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Examination in the courtroom: genre characteristics

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Abstract. The article studies the genre «courtroom examination» as a form of discursive practices in the courtroom. The research material is courtroom transcripts posted on the Internet, as well as fiction fragments. The research purpose is to describe the genre court interrogation» according to such linguosemiotic characteristics as a communicative goal, a communication channel, participants, composition and language. It is concluded that the courtroom interrogation is a form of interaction of asymmetric subjects implementing different intentions. Agents (prosecutors and defense attorney) act as interrogators, and clients (witnesses, victims, defendants) temporarily entering the legal field act as interrogatees. An analysis identified that the explicit communicative purpose of the genre is informing; the implicit communicative purpose is persuasion. The genre topic is regulated and includes crime events, identities of defendants and victims, and evidence. The communication channel is oral. The structure is strictly regulated by legal rules. The language corresponds to the official and colloquial styles.

Keywords: genre, examination, discourse, communicative purpose

Судебный допрос: жанровые характеристики

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Аннотация. В статье рассматривается жанр «судебный допрос» как форма организации дискурсивных практик в зале судебного разбирательства. Материалом исследования послужили стенограммы судебных заседаний, размещенные в сети Интернет, и фрагменты художественных произведений. Целью исследования является описание жанра «судебный допрос». Для описания были использованы такие лингвосемиотические признаки, как коммуникативная цель, канал коммуникации, состав участников, композиция и языковое оформление. Был сделан вывод о том, что судебный допрос является формой взаимодействия асимметричных субъектов, реализующих разные интенции. В качестве допрашивающих выступают агенты (прокурор, адвокат), а в роли допрашиваемых – клиенты (свидетели, потерпевшие, подсудимые), которые временно входят в юридическое поле, принимая правила юридической игры. В ходе анализа было установлено, что эксплицитной коммуникативной целью жанра «судебный допрос» является информирование, а имплицитной − убеждение. Тема является строго регламентированной и включает событие преступления, личности подсудимого и потерпевших, доказательства вины и невиновности подсудимого. Канал коммуникации является устным. Структура допроса регламентируется процессуальными нормами. Языковые характеристики жанра соответствуют официально-деловому и разговорному стилям.

Ключевые слова: жанр, судебный допрос, дискурс, коммуникативная цель

Examination in the courtroom is a form of interaction of asymmetric subjects that implement different intentions. Agents (prosecutors, defense attorneys) act as interrogators, and clients (witnesses, victims, defendants), who temporarily enter the legal field, accepting its rules, act as interrogatees.

The lower communicative status of the interrogatee is due to the asymmetry of power. Witnesses are required to answer questions asked by agents, and the latter have the right to prevent any violation of communicative maxims by controlling the interrogation process and putting pressure on witnesses. «The interrogator has great opportunities to use semantic and pragmatic properties of questions as a means of achieving procedural goals» [1: 169]. According to J. Gibbons, examination in the courtroom differs significantly from questions asked in everyday communication: answers given by the interrogatee serve to confirm a version of the crime event constructed by the interrogator [2: 115]. In everyday communication, questions contain a request for information and do not imply a mandatory answer. The interrogator does not possess the requested information. In the courtroom, the interrogator has the right to demand an answer to his question. However, he already possesses the requested information [ibid.: 117]. The interrogator's speech

actions are aimed at further constructing a possible world, by restoring and building up elements of the crime event. During the cross-examination, the interrogator attempts to destroy the version of events constructed by the opposing party. Through the interrogatees, they inform the jury about the circumstances of the crime committed and bring them into their possible worlds, refuting the worlds created by the opponents. According to A.S. Aleksandrov, questions help the lawyer to direct, control the process of court interrogation, present own versions of crime events, receive information supplementing the already existing version, destroy the testimony of the opposing party's witness and influence the court [1]. «By controlling the testimony of witnesses, lawyers control thoughts of the jury» [2: 117].

The communicative purpose allows us to draw a line between court interrogations and interrogations at the stage of preliminary investigation. If for the investigator interrogation is a search for new information about the crime committed and criminals committed the crime, for the prosecutor or the defense lawyer it is an instrument used to inform and persuade jury members, create a believable story that will be accepted by them. Of interest is the conclusion about the difference in interrogation at the stage of preliminary investigation and court interrogation made by A.V. Vasilyev. According to the author, in the first case, it is important how the words recorded in the trial minutes look rather than how reliable will be the testimony. In a jury trial, the words spoken by the interrogators rather than the evidence recorded in the trial minutes should appear reliable [3].

The explicit communicative purpose of the court interrogation is to inform the addressee (jurors) of evidentiary facts.

