The Counsel-Witness Battle of Identities on Cross-Examination at the High Court of Tanzania in Dar es Salaam

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Abstract

This paper examines courtroom interactions between members of the juridical field and the laity who come in as witnesses, to identify the identity struggles and how these struggles are likely to affect adjudication. It analyses this struggle through examination of ethos. The results of identity struggles reveal counsel enjoying identity access and discourse resources to denounce the witness who has only the response move to operate from. The witness only flouts authoritative discourse not as much to denounce counsel's ethos, but to protect himself. The study further shows that this struggle goes against the view of the law-society relationship that looks at the judiciary is a trustee of the rule of law, administering the law for the benefit of the entire community. Cross-examination has failed to become a process that is substantively just and humane. The layperson remains a stranger in the courtroom.

Key words: *ethos, counsel, witness, social identity approach, identity struggle*

Introduction

If anyone asked a judiciary personnel, as I did, what the Tanzanian judiciary was struggling with, they would mostly hear that the judiciary is not being independent (it is overwhelmed by the state), there is a backlog of cases, and that the predominance of written English is pain to most Tanzanians participating in judicial processes. The personnel would also point out that the filing system is poorly managed which causes some of the judiciary personnel to get involved in corruption issues, there are poor working environment, and that it was very hard to keep evidence. Some of us laypersons will add that on top of everything else the judiciary continues to be strangely formal. No one seems to worry about the seemingly procedural issues of interrogation of witnesses. This paper examines courtroom interactions between members of the juridical field and the laity who come in as witnesses, to identify the identity struggles in the courtroom drama of cross-examination. Specifically, it aims to find ways in which participants claim their identity and

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determine the role such struggles are likely to have upon the dispensation of justice. This paper draws on data from a critical discourse analysis study on cross-examination, but basing the analysis on one of the Aristotle's three appeals, ethos. Being about identity struggle, the study draws also from the social identity approach.

The Courtroom as the Playground

In order to position the two parties appropriately and situate our understanding of the identity struggles in the courtroom better, I need to define *authoritative discourse* and *contact zone.* Authoritative discourse is a prior discourse acknowledged as the norm in an institutional setting. In the courtroom this is the discourse norms or expectations as to who should elicit, manage and control the story-telling process. Contact zone, on the other hand, is the place where struggles occur against various kinds of authority. This is where cultures meet, clash and grapple with each other. One could allowably take authoritative discourse and contact zone as forming the context of culture, where the context of situation occurs with identity struggles constantly at play between insiders and outsiders.

Our contact zone, generally the juridical field, "is organized around a body of internal protocols and assumptions, characteristic behaviors and self-sustaining values, [which form] a legal culture" (Bourdieu, 1987:806). This culture is preserved through sign systems such as the written word, the spoken word, codes of behavior and ritualized conventions that normally display the "desire to give a culture a distinctive identity, and a parallel determination to protect it against anything other. The *other* is anyone and anything deemed capable of disrupting the social fabric and the integrity of its imaginary identity: strangers, foreigners, and intruders" (Cavallaro, 2007:xiii emphasis in the original). In addition, the juridical field has its own influence, central to which is "the power to determine in part *what* and *how* the law will decide in any specific instance, case, or conflict" (Bourdieu, 1987:807 emphasis in the original). Like any other social field, the juridical field is not independent of other social realms and practices. It is closely tied to them, but the nature of this relationship "is often one of intense resistance to the influence of competing forms of social practice or professional conduct" (Bourdieu, 1987:808). Professionals within the juridical field are constantly engaged in a

struggle with those outside their field to gain and sustain acceptance for their practices (Bourdieu, 1987).

The antagonistic relationship between the juridical social field and other realms is no accident. Any social field is a site of struggle or competition for control, leading to a structure of differential professional prestige and power. Bourdieu says that members of the juridical field work within "habitual, patterned ways of understanding, judging, and acting which arise from [their] particular position as members of one or several social 'fields,' and from [their] particular trajectory in the social structure" (Bourdieu, 1987:811). He calls such ways of being *habitus*. Habitus, says Bourdieu, is what gives the group its consistency despite the variations in the behaviors of individuals within the group. It tends to stabilize the group's practices and sense of identity, acting as an agent of the group's self-recognition and self-reproduction (Bourdieu, 1987). Whereas counsel (the player on home ground) would be attached to some habitus as members of the juridical field, the lay witness (the player away from home) does not belong to this habitus while the interaction is conducted in line with this juridical habitus. It is partly this, as we shall see in the data, which makes witnesses dejected strangers.

