

Yes/No Questions in American and Romanian Witness Examinations

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Abstract. The paper sets out to present yes/no questions comparatively, i.e. in American and Romanian witness examinations, from a syntactic and a functional point of view. Yes/no questions are the mostly used type of questions by lawyers (in American courtrooms) and judges (in Romanian courtrooms), with the purpose of requesting either confirmation or disconfirmation of a certain fact.

Keywords: courtroom, witness examination, yes/no questions, requesting confirmation or disconfirmation, coerciveness

INTRODUCTION

The language used in the courtroom has long been considered an important field of study; research of institutional interaction has provided a lot of information about the language that legal and lay participants use in the courtroom and about the linguistic constraints imposed by the legal system. The speech event known as witness examination, occurring in the courtroom, is very different in the two systems of justice, the adversarial (American) and the inquisitorial (Romanian) ones, being a string of question-answer adjacency pairs, which are interlaced into larger patterns.

The data presented here are part of my doctoral thesis research and are based on 100 pages of transcripts of three famous criminal trials in the U.S.A. (the O.J. Simpson trial, the Oklahoma City bombing trial and the Zacarias Moussaoui trial), found on a website, and 100 pages of transcripts of Romanian criminal trials that took place at the Timisoara Courthouse and that I personally attended, recorded, and then transcribed.

As questioning in the courtroom 'is predominantly characterized by question-answer sequences in which the professionals largely ask questions and the lay 'clients' respond with answers' (Drew and Heritage, 1992: 54), this paper sets out to analyse the yes/no questions found in the stage of witness examination in both corpora, trying to establish the main similarities and differences between them, from a syntactic and a functional point of view.

RESULTS AND DISCUSSION

The process of witness examination in an American trial involves two stages of questioning: direct examination and cross-examination.

The direct examination is the questioning of a witness by the party who called him/her to the stand and is more supportive to the witness. As a rule, leading questions, i.e. questions in a form suggesting the answer to the witness, are not permitted during direct examination, because the witnesses called by a party are presumed to give testimony favourable to that party, and, therefore, leading questions are not necessary.

The cross-examination is the interrogation of a witness called by one's opponent. It follows the direct examination and its purpose is to employ more aggressive tactics in order to

discredit and challenge the witness's account of events. Since a witness called by the opposing party is presumed to be hostile, leading questions are permitted in cross-examination. In direct examination, lawyers do not interrupt the witnesses, are more permissive and do not use leading questions, while during cross-examination, lawyers try to intimidate and discredit the witnesses with the help of leading questions.

Yes/No questions occur mostly in cross-examinations and show some degree of coerciveness in the American witness examination, as Woodbury (1984: 205, *apud* Archer, 2005: 78) shows in his 'continuum of control':

Amount of control	Type of question
Least	Broad <i>wh</i> -
	Narrow <i>wh</i> -
	Alternative
	Grammatical yes/no
	Prosodic
Most	Tag

Yes/No questions in Cross-Examination

They are the mostly used types of questions in cross-examinations and, as Danet and Bogoch found out, 'a high 87% of all questions asked during cross were coercive, as opposed to 47% on direct' (1980: 48). This is due to the fact that in cross-examinations a lawyer 'will ask not for information, but for confirmation of something he already knows, or believes' (Bülow-Møller, 1992: 85).

Therefore, they are generally called Yes/No questions because of the type of answer expected (yes/no or other pragmatically correct answer); they can take various forms - containing the verbs *be*, *have*, or *do* or a modal verb (*can*, *may*, *must*, *will*, etc.) - and are *requests for confirmation/disconfirmation* that occur in initial, mid- or final positions in a longer sequence.

(1) (O. J. Simpson case – Testimony of Mark Fuhman, Witness for the prosecution)

→ DC: Did you have your little flashlight?

W: Yes.

→ DC: Did you use it?

W: Yes.

→ DC: Were there any other lights being shown on the area at that time?

W: No.

→ DC: Was anybody else on the crime scene near the body inside the fence?

W: No.

→ DC: Was anybody next to the fence on either side?

W: No.

→ DC: Was anybody accompanying you in any way?

W: No.

(2) (O. J. Simpson case – Testimony of Mike Norris, Witness for the defence)

→ PC: Did he have any--seem to have any trouble unzipping that bag, sir?

W: I didn't notice him unzip it.

→ PC: Okay.

Did you see him take out the ticket or what appeared to be an airline ticket?

W: Excuse me?

→ PC: Did you see him take out what appeared to you to be an airline ticket?

W: Yes.

(3) (O. J. Simpson case – Testimony of Denise Pilnak, Witness for the defence)

→ PC: While you were standing out on that porch, did you see a young couple, a boy and a girl, walking southbound on Bundy?

W: No.

→ PC: Did you see a girl wearing light colored pants and a beige--

J: Blazer.

PC: Thank you.

PC...blazer?

J: With stripes.

W: No.

→ PC: Did you see a white Nissan--excuse me.

Did you see a Nissan 300ZX driving northbound on Bundy?

W: No, I did not.

(4) (Oklahoma City Bombing trial – Testimony of Daina Bradley, Witness for the defence)

→ PC: Has any victim tried to get you to do that?

W: No, they have not.

→ PC: Did anyone from the prosecution or the FBI try to get you to change anything that you remember?

