

## REVIEW

# Ways of Representation of Main Suggestive Strategies and Tactics in Law Discourse

Veronika Katermina\* Tatyana Safronova

English Philology department, Kuban State University, Krasnodar, ul. Stavropolskaya, 149, 350040, Russia

### ARTICLE INFO

#### Article history

Received: 21 March 2019

Accepted: 16 April 2019

Published Online: 12 July 2019

#### Keywords:

Suggestion

Witness examination

Cross-examination

Suggestive strategies

Suggestive tactics.

### ABSTRACT

This article is devoted to the research of the mechanisms of suggestive influence represented in professional layers – prosecutors and attorneys – speech within the English law discourse on the material of a particular witness examination part of the court procedure. Some basic suggestive strategies and tactics used in this step and brief characteristics of their intentionality and ways of representation are presented. It is stated that suggestion as a means of persuasion and manipulation on a psyche is possible only due to the existence of a certain mechanism which gives a person an opportunity to perceive the suggested influences and reflect them. The authors suppose that the analysis of an effective manipulation of professional opponents – a plaintiff and a defendant (some basic suggestive-psychological algorithms used at the opening statement as well as suggestive strategies, tactics and methods applied) might considerably enhance the perspectives of studying characteristic features of law discourse thus allowing to get closer to the understanding of how a person's brain works as well as the nature of consciousness and subconsciousness together with the anthropocentric approach aimed at realization of manipulation/suggestion within the situation of an institutional communication.

## 1. Introduction

A lot of works of Russian and foreign scholars are devoted to the study of the phenomenon of language manipulation and suggestion, among them the classics of Russian neuropsychology V.M. Bekhterev<sup>[3]</sup>, I.P. Pavlov<sup>[14]</sup>, psychologists V.A. Goncharov<sup>[7]</sup>, S.K. Myshlyayev<sup>[13]</sup>, A. M. Svyadosch<sup>[16]</sup>. Own suggestive systems have been developed by practicing psychotherapists abroad: S. Andreas<sup>[1]</sup>, R. Bendler<sup>[4, 5]</sup>, D. Grinder<sup>[5]</sup>, M. Erickson<sup>[6]</sup> as well as such linguists as J. Vandries<sup>[19]</sup>, V. von Humboldt<sup>[8]</sup>, L. S. Barhudarov<sup>[2]</sup>, N. Krushevsky<sup>[11]</sup>, V. Wundt<sup>[20]</sup>, R. Rolland<sup>[15]</sup> etc.

The essence of speech influence in the modern scientific paradigm is reduced to the ability of one person to influence another through the use of a certain set of language means.

In our study we consider the linguistic situation presented in the courtroom, namely the impact of the speech of a lawyer and the prosecutor on members of the jury. The task of both parties in this case is to convince the listeners that they are right by any available linguistic means and to persuade them to make a certain decision (to issue a guilty or acquittal verdict).

The speeches of professional opponents of the judicial discourse can be procedurally divided into the stages of an

\*Corresponding Author:

Veronika Katermina,

English Philology department, Kuban State University, Krasnodar, ul. Stavropolskaya, 149, 350040, Russia;

E-mail: [veronika.katermina@yandex.ru](mailto:veronika.katermina@yandex.ru)

introductory statement, the questioning of witnesses and the final word.

One of the most significant and suggestively filled is the stage of interrogation of witnesses. This stage takes place after the introductory word of the parties and can be presented in the form of interrogation of one of the parties of the alleged witness in order to indirectly argue their position – the so-called direct interrogation, or the interrogation of the witness by the party opposing the one called by the witness in order to clarify the evidence and possible discredit arguments –cross-examination.

## 2. Methodology

The main method is the descriptive method; methods of cognitive science were also used – the method of cognitive analysis, categorization, observation, comparison, generalization, the method of conceptual and taxonomic analysis; interpretation method; functional method; cognitive modeling method; data integration method.