Upon stepping into the courtroom the non-lawyer does not have the necessary discourse tools (i.e., knowledge and experience with discourse practices) to match those of his questioner. The forms of address are different (e.g. in one of the cases analyzed here the witness responds respectfully with a honorific "I saw it sir" and the judge overlaps with "I am not sir…." (Fastas-671/CRT)). His strangeness in court is further revealed by the fact that in the entire interrogation he uses the honorific 'sir' more than 40 times. His role here is only to answer questions in a yes-no format, leaving the initiation move exclusively to counsel and judge. When he grabs the initiation move to ask counsel the time of some action in the past, the counsel quibbles with "YOU tell us the time, not me. I'm not a bureaucrat of the ministry of energy". When he tries an initiation (not a response-initiation):

167 **PW1:** [But I think sir there was something =

168 **XC1: =** There are no buts here Mr. Mwita! I would like you to answer my questions!

169 **CRT:** You can wait for the buts, your lawyer will come back and re-examine you

Both judge and counsel stop him from flouting the norms of the authoritative discourse. He needs to remember that he should shed off his pre-trial identities, such as a highly educated person, an executive, managing director, lecturer and all the interactional privileges that go with such statuses. At least, he is expected to refrain from conducting himself in line with his out-of-court or pre-trial identities. These identities, however, can be elicited (and they do get elicited with mean and devastating intentions) during the trial. He is expected to operate in his role identity as a witness - the only trial identity, as one to be questioned, one through whom and against whom counsel creates the story. The insider-outsider contrast is made more explicit when in one of the two cases the judge schools the witness as the witness tries to 'argue' with counsel. The judge tells the witness, "Witness, in court we don't engage in arguments. You don't engage in arguments with a counsel, you just answer…." (Kis-28/CRT). What the expression "in court we don't engage in arguments" suggests is, first, that the witness is not part of the 'we', which should remind the witness that he does not belong to the habitus. If he did, he would know better than arguing in court. In requiring outsiders to conduct themselves in such ways, says Cavallaro, courtroom discourse concurrently constructs the outsiders' subjectivity, i.e., their social identities as components of interrelated structures of power and knowledge (Cavallaro, 2007). Whereas the lay-person's identity is placed upon him by and through his participant role, counsel's identity is expressed in the juridical field's narrative and rules. Legal narrative has legal counsel as devastating cross-examiners of lying witnesses (Goldman, 2005).

One would look at any cross-examination exercise as based on lack of trust. Counsel's motive is to do all he can, through elicitations, to weaken the witness' testimony by digging holes in it. His purpose is to build a credible (and therefore convincing) story for their side, and therefore he has to maintain tight control over the witness, asking narrowly conceived questions that demand specific answers (Freedgood, 2002; Magenau, 2004). These questions tend to, among other things, test the witness' veracity, and shake his credibility by injuring his character (Evidence Act, Cap 6R.E.2002). Counsel is bent to demolish the little the witness has built in evidence. The

witness, knowing counsel to be on hunt, he too does not trust the cross-examining counsel and the side he represents.

The Social Identity Approach

What we see above, between the lawyer and non-lawyer is "a major legacy of the social identity approach, … to distinguish group-level identities as distinct aspects of self-concept in their own right, and as distinct from personal identity (or identities)" (Spears, 2011:220). It is necessary to touch upon identity issues because identity "guides life paths and decisions, allows people to draw strength from their affiliation with social groups and collectives, and explains many of the destructive behaviors that people carry out against members of opposing ethnic, cultural or national groups" (Vignoles *et al.,* 2011:1). Identities are "the meanings that individuals hold for themselves – what it means to be who they are" (Burke, 2001:2). This, as we shall see, is at the core of this study, that we are dealing with two sides with highly varied levels of identity access, one left only with a new (and sometimes strange) identity to perform in.