Interrogatives and representatives predominate in the **speech structure** of court interrogation. Replicas of the judge monitoring the course of the trial, and objections of the opponents are declarative speech acts expressed by performative verbs: *Objection / Overruled / Sustained / The fact that he responded will stand / Протестую, Ваша честь / Протест отклонен / Принимается.*

Defender: *Doctor, do you recall the trial of a man by the name of Buddy Wooddall in Cleburne County, May of 1979?*

Witness: *Yes, I certainly do.*

Defender: *And you testified as an expert in the field of psychiatry and told the jury that Mr. Wooddall was not insane?*

Witness: *I did.*

Defender: *Do you recall how many psychiatrists testified on his behalf and told the jury the poor man was legally insane?*

Witness: *I believe there were five, Mr. Brigance.*

Defender: *That's correct, Doctor. Five against one. Do you recall what the jury did?*

Witness: *Yes, I recall. He was found not guilty by reason of insanity* [4].

The lawyer constructs the situational context relying on the prototypical assessment or previous situational contexts (possible worlds) – «the expert who made a mistake». He recalls those cases in which the accused were also recognized sane by the psychiatrist despite the opinion of the psychiatric commission. Indicating that the expert made a lot of mistakes in qualifying the mental state of defendants (argumentum ad personam), the lawyer is trying to convince the addressee of a possible repeated error. The speech acts used in this fragment are interrogatives and representations.

The main **communication channel** is oral. The questions of the interrogator and the answers of the interrogated are recorded in the minutes of the trial.

The structural parts of the court interrogation as as follows: 1) direct interrogation (examination-in-chief) is interrogation of own witnesses; 2) cross-examination is interrogation of witnesses of the opposing party in order to clarify, supplement or verify testimony; 3) repeated interrogation (re-examination) is interrogation of own witnesses conducted after the main interrogation in case of doubt about authenticity of the initial testimony or with the aim of clarifying it.

If direct interrogation is aimed at forming the basis for arguments, cross-examination is a means of refuting the evidence of the adversary[1]. Direct examination is the first examination of a witness by the party calling the witness. Cross examination is defined as the examination of a witness who has already testified in order to check or discredit the witness's testimony, knowledge, or credibility[2]. In accordance with Rule 611 of the Federal Rules of Evidence, cross-examination should only refer to matters that were covered during direct examination or that are relevant to the witness's credibility. Anything exceeding these limits is per-

[1] Zinchenko P.I. Tactics of examination by prosecutors: Abstract of Thesis. Moscow, 2011. 27 p.

[2] Cross examination [Электронный ресурс]. URL: https://www.merriam-webster.com/dictionary/cross-examination (10.04.2020).

missible at the court's discretion. Leading questions are also ordinarily allowed on cross-examination under Rule 611[3]. Cross-examination is an important step in the legal process. It involves putting questions to a witness brought forward by the opposing side. These questions are designed to probe the reliability of the witness, as well as to uncover additional information about the case at hand. Cross-examination ensures that the trial is fair, and that all information is truly out on the table [5].

While during the direct interrogation and re-interrogation of own witnesses, the intentional horizons of the interrogatee and the interrogator converge, and questions are asked to receive information about facts that enhance the credibility of the constructed world, during the cross-examination interaction is disharmonious, since the agent seeks to destroy the world constructed by the opponent, using the testimony of witness of the opposing party, to identify contradictions and gaps in their testimony. This is the most unpredictable stage of the trial, which implements the principle of *audiatur et altera pars*, «a verbal battle between lawyers and witnesses, in which the former have an advantage because they control the interrogation process» [2: 116]. Agents seek to discredit witnesses before the jury, to question their competence and / or the veracity of their testimony.

Defender: *Кто нанёс удар по голове?*
Witness: *Подсудимый.*
Defender: *Вы видели это лично?*
Witness: *Нет.*
Defender: *Тогда откуда знаете, что это сделал подсудимый?*
Witness: *Не знаю.*
Defender: *Тогда и отвечайте – «Не знаю»* [6].

The lawyer reveals the unreliable testimony. The witness violates the communicative maxim of quality, reporting inaccurate information. The lawyer accuses him of perjury, realizing a strategy of exposure.

Let us pay attention to the limitations established for the cross-examination procedures. The questions should not go beyond the scope of direct examination and facts affecting reliability of the testimony. Questions asked by the lawyers should not be wider than questions posed during the direct examination. It is forbidden to ask probabilistic questions *(If ...?)*, assessment questions *(What do you think ...?)* and questions of law (e.g., questions about the admissibility of evidence).