This procedural stage of the court hearing, as well as the stages of the opening or closing words, has a suggestive influence on the jury. However, in this case, the suggestion is implemented indirectly, since the addressee of the questions asked by the prosecutor / lawyer is a witness, and the jury acts as an observer.

As a result, the suggestive strategies and tactics of the stage of interrogation of witnesses can be divided into those used by speakers at the stage of direct interrogation, and, accordingly, those used at the stage of cross-examination.

Of particular interest is the direct interrogation of witnesses in view of the fact that it is the most suggestively filled and contestable

Modern scientists have studied and described both procedural stages of interrogation of witnesses. Nevertheless, among the identified communicative and language strategies and tactics, we selected those that implement the maximum suggestive impact.

Among the main objectives of cross-examination are the following:

- refutation of the testimony of the interrogated person;
- the establishment before the court of the incompetence of the interrogated person;
- clarification and specification of previously given evidence;
- receiving new information confirming the position of the party.

Based on this, we consider it expedient to consider the implementation of suggestive psychological sequences of influence on the jury by the prosecutor and the lawyer, as well as suggestive strategies and tactics applied at each stage.

## 3. Results

The main task of both the prosecutor and the lawyer at this stage is to discredit the opponent's arguments.

To achieve this, the speakers use a number of suggestive strategies, namely, a strategy for obtaining reliable testimony, an optimization strategy, a strategy of inclining to admit / denial of lies, a strategy of persuasion. All of them are realized due to the already formed emotional background in the mind of the jury.

The suggestive strategy of obtaining reliable testimony allows the witness to obtain specific reliable testimony required to argue his own position, and is characterized by the use of the following tactics:

Tactics insisting on remembering. This suggestive tactic is aimed at realizing direct influence and even some indirect pressure on the witness in order to obtain the necessary evidence:

*Q: So, I mean, do you think it was that Thursday night you saw the defendant; if you remember?*

*A: I don't remember exactly if it was that night, or if it was the next day, or -- it was one of those two.*

*Q: Either Thursday night or Friday morning, the 4th?*

*A: Yes<sup>[18]</sup>.*

In the presented fragment, the prosecutor needed to insist on the witness's recollection by the defense of the exact date when he saw the defendant in order to discredit his alibi, claimed by the lawyer.

For this purpose, a number of suggestive and clarifying questions are used aimed at specifying the date. Explanation of the question through introductory constructions (*I mean, if you remember*), providing a choice of two possible days of the week with an indication of the exact number allows the prosecutor to specify his question as much as possible by means of elements of a scientific functional style.

Answers to these questions serve as an immediate form of argumentation for the prosecution. On the one hand, the witness expresses uncertainty on the basis of the use of lexical and syntactic repetitions – the elements of a journalistic style; on the other hand, he unequivocally agrees with the last question which fully argues the arguments presented at the introductory statement stage, i.e. the crime was committed on the fourth day

A provocation tactic is also widely used, in which the prosecutor / lawyer asks such questions to the witness whose answer is the direct or indirect argumentation of the stated position:

*Q: And when you were in Jacksonville last year – do you remember going to Jacksonville to testify?*

*A: I do.*

*Q: Do you remember who you testified for, sir?*

*A: Well, I don't testify for anybody, sir. I try to give the same testimony no matter who retains me, but it was Mr. Craig Dennis's firm* <sup>[18]</sup>.

The question of whether the witness had given expert testimony earlier, in conjunction with the concretizing question of who was testified against, was contextually aimed at exposing the witness to giving different testimonies.

Another example of the implementation of this tactic may be the emotional pressure on the witness:

*Q: It goes without saying, would you agree, that if you were told that your brother was alleged to have raped his daughter, that's something that would never leave your mind?*

*A: That's true. Let me say that I didn't want to know the detail, and I consciously (because this is a dreadful thing that allegedly happened) didn't want to know the detail* <sup>[18]</sup>.

In the presented example, the lawyer puts emotional pressure on the witness by using emotionally-colored vocabulary (*was alleged to have raped*) in raising the question with a conditional construction (*if you were told*), which together forces the witness to talk about a possible situation, the subject of which extremely unpleasant. It is expressed lexico-semantic repetition in the answer (*I didn't want to know the detail*).