Identities involve "people's explicit or implicit responses to the question: 'Who are you?' … in other words, identity comprises not only 'who you think you are' (individually or collectively), but also 'who you act as being' in interpersonal and intergroup interactions – and the social recognition or otherwise that these actions receive from other individuals or groups. Thus, the identity question, 'Who are you?' actually encompasses a range of diverse but related contents and processes" (Vignoles *et al.*, 2011:2). Moshman adds that "*to have an identity is to have an explicit theory of yourself as a person* – that is, singular and continuous rational agent, extending from the past through the future, and acting on the basis of beliefs and values that you see as defining who you are" (Moshman, 2011:918 emphasis in the original), and Vignoles sums up identity as "all aspects of the image of oneself – as represented in cognition, emotion, and discourse" (Vignoles, 2011:404). Up to this point, then, we are nowhere close to making a witness claim his identity where he performs only under a trial identity.

Method

This study collected and analyzed only those cases that were heard in the English language. The High Court of Tanzania is bilingual, conducting trials in either English or Kiswahili. Cases tried in English are only thus tried after the parties have chosen to use this language, making it easy for the judge who is then required to record

proceedings and the judgment in English. Cases tried with the aid of interpreters were not considered owing to alterations in the interpretation process, which would affect the force of utterances. It is for a similar reason that cases tried in Kiswahili were not considered in this study.

The study was carried out at the Commercial Division of the High Court in Dar es Salaam because it was here more than in any other division of the High Court that the audio recording equipment was in regular use. It was decided that I would observe sessions and collect voices from the Commercial Division's ICT department. The selection of the High Court against primary courts where supposedly the majority and less fortunate get involved was dictated by the fact that the verbal wrangling aspect of the Adversarial system between counsel and witness of the adverse party is missing at the primary level. Legal representation is currently allowed only at Resident Magistrate courts and the High Court. And whereas trials at Resident Magistrate courts are considered to be more dramatic than those at the High Court, audio recording would not have been possible especially due to the fact that the recording equipment was not yet installed in Resident Magistrate courts at the time.

Ethos as Theory

Ethos refers to the heterogeneous sense and value of social relations, to the different meanings and values of multiple subject positions affiliated in particular social, political, or ethical orders. It has conventionally been rendered as either "character" (meaning a central self) or "custom" (referring to one's performance of a social role) (Bradford, 2004:103) and "credibility, classically demonstrated through good sense, good moral character, and good will" (Doan, 2004:5). Being the coalescence of meanings and values that make possible notions of an essential and aesthetic, or authentic and performative, self (Bradford, 2004), ethos becomes the sort of social identity that participants implicitly signal through their verbal and non-verbal comportment to win approval and good will of the audience (Doan, 2004). Additionally, it is the discursive formation of symbolic relations (social, political, and ethical) without which specific senses of self and other, just and unjust, or good and evil would not exist (Bradford, 2004).

In a polemical and adversarial speech event such as cross-examination, it is important to examine ethos in terms of how

participants construct themselves and construct others involved in the same event. In order for trial participants to persuade the judge, it is necessary that their ethos be enhanced. This explains why even the outsiders in the tournament do not passively accept a position that they feel places them in disfavor of the decision makers. Since it is necessary for one to gain acceptability, participants normally enhance their ethos and at the same time discredit or denounce other persons as ones opposed to the legitimate order. They need to discursively produce these subject positions through transformations in ways of thinking, knowing, and speaking rather than to the representation of an essential human identity, of an ideal and original human nature or virtue (Bradford, 2004). The denouncer endeavors to make the person denounced seem as one acting against the legitimate order on purpose. The denounced person is made to be in uniformity with illicit conduct, i.e., such conduct is the norm to him (Garfinkel, 1956). When a participant works to discredit another, according to Goffman (1963), their focus is always on the audience, who are meant to be convinced that the identity they had in mind about the said person was only virtual reality, and that what the denouncer reveals is the true identity of that person. Here the audience refers to one who can make decisions – the judge. The sense and value so acquired or maintained by such claims derives, however, not from their authenticity (not from their representation of categorical truth in language), but from the rhetorical currency they obtain as discursive practices in social relations (Bradford, 2004).

As we examine ethos, it is important to keep in mind the fact that as they function in the courtroom witnesses are presumed to be operating under their accustomed identity (i.e., *trial identity*) to which they are new, and they are barred from being and acting what they have always been before coming to the courtroom (their *pre-trial identity* i.e., their educational status, religious and cultural backgrounds, and the authority they enjoy at their workplaces). This work will present only parts of the cross-examination where the counsel and witnesses enhance their ethos while downgrading the other.

