at that time? Around what time did the asset come for his report?)

A: *Humigit kumulang alas 11:00 po nang [ng] umaga.*
(More or less 11:00 in the morning.)

Q: *At sino po [ang] partikular sa inyo ang [ang] [uh] nakausap nya at nabigyan niya ng ulat?*
(Who in particular did he talk to and was given the report?)

A: *Ako po.*
(Me, sir.) **[6.0]**

T: *Ito po bang asset na ito ay [uh] matagal nang [ng] nagbibigay ng ulat sa inyong tanggapan patungkol sa [uh] [mga] ipinagbabawal na gamot?*
(This asset you're referring to, has he been giving reports to your Office for long concerning illegal drugs?)
[6.0]

S: *Hindi pa po [katagalan] [matagal].*
(Not too long.)

An analysis of these utterances revealed that the first part of the examination used closed questions while the succeeding ones employed open *wh* questions. The first two sets of questions are very restrictive in that they call for a 'yes-no' answer only, with no elaboration required. And while the succeeding question is open in nature, the question asked is a *who* question and the last, a confirmatory question which does not call for an elaborate answer. The topic is likewise determined by the lawyer. Whatever is asked by the counsel, the witness is obliged to answer.

To reiterate, the system of turn-taking that participants adopt is obviously based on institutional modes of talk or discourse rules. The advantaged group or the interrogators, that is, the judges and the lawyers, are given longer turns especially when they give their opening and closing speeches. In the conduct of both direct and cross examinations, they control the topic, decide who can talk and when the question-and-answer exchange will begin and end leaving the powerless group or the interrogated, that is, the suspects and the witnesses, at a disadvantage. As it is, with the training that lawyers underwent, it is presumed that they already have an idea as to how the witness will answer any given question.

Moreover, answers yielded by the witness should be relevant and the criteria for such relevance are drafted by the lawyers themselves. From time to time, suspects and witnesses may also be interrupted in the course of their responses to stop them from giving unnecessary and "insignificant" information. This is one reason why studies show that the narrative reports given by the witnesses are not accurate since they are deprived from 'telling their own stories.' To get explicit answers, lawyers engage in *reformulation*, rewording what has been said by the witness or witnesses in response to the lawyer's query. The rewording may be done in one turn or a series of turns or even in one whole episode, the purpose of which is to make the witness or the suspect accept the lawyer's own version of events as seen in the example below:

Q: And this was, as you said, this was signed where?
A: That was 1990 and…
Q: Where, where was it signed?
A: It was prepared by XXXX, and notarized by…
Q: Where was it signed by the defendant XXXX?
A: I was not present then. I think it was signed in her house or at the house of XXXX.

In this extract of trial examination, it could be noted that the counsel asked the witness the question three times, the last one rephrased at that. To elicit the response, the counsel had to ask the question several times before he received an acceptable response to his inquiry.

In some instances, the counsel asks confirmatory questions but answers elicited do not confirm at all as seen in the following example:

Q: Do you mean to tell this Honorable Court that she has a typewriter in her house?
A: The initial draft was prepared in her house but I typed it in our office. But these were documents not typewritten, only handwritten in the house of XXXX. She was present with the witness XXXX.

In the legal setting, witnesses and/or suspects generally succumb to the power of the lawyers especially when they do not know how to counteract the lawyer's strategy. But in the turn-taking system, witnesses may also exercise power on their own by resisting the carefully-designed question/s of the lawyer:

Extract 1:
Q: Now this alleged transaction between *alyas* XXXX and the poseur buyer happened inside the alley where the house of alias XXXX is located?
A: No, Ma'am. It happened at the barangay road.

Extract 2:
Q: What time was the transaction between alias XXXX and the poseur buyer?

A: It happened at night time, but I could not exactly tell the exact time because it happened a long time ago.
Q: Can you still recall when your team was dispatched to proceed to the place of your buy bust operation?
A: *Maliwa-liwanag pa po nung nag-dispatch kami*.
(It was still daytime when we were dispatched.)
Court:
Q: Can you approximate the time, five or sick o'clock?
A: Perhaps it was between five (5:00) to six (6:00) o'clock in the afternoon and the operation lasted until night.

Extract 3:
Q: Can you estimate what time did your subject arrive at the place?
A: I could no longer recall the exact time, because that happened at night time.

Extract 4:
Q: And this does not refer to a sale of a portion of a land owned by her, is it not? Just answer my question.
A: On the first part, it was not a sale but a contract of indebtedness.