No less significant is the tactics of posing a direct question in which the speaker deliberately asks a general type of question that requires a yes / no answer in order to get a definite answer:

*Q: So you really didn't see my client before the collision, did you?*

*A: As I already told you, I was looking straight ahead, and a car was in front of me. The car swerved sharply to the right, and I saw the car to my immediate right start to swerve into my lane.*

*Q: So that means no, doesn't it?*

*A: I suppose so* <sup>[9]</sup>.

The use of the alternative question form allows the speaker to get the witness to answer "yes" or "no" which is aimed at arguing the stated position. However, the behavior of the witness is impossible to predict, as a result of which a detailed response may be presented. In this case, the speaker deliberately asks questions about the same content (*you really didn't see ..., did you? / So that means no, doesn't it?*) until he gets the answer in the desired form (*I suppose so*).

The strategy of inclining to confess / denounce in a lie is one of the most suggestively filled and it implements the maximum impact on the jury. As part of this strategy, the prosecutor / attorney deliberately asks questions that may show the unreliability of the interviewed witness and reveal a lie in his testimony and, as a result, partially or

completely discredit the opponent's position. The tactics used to implement this strategy include the following:

The tactics of checking the information value of the interrogated person. This tactic is aimed at identifying how important the testimony of the alleged witness is. Such questions differ by thematic variability but most often they look like this:

*Q: Officer, do you consider yourself as a professional?* <sup>[18]</sup>.

There is an identification of the scope of the witness's activity in order to identify the degree of his knowledge in the issue being studied. Such a question implies the expression of a personal assessment of their activities by a witness as an element of a journalistic functional style and, as a result, has a suggestive influence on the jury.

*Q: Your job involves a lot more than just strapping on a badge and a gun and riding around in a police car?* <sup>[10]</sup>.

The concretization of the scope of work and official duties determines in more detail the witness's awareness and also allows to introduce an element of irony by using the appropriate lexical units (*just strapping on a badge / riding around a police car*).

This tactic allows us to "weed out" those witnesses who are not related to the case in question or those whose social status or education does not allow to provide unambiguously reliable information.

As part of the strategy of exposing a lie, the majority of prosecutors and lawyers use the tactic of reminding the testimony already given which is aimed at direct discrediting of the testimony and, as a result, allows the jury to distrust the side of the witness who stated this:

*Q: Doctor, it is very misleading to tell this jury that your legal work is done at four in the morning and on weekends, isn't it, sir? Isn't that just a little misleading?* <sup>[12]</sup>.

The expression of the personal assessment of the witness's answer to the previously asked question is implemented in a commentary format with elements of irony: *it is very misleading ..., isn't it, sir?*

The lexico-syntactic repetition (*Isn't that ... misleading?*) allows the jury to focus on the witness's desire to confuse or mislead them. This technique allows to create a mistrust of the jury to further testimony of this witness and the side of his stated.

The suggestive strategy of persuasion is implemented after or during the interrogation of the witness by the opponent which allows to express disagreement in the form of a protest. It is either accepted by the judge and obliges the speaker to change the formulation of the question or is rejected. Within this strategy, the most common tactic is to identify and suppress an incorrect question which allows to focus the attention of the judge and jury on the inexpe-

diency or illegality of the question asked:

*Q: In fact, I think you described him as being very forthright, didn't you?*

*A: Correct.*

*Q: Expressing genuine concern about, you know, what happened to your cousin?*

ATTORNEY KRATZ: Objection, Judge, calls for speculation, how genuine it may be<sup>[17]</sup>.

The presented example demonstrates the formulation of a question that causes one of the most common objections – a call to speculation. Within the framework of any court session, speakers should be operated on with facts or reasoned theories of developments. Speculation and reasoning of witnesses should be considered unacceptable. The prosecutor asked the defense witness a question about his knowledge of what had happened to his relative, with whom he had not been in touch for more than six months. Therefore, the lawyer, by interrupting, appealed to the judge with a view to stop possible unconfirmed arguments.