Analysis and Results

Overview of Cross-examination Sessions

a) Commercial Case Number 65 of 2011 - Fastas Mining Limited vs. Zakuvuna Mining Limited. In this cross-examination session both cross-examining counsel (XC1- Mr. Kigonya & XC2- Mr. Chebboh) question the first prosecution witness PW1-Mr. Mwita in relation to the provisions of regulation 8 sub-regulation 2(a) of the Mineral Rights Regulations of 1999 as amended in 2001. XC1 is putting forward the view that the office of the Commissioner for Minerals did not address itself to these provisions when dealing with Fastas Mining Limited's matter. He claims that Fastas Mining is the rightful holder of a prospecting license. To this effect Fastas Mining had submitted indicative estimated cost listing on application number HQP 15511 or PLR 4939/2008 claiming that they had spent a total of 493,711$ in prospecting activities in respect of application number HQP 15511 or PLR 4939/2008.

XC1 further claims that even the revenue form does not indicate that payments made by Fastas were made on behalf of Zakuvuna Mining Limited, which makes Fastas the rightful holder of the license. Fastas paid the prospecting fee because HQP 15511 had been transferred to it, and the payments were in respect of something that constituted a mineral right. On his part, XC2 claims and pursues the view that PW1's office had dealt with the plaintiff's matter negligently by not communicating with the first plaintiff. He further seeks to shake the witness' credibility by showing that despite the witness' professed knowledge on relevant law, the witness acted the contrary as he proceeded to deny the first plaintiff exclusion of time in computing the period of the license. In the text portions from this case are initialed as FASTAS.

b) Commercial Case number 45 of 2011 - Igembensabo Logistics (T) Limited vs. Kisorya Ltd and Deodatus Kinyerero. In this cross-examination session XC claims that the second defense witness (DW2 - Mr. Sitesha) is lying about BHAM UK being the owner of the coffee under dispute. He therefore wants the witness to prove that he is an agent for BHAM UK. Upon unsatisfactory proof of ties between him and BHAM UK (*unsatisfactory* in counsel's view), counsel goes further to claim that BHAM UK does not exist, and therefore pursues a new line, demanding that the witness should prove BHAM

UK's existence. Counsel further seeks to shake the witness' credibility by signaling the company's malpractice with the profoma invoice, the alleged travel to Birmingham (without invitation letter), and disparities on calculations of the claimed amount. In the text portions from this case are initialed as KIS.

Counsel Enhancing own Ethos and Denouncing Witnesses

Counsel XC1 of the FASTAS case claims that he does rigorous questioning because he believes that "that's how we get to the truth" (Fastas-834/XC1), and despite the witness' complaint that the counsel has been making him "jumping here and there" (Fastas-833/PW1), counsel gets the judge's endorsement when the judge latches with "jumping is ok in court, that's how we arrive at justice, by jumping and swimming under" (Fastas-835/CRT). Pointing to this kind of questioning suggests that without such degree of questioning this witness would always conceal the truth. That is why he says that his intention is to shake his credibility (Fastas-709/XC1). Asked if the sum he mentioned is the correct one, counsel responds:

709 **XC1:** It is not my lord [I want to shake his credibility.

710 **PW1:** [no, no]

711 **CRT:** Oh, ok go ahead but do it faster.

Here counsel receives the support of judge (that he should shake credibility) amid the negative view of the witness, but he is required to do it faster. It is possible, therefore, to say that counsel is commended as one helping the court to reach justice fairly.

Counsel XC1 also denounces the witness as one who does not act educated despite appearing to be fairly educated (Fastas-934/XC1), suggesting that the witness is being uncooperative, which is a vice in court. Counsel XC2 too denounces the witness as dishonest, colluding with others to frustrate matters of justice. He asks the witness:

> So in your experience and sense of justice you could not see that this is a proper case for excluding time or is that you are just colluding with other persons to frustrate the cause of this matter? (Fastas-1073/XC2).