Extract 5:
Q: So you again are saying that you were not present when this document was prepared…neither you were prepared,…neither you were present when this document or receipt was executed by the person who signed the document?
A: I think the original have a signature. Do you have the original?
Q: That is your Exh. "B". Where is the original?
A: That is my signature.

In the preceding extracts, some of the questions invite confirmation from the witnesses. However, in the first example, while a "no" response was produced, it also contradicted the place cited by the counsel, that is, the alleged transaction between the poseur buyer and the suspect did not happen in the alley but at the barangay road. For extract 2, the witness did not respond appropriately to the question as to the time when the event happened. He only answered "night time" which is a long stretch of hours impossible for the lawyer to guess. It was only after the third follow-up question when he was asked by the judge herself to approximate the time that an answer was elicited from him: "Perhaps, between 5-6 pm…" implying that he was not even sure because of the use of *perhaps*. The same is true for extract 3 when the witness was asked if he could approximate the time when the suspect arrived at the place where the transaction was supposed to have taken place but the answer was an implicit rejection. As regards extract 4, while it is clear that the lawyer was exercising control over the witness by asking a *yes-no* question and following it up with the directive "Just answer my question", the witness gave an answer not related to what was being asked. Finally, for extract 5, the witness avoided answering the question by not giving a 'yes' or 'no' response. She responded with a statement and followed it up with a question. For the last exchange of utterances, while the lawyer was asking as to where the original document could be found, the witness answered by affirming her signature on the document.

Heritage and Clayman (2010) argue that the lack of both explicit negation and intrinsic contradiction poses a puzzle as to how these responses are heard to be competing with the attorney's version of

events. It anchors on the absence of a confirmatory "yes" in a sequential context where that was the preferred response, together with a discriminably different characterization, both of which are interpretive resources suggesting a competitive understanding of responses. Despite the attorney's greater experience in the courtroom, and his command of a formidable line of questioning, the witness throws down a succession of roadblocks and effectively resists being steamrolled (p. 181). All these show how witnesses enact resistance in the courtroom.

In the preceding discussion, it was stated that in the courtroom, turn-taking system is restrictive in that the lawyers are confined to asking questions while the witnesses, to answering such questions with the other parties hindered from speaking except under special circumstances. In the extract below, it could be noted that in the fifth exchange of utterances, the counsel for the other party butts in, saying: "Already answered your honor, please" as a quick response to the question of the prosecuting attorney to help the witness from being pushed to the wall.

PA: While you were waiting for this subject to come to the place of the operation, where were you when you were waiting?
W: I was in a private car.
PA: And your asset, the poseur buyer was waiting for that target to come?
W: Yes, ma'am.
PA: Where in particular was the asset positioned at the time he was waiting for this target to come?
W: It [He] was near a store with a lamppost.
PA: So when this person arrived what did you observe?
W: When he approached the asset, the asset made the pre-arranged signal that he has already bought from the target.
PA: So you did not see him in the act of …
Counsel 2: Already answered, your Honor, please.
Court: Sustained.

To sum up, the examples cited above validate the contention of Heritage and Clayman (2010) that attorneys are not permitted to present their evidence in an uninterrupted speech since each attorney must build his or her case step-by-step by interacting with the witnesses, through a series of question-and-answer exchanges concerning the facts of the case (p.176).

5. Conclusion

This paper investigated the structural analysis of the questions raised in direct and cross examinations, the sentence structures of courtroom talk that cover direct and indirect reported speech, *and-* and *so-prefaced* questions, as well as the turn-taking system observed by the courtroom players. For those who are not aware as to how language works in the courtroom, the study has raised a certain degree of awareness among the lay courtroom players as to how power is achieved by the interrogators in the courtroom especially that courtroom talk is governed by institutional modes of discourse giving the interrogators a free hand as to what questions need to be asked and how to go about the turn-taking system.

It is important for courtroom lay players to know the strategies employed by legal professionals in terms of the questioning process so they do not fall prey to the latter's questioning style and become defenseless in the interrogation process. While there are instances when some witnesses are able to enact resistance of the power imposed on them by the interrogators, that was possible only to some limited degree. Knowing then how the

whole legal proceedings operate in the courtroom can somehow equip the lay courtroom players with the necessary techniques to limit this play of power. Further, as there is a close connection between language and power, the lay who are already put at a disadvantage could lessen their powerlessness through the use of a language known to them, a language they are most comfortable with rather than carrying out courtroom talk in a language which is hardly understood by the interrogated. This way, the degree of inadequacy of their speaking style could be minimized and their voices heard more strongly in the interest of justice.

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