W: No, they did not.

(5) (O. J. Simpson case – Testimony of Brian Kaelin, Witness for the prosecution)

→ DC: Did he ever show any anger or upset - being upset at the fact that she was dating other men?

W: No.

→ DC: Did you ever discuss with O.J. what your relationship was with Nicole?

W: No.

→ DC: Was it ever a concern of his?

W: No.

→ DC: Were you ever present when Nicole would come over and visit O.J. at his Rockingham house?

W: When I was there?

DC: Yes.

W: Yes.

Yes/No questions are sometimes used by lawyers in the strategy called 'question cascade'. This is a strategy very much employed by lawyers, especially in cross-examination. Lawyers use the rapid-fire approach, leaving almost no time to answer, which has a 'bombing' and dizzying effect on the witness, repeating the same verb structures and changing only one word in the sentence. These questions are not isolated, they are usually strung together, having a purpose, i.e. heading towards the final question in the sequence, which is of great importance and is perceived as a conclusion.

(6) (Oklahoma City Bombing trial – Testimony of Lori Fortier, Witness for the prosecution)

PC: Did Michael say he was willing to help?

W: No, he did not.

→ PC: Did you ever say anything to indicate that you were not willing to help?

W: That I was not willing to help?

No, I never said anything.

→ PC: Did you ever say anything to him to indicate that you did not approve of this plan?

W: No, I didn't.

→ PC: Did you ever say anything to indicate you disapproved of his plan?

W: No.

→ PC: Did you ever say anything to indicate that you approved of his plan?

W: No, I did not.

PC: Did you approve of his plan?

W: No.

Yes/No questions in the Romanian witness examination

Yes/No questions, known as *total questions* in Romanian (Avram, 1986; Şerbănescu, 2002), are questions without an interrogative word, which in Romanian may be expressed in two ways: through subject-verb syntactic inversion or through intonation, without inversion. It should be noted therefore that, just like in English, in Romanian, yes/no questions formed by means of intonation have the same form as Romanian declarative questions.

(7) (Case 1)

→ J: Ați fost angajată a societății parte vătămată?

W: Da.

[→ J: Were you an employee of the company which is the injured party?

W: Yes.]

(8) (Case 2)

→ J: Pe soțul dumneavoastră îl cunoștea?

W: Nu.

[→ J: Your husband, did she know him?

W: No.]

(9) (Case 5)

→ J: A venit vreo persoană la dumneavoastră acasă să verifice calculatoarele, să vadă dacă sunt

bune, dacă funcționează?

W: Nu.

[→ J: Did anyone come to your house to check the computers, to see if they were good, if they worked well?

W: No.]

(10) (Case 3)

→ J: Loc de muncă a avut?

W: Ăăă...da.

[→ J: Did he have a job?

W: Errr...yes.]

(11) (Case 8)

→ J: A existat vreo groapă în carosabil, ceva în calea vehiculului?=
W: = Nicio groapă.

[→ J: Were there any holes on the road, anything at all?=
W: = No holes.]

(12) (Case 9 – Witness 1)

→ J: Dumneavoastră ați văzut de pe terasă altercația?

W: Eu cu încă un prieten am mers acolo °să vedem ce se întâmplă°.

[→ J: Did you see the quarrel from the terrace?

W: I went there with a friend °to see what was happening°.]

(13) (Case 9- Witness 2)

→ J: Voi v-ați jucat în tomberon?

Nu vorbim despre K.S., ați băgat vreun copil în tomberon?

W: Nu.

[→ J: Did you play in the dumpster ?

I am not talking about K.S. now, did you throw anyone into the dumpster?

W: No.]

The above examples show that the judge uses Yes/No questions *to request confirmation/disconfirmation* from the witness.

There are cases when the judge changes the neutral word order of the question, by placing on the first position in the question, as an emphasis, the object of the question, so that the witness can better understand the purpose of the question (See also (8)).

(14) (Case 2)

→ J: Pe MN, îl cunoașteți?

W: Nu.

[→ J: MN, do you know him?

W: No.]

(15) (Case 9- Witness 1)

→ J: Amenințări, a adresat față de copiii din parc, față de oameni?

W: După spusele copiilor, am înțeles că i-o amenințat că îi mai bagă și pe alții în tomberon.

[→ J: Threats, did he utter any to the kids in the park, to the people?

W: The kids say he threatened to throw others, too, into the dumpster.]

CONCLUSIONS

Witness examination is a topic of research that provides a lot of interesting data, which can be analysed from different perspectives. My paper has presented a comparative analysis of yes/no questions, which are a means for requesting confirmation/disconfirmation from the witness in cross-examinations (in American courtrooms) and in the Romanian witness examination. Yes/No questions present a certain degree of conduciveness, especially when they are employed by the American lawyers in “question cascades”, trying to intimidate the witness and make him/her say what they want. In the Romanian courtroom, it is a means through which the judge is only trying to make sure the information s/he already has on file is correct, requesting the witness’s confirmation of his/her deposition.

Transcription conventions:

PC	Prosecuting Counsel
DC	Defence Counsel
J	Judge
W	Witness
◦ ◦	A passage of talk noticeably softer than surrounding utterances.
=	Latching between two turns or words within a turn (contiguous stretches of talk)

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