In the KIS case, counsel XC constructs himself as a seeker of truth (this is a virtue) and constructs the witness as a liar, a person who should not be trusted. This he does with statements such as:

> Mr. Sitesha, I am saying there is nothing like BHAM UK Limited which existed! This is just fictitious. You want to cheat the court to believe that there is such a company. What do you say? (Kis-20/XC).

And he goes on to portray the witness as a liar with "… you want to make this court to endorse your allegation, even if there is no evidence?" (Kis-64/XC); "How can this honorable court believe that you executed such a contract with Kisorya Ltd to transport your consignment from Rwanda – that you are not cheating the court to believe you?" (Kis-122/XC); "I am saying that you are not telling the court the truth! I am saying that there is nothing in such transaction, there is no such transaction between you and Kisorya Ltd, and what you are testifying here is total lies…" (Kis-124/XC); and "It might be that there was no any letter written by Kisorya Ltd, and what you are saying are your own words…?" (Kis-148/XC).

Counsel XC1 of FASTAS case also portrays the witness as an imbecile, one who cannot understand something simple, and that is why he 'being such a good person' says that he would try and simplify the question, as seen below:

103. **XC1:** Mr. Mwita, is it correct to say that where a holder of a mineral right transfers or assigns his right to another person, the person making the transfer continues to be liable to pay fees and rents until the transfer has been completed in accordance with the law?

104. **PW1:** Repeat it again sir.

105. **XC1:** I will try and simplify it.

Counsel XC1 also takes advantages of authoritative discourse to accuse the witness of lying but without using the direct expression 'You are a liar.' He chooses to express this through a question form, making it less direct "…*Why didn't you tell the truth* that the application has been granted?" (Fastas-940/XC1 emphasis added). Even though the reading of the utterance could also tell that the witness withheld the information, it suggests in this context that the

witness lied and therefore should not be trusted. Counsel XC of the KIS case does that a lot more.

Counsel XC of the KIS case indirectly weakens the witness by producing more than one version of the same question in a single turn. With these versions it is harder for the witness to respond without hesitations. When fluency goes down, it is easy for the responder to be judged as weak. For example, which version is one to respond to in the following question?

> If that is the case, my question to you is, do you have any document establishing that you were to act on behalf of Kisorya Ltd? That you were an agent of Kisorya Ltd? That Kisorya Ltd was transporting your cargo? Do you have any agreement to prove before this court? We want to believe that actually you instructed Kisorya Ltd to transport your coffee from Rwanda. Do you have any such document? (Kis-114/XC).

Another way, and a more tricky for the witness, is asking questions like:

> How can this honorable court *believe* that you executed such a contract with Kisorya Ltd to transport your consignment from Rwanda? That you are not *cheating* the court to believe you? (Kis-122/PW emphasis added).

This is a question that rests on need of proof on the contract and also on the addressee having to redeem himself for whatever other reason of character.

In general, counsel enhance themselves as seekers of truth who do so through legally acceptable means, but denounce witnesses as ones who would always conceal the truth, ones who act contrary to expectations despite being educated, dishonest - so they should not be trusted, and ones who want their allegation without evidence.

Witnesses Enhancing own Ethos and Denouncing Counsel

When the witnesses fear that counsel's questioning style would weaken their side, they flout the authoritative discourse to redeem themselves. For example, instead of responding, PW1 of the FASTAS succeeds to denounce counsel as aggressive and bent towards confusing him (e.g. "…you are forcing me" (Fastas-365/PW1); "…I have been jumping here and there" (Fastas-832/PW1); "Aa una-confuse vitu bwana!" [You are confusing things] (Fastas-830/PW1))

and he tells the judge that counsel has been "talking of confusing so many licenses touching this and this" (Fastas-661/PW1), and therefore counsel "should be systematic" (Fastas-663/PW1). This is an attempt to portray counsel negatively as one trying to take an unfair advantage over the witness. But we note that the judge counters this with "jumping is ok in court, that's how we arrive at justice, by jumping and swimming under" (Fastas-835/CRT), and concurs with the counsel when he adjoins with "that's how we get to the truth" (Fastas-834/XC1). But it is an attempted shot.

We see, however, that his constant pleas register a denouncement for the counsel as follows:

9. **PW1:** Sir may I explain this before I answer this question a bit back so the history is over [there

10. **XC1:** [Can you answer my question yes or no? =

11. **CRT:** = Just a moment, just a moment. let him explain (To witness) can you explain?