The judge has no right to interfere in the examination. However, being a professional imperative, he must ensure that the maxims of relevance, quality, quantity, and presentation are followed by the participants. The intervention of a judge in the examination is due the need to monitor compliance with the fundamental rules of court interrogation. The speech behavior of the prosecution and the defense must «fit into one of the well-known categories of the procedure» [7].

In the United States, according rule 611 of the Federal Rules of Evidence, the court monitors the manner in which witnesses are interrogated and evidence is presented in order to (1) improve the efficiency of the interrogation procedure; (2) ensure the rational use of time; (3) protect witnesses from attacks by the interrogator[4].

In Russia, the role of a judge is enshrined in article 275 of the Code of Criminal Procedure: «the court has the right to ask questions after the examination by the parties, to dismiss leading questions, as well as questions that are not relevant to the criminal case»[5]. Both the Constitution of the Russian Federation and the Code of Criminal Procedure of the Russian Federation enshrine the principle of adversarial proceedings. However, according to S.A. Pashin, «the main problem of the Russian criminal process is its «chimerical», «hybrid» character, aggravated by accusatory activities of the courts, inquisitorial mentality of the judiciary» [8: 11].

In a jury trial, interference of the judge in interrogation is not evident, since it can be interpreted as an attempt to influence the jury. The interference is caused either by the need to clarify information on the basis of a written request of the foreman of the jury, or to clarify the question asked by the interrogating party, to assist the witness who finds it difficult to answer the question:

Defender: *Скажите, пожалуйста, Кремнев Вам говорил, что вот торговый центр был продан Голд Смиту с его согласия? Кремнев давал согласие на продажу?*

Witness: *Еще раз повторяю опять то же самое. С того момента я личного участия в этом не принимал.*

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[3] Federal Rules of Evidence [Электронный ресурс]. URL: https://www.rulesofevidence.org/article-vi/rule-611/ (14.06.2018).

[4] Ibid.

[5] Code of Criminal Procedure of the Russian Federation [Электронный ресурс]. URL: http://www.consultant.ru/document/cons_doc_LAW_34481/ (21.05.2017).

Judge:* *По согласию Кремнева можете что-то пояснить? Да, нет, не знаю.

Witness: *Не знаю.*

Judge: *Так и отвечайте. Следующий вопрос* [6].

In a trial without jury members, the interference of judges in interrogation is regular:

Defender: *Гильзы калибра 9 мм в тот момент были обнаружены Вами или следователем?*

Witness: *Не знаю. Врать не буду, не знаю.*

Judge: *С этого момента поподробнее. Чего там про гильзы?*

Witness: *Ну, когда проводились осмотр ТПУ, мы были не в самом ТПУ, а где я гильзы выкидывал.*

Judge: *Снимали Вас?*

Witness: *Да.*

Judge: *На видеокамеру?*

Witness: *Да.*

Judge: *Или фотографировали? Или это с видеокамеры снимки?* ***Смотрите, и судье любопытно*** [9].

The judge intervenes in the examination, asking clarifying questions. Of interest is the ironic replica of a judge characterizing his interference with the interrogation. The irony arises from the contradiction between possible world A and possible world B. A is the regulatory world where the judge must act as an impartial arbitrator. B is the World of Action, where the judge contradicts this rule, violates it. The judge realizes this and with the help of self-irony restores dissonance.

As for the language of court interrogation, it is characterized by a combination of various functional styles: questions asked by lawyers correspond to the official and often conversational styles, answers given by witnesses correspond to the conversational style:

Defender: *Свидетель говорит, что Вы разговаривали с погибшим грубо, обвиняли его в воровстве, а он Вам грубил в ответ.*

Witness: *Вы чё тут все с ума посходили?* [10].

The lawyer does not use the cliched, terminologically rich legal language. Let us pay attention to the phrase *Witness говорит* used instead of *Witness утверждает*, as well as the replacement of the criminal law term *кража* with a unit of the spoken language *воровство*. The witness's response, expressing the state of indignation, contains colloquial lexical units.

Of interest is the interrogation of an expert in a jury trial. It has certain specifics, since questions asked by lawyers and answers given by experts, clarifications and additions should be clear to the jury. In addition, the interrogators themselves must have expert knowledge. Otherwise, they will appear before the jury as amateurs and undermine confidence in the constructed version of the crime event.

To conclude, the following features of the genre can be emphasized:

1) the explicit communicative purpose: informative; the implicit communicative purpose: persuasive;

2) the genre topic: crime events, identities of defendants and victims, evidence;

3) the participants: lawyers, judges, jury members, witnesses, defendants, victims;

4) the communication channel: oral;

5) the structure: strictly regulated by rules of the legal field;

6) the language features: language of the official and conversational styles.

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