#### 4. Conclusion

As we see, the stage of cross-examination of witnesses is very important in the framework of the court session as it allows to present a detailed picture of events stated in the introductory word as well as indirectly affect the jury drawing their attention to the inconsistency of the arguments of the opposite side which affects their direct relationship to the circumstances of the case and judicial speakers.

At this stage, the impact of the suggestion stage aimed at “immersion” of the board members in the situation in question, is strengthened and fixed, and the necessary need for a guilty or acquittal verdict is being prepared and created based on a changing attitude to the position of one party or the other.

Thus, the study of suggestive influence in judicial discourse seems to be a very promising direction of modern linguistic research within the framework of which the mechanisms and ways of realizing the potential of professional speech can be identified and specified.

#### References

[1] Andreas S., Folkner Ch.. [M]. NLP. New technologies of achieving success. Sofiya: Gelios, 2001.  
 [2] Barhudarov L. S.. [M]. Language and translation. Moscow: International relations, 1975.  
 [3] Bekhterev V. M.. [M]. Selected works on Social Psychology. Moscow: Nauka, 1994.  
 [4] Behndler R.. [M]. Use your brain to change yourself. Saint-Petersburg: Petersburg, 1994.

[5] Behndler R., Grinder D.. [M]. Transformation. Neurolinguistic programming and the structure of hypnosis. Moscow: Nauka, 1999.  
 [6] Erikson M.. [M]. Hypnoticrealities: usage of clinical hypnosis and the variant of indirect suggestion. Moscow: Nauka, 1999.  
 [7] Goncharov V. A.. [J]. Dynamics of interpersonal relations in artificially reorganized small group. Psychology of the XXIst century. 2001: 143–145.  
 [8] Gumboldt von V.. [M]. Selected works on linguistics. Moscow: Progress, 1984.  
 [9] Kertscher Tom Wis. fighting Dassey release in 'Making a Murderer' case / Tom Kertscher. USA Today. URL: <https://www.usatoday.com/story/news/nation-now/2016/11/14/brendan-dassey-ordered-released/93804596/>  
 [10] Kevin Grasha Tensing trial: What you need to know / Kevin Grasha. USA Today. URL: <http://www.cincinnati.com/story/news/2016/10/24/tenzing-trial-everything-you-need-know/92464944>.  
 [11] Krushevskij N.. [M]. Essays of the science about Earth. Moscow: Nauka, 2011.  
 [12] Mistrial declared in case of South Carolina officer who shot Walter Scott after traffic stop. Washington Post. URL: <https://www.washingtonpost.com/news/post-nation/wp/2016/12/05/mistrial-declared-in-case-of-south-carolina-officer-who-shot-walter-scott-after-traffic-stop/>  
 [13] Myshlyaev S. K.. [M]. Hypnosis. Personal influence? Saint-Petersburg: Fraternity, 1994.  
 [14] Pavlov I. P.. [M]. Complete works. Moscow: Academy of Sciences, 1951.  
 [15] Rollan R.. [M]. Collection of works in 9 volumes. Moscow: Pravda, 1983.  
 [16] Svyadoshch A. M., Romen A. S.. [J]. Application of the autogenic training in psychotherapeutical practice. Technique of autohypnosis. Karaganda, 1966: 16–25.  
 [17] Transcript of proceedings / McMartin Preschool Abuse Trial. Famous trials, 1987, 90. URL: <http://www.famous-trials.com/mcmartin>.  
 [18] Transcript of proceedings // Butler vs. Lubbock. URL: <https://fas.org/butler/sentence.html>.  
 [19] Vandries Zh.. [M]. Language. Linguistic introduction to the history. Moscow: State Socio-economic Publishing House, 1937.  
 [20] Vundt V.. [M]. Problems of psychology of peoples. Saint-Petersburg: Peterburg, 2001.