The judge latches with "just a moment let him explain", to temporarily break away from the yes-no format, which is a favourite of the counsel. Whereas we don't know what the judge feels about the witness, it is certain that what he gathers from the witness below would have been missed under the counsel's interrogation style. This is what the counsel had wanted to obscure with a yes-no response:

12. **PW1:** According to the Mining Act when somebody has submitted his application and endorsed up his programme of work and the expenditure is going to incur on that business. There are times people will spend $50000, some will spend depending on the size of the area itself [but

13. **CRT:** [but what does the law say?

14. **PW1:** The Law says that you should have a minimum of - a minimum of err ((aside whispering to neighbour: what do they say?)) PLR because this one isn't prospecting as such, this is you photograph by using an aeroplane so that you will pick from one place to the next and to the next. And that one spending will depend on the prospector himself, how much he is going hire the -the….

The fact that the judge temporarily takes over the interrogation says a lot, and I think counsel loses a bit.

In the KIS case too the witness portrays counsel as one bent towards illicit conduct when he keeps asking questions to which the witness has already responded. Such responses include, *"Like I said*, on the telephone call they asked me to come there…" (Kis-76/DW2 emphasis added); "*As I mentioned earlier*, I did not receive any money from them…" (Kis-105/DW2 emphasis added); and "*Like I mentioned* I have that, it's not here, it's in my office. *I have already answered that!*" (Kis-130/DW2 emphasis added). These are attempts to portray counsel negatively as one unable to make progress in the interrogation.

The witness in the KIS case also challenges counsel's view that he is the one supposed to produce evidence which, in the witness' view, should have been produced by Kisorya Limited. He remarks, "Am I supposed to produce this evidence or Kisorya Ltd? …" (Kis-129/DW2). With utterances such as this the witness (DW2) seems to suggest that counsel is not well versed in the law of evidence. After these words the judge does not utter a word, but we note, however, that earlier on the judge for the KIS case warns the witness:

> Witness, in court we don't engage in arguments. You don't engage in arguments with a counsel, you just answer. If you don't have an answer you can keep quiet (Kis-20/CRT).

With such views of the judge it is hard to say for sure how the witness succeeds portraying the image of counsel as a negative person.

Lastly, the FASTAS case, when the witness (PW1) feels that counsel (XC1) does not easily accept his view of what is written on the document, he finds his way of suggesting that counsel is linguistically incompetent, but without saying it so explicitly. Instead he tells counsel, "[this is] typical English, very modern English…" (Fastas-937/PW1). Counsel interprets, as most of us would, that 'You are incompetent if you cannot understand something written in simple English' and counters with a threatening expression "You appear to be fairly educated, Mr. Mwita! Don't push me into calling you names!" (Fastas-938/XC1). The judge latches the counsel's threat of name-calling with "I will not allow that!"(Fastas-940/CRT) which

seems to have worked for the witness as he makes the counsel appear negatively before the judge. Generally, witnesses denounce counsel as ones trying to take an unfair advantage over witnesses forcing them to do what they shouldn't do. Counsel are also unable to make progress in the interrogation. Lastly, counsel are denounced as linguistically incompetent.

Discussion

The aim of this study was to find ways in which participants claim their identities and determine the role identity struggles are likely to have upon the dispensation of justice. Participants do more to denounce their interlocutors than they do to enhance their own ethos. Witnesses produce response-initiations against authoritative discourse. A closer reading reveals that this does not in anyway downgrade counsel's personality, it only shows how important it is for witnesses to guard the little that they have been left with after shedding off their other identities. When witnesses complain about counsel's conduct in court, they hear the hovering voice "jumping is ok in court, that's how we arrive at justice, by jumping and swimming under" (Fastas-835/CRT) and counsel reminding them to respond in a yes-no format. Sometimes they try to tarnish counsel's image as ones who cannot make progress in the interrogation, not well versed in the laws of evidence, but the hovering voice hums "witness, in court we don't engage in arguments. You don't engage in arguments with a counsel, you just answer. If you don't have an answer you can keep quiet" (Kis-20/CRT). This tells us that there were shots tried, but not successfully effected. The rare successful chances are when judges feel the need to collect additional valuable information. Counsel do rigorous questioning because the witnesses would not reveal the truth without grilling. They see and portray witnesses as ones who act contrary to expectations, suggesting that they are being uncooperative, which is not a virtue in court. They also portray witness as dishonest, colluding with others to frustrate matters of justice. They are liars who often times want the court to endorse their allegations without proof. What's more, witnesses are imbecile for whom very simple things need to be simplified.

Looking at the battle between counsel and witnesses, the counsel win easily because there is not much of the judge's censure when they paint witnesses negatively. I think this is because in the legal profession's narrative the defense counsel is seen as an instrument of liberty and political justice for his client, and his cause "is always

just" (Goldman, 2005: 1246) and the judge sees and treats him like that. When witnesses engage trans formatively, they are only resisting the undue pressures from counsel, and not denouncing their interlocutors. One reason the witnesses cannot perform successfully is because they are denied the initiation move. One question for the non-lawyer is: can the judge change his mind upon counsel's credibility from witnesses' complaints that counsel are not fair – that they are going around and around instead of asking a question once and moving to the next? Part of the answer is that judges and counsel have gone through a similar training, they are both officers of the law, they belong to the same habitus, and it is likely that they both know this way of questioning to be acceptable (Evidence Act, Cap 6R.E.2002: 154-155).

The core-periphery metaphor seems to be at play all the time against witnesses. The courtroom continues to be significantly unlike the practices of any other social universe, keeping at bay those belonging to other realms. The identity denial of the witness goes against Burke's understanding and view of the internal focus that the multiple identities "*function together within the self*, or within the overall self-verification process, and the implications of the self-verification for the multiple identities held" (Burke 2001:1-2 emphasis added). Identities of witnesses as members of groups (social identities) have not been alluded to by witnesses but have been used by counsel in questioning. They have not been allowed to summon their role identities except that they are witnesses. This is despite the fact that witnesses in this study are of high-ranking officials – in FASTAS case the witness is an assistant director in the ministry of energy, and in KIS case the witness is a 'principal officer' of a transport company. Counsel and judge have exploited role identities of witnesses the most, denying witnesses the initiation move. Personal identities of witnesses have also been exploited only by counsel. This gets us to the second part of the study: do these struggles have anything to affect the adjudication process?

The witnesses still act as strangers denied discourse resources, and much of the protection from the judge. When non-lawyers do not feel belonging to the discourse event, the contest goes unbalanced. This adversarial interaction makes the adjudication one on identity struggles more than a humane search for truth. Truth does not seem to a favorable vocabulary in the legal field, where the one who argues more convincingly (which entails also painting a negative image of the other side) wins the day. The law-society relationship presents

the judiciary as a trustee of the rule of law, administering the law not for its own benefit, but for the benefit of each and every member of the community (Kenny, 1999), and Ashworth (2005)'s expectation that courtroom processes should be substantively just and humane, seem to be at odds with findings of this study. Administration of the law cannot be seen to be for the benefit of the entire community if and when members of the community supposed to be served by the judiciary do not receive a substantively just and humane treatment in the hands of counsel of the adverse party. It is implausible, to any uninterpellated mind, that a treatment such as witnesses receive at cross-examination makes them beneficiaries of the legal process. The witness has remained a goal upon whom speech acts such as directing, threatening and insulting are performed, making witnesses tools through which to achieve their desired end. Counsel and judges have continued to stick to the legal habitus, stabilizing their group's practices and sense of identity, keeping the laity outside.

Conclusion

This paper examined courtroom interactions between members of the juridical field and the laity who come in as witnesses, to find ways in which participants claim their identities, and to determine the role such struggles are likely to have upon the dispensation of justice. Using ethos – an appeal to character – counsel enhanced their characters and denounced witnesses in order to win their arguments before the judge. The identity struggle is unbalanced because counsel who enjoy discourse resources enhance their ethos and denounce the witnesses. The witnesses are unable to denounce counsel due to lack of access to the initiation move. They are only allowed this move through the response move, the rest being by counsel and judge to remind them to stick to authoritative discourse. In very few instances they engage themselves transformatively to complain about mishandling of the interrogation by counsel, the complaints generally fall on deaf ears to suggest that complaints cannot be a weapon against counsel's character. It has also been seen that identity struggles that go on are working against the spirit to reach justice.

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