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Witness and Lawyer in the Roman courts.

Linguistic strategies of evasiveness and intimidation in Roman trial debates.

Roman courts were a venue where Latin was spoken in a variety of situational contexts and registers. Firstly, there must have been a series of legal formulas and performatives (e.g. oaths) uttered by the president of the court or his clerks, as well as lawyers and witnesses; then came the fully-fledged orations (*orationes perpetuae*) pronounced by counsel, which were a mixture of formal prose recited from a memorized script and improvised, extempore phrases¹. Finally, there was the questioning of witnesses. Scraps of heated exchange between lawyers (*altercatio*) have been preserved: these were either occasioned as objections to cross-questioning or took the form of extemporaneous interruptions and caustic comments in the opposing counsel's speech².

The Latin of lawyers, the 'orators', was expected to represent a standard, prestige variety, and was under intense scrutiny in this respect: Cicero, in his survey of the history of Latin eloquence in *Brutus*, shows that brilliant legal thinking was not enough to be regarded as a first-class barrister, and was regarded as flawed if counsel spoke the wrong, provincial variety of Latin (*oppidani*)³. In another passage, Cicero describes some old-fashioned speech habits of a previous generation of lawyers, exhibiting features which, to contemporary Roman ears, appeared 'uneducated'⁴. Gellius likewise

¹ Cf. Quint. *inst.* XI 2,47 *memoria autem facit etiam prompti ingeni famam, ut illa quae dicimus non domo attulisse sed ibi protinus sumpsisse uideamur, [...] idque in actionibus inter praecipua seruandum est, ut quaedam etiam quae optime uinximus uelut soluta enuntiemus, et cogitantibus nonnumquam et dubitantibus similes quaerere uideamur quae attulimus*. Cicero and other famous orators published their speeches after the trial; during the process they seem to have taken with them only rough notes and memos (*commentaria*), perhaps along the lines of the so-called 'narratio' (or better: νομικός) documents found in some papyri (for an updated bibliography on the problem see the entry for *P. Col. 7.174* at <http://papyri.info/ddbdp/p.col;7;174>).

² On *altercatio* cf. Powell 2009, 29-31.

³ In a similar vein, Quintilian recommends avoidance of regional vocabulary and technical expressions (ie precise words used by a specific profession, typically used to designate a precise tool, *Fallunt etiam uerba uel regionibus quibusdam magis familiaria uel artium propria, ut 'atabulus' uentus et nauis 'slataria' et †inmalocosanum [...]* VIII 2,13). 'Provincial' Latin in this context is discussed in Adams 2007, 135, with references: Quintilian also mentions the same Piacenza lawyer criticised in Cicero's *Brutus*, Tinca, who said *precula* for *pergula*.

⁴ Cic. *de orat.* III 46 *Qua re Cotta noster, cuius tu illa lata, Sulpici, non numquam imitaris, ut Iota litteram tollas et E plenissimum dicas, non mihi oratores antiquos, sed messorum uidetur imitari?*

records interesting derogatory remarks on lawyers naively showing off obsolete or overly technical Latin. Their aim was to impress a jury or an audience but they were easy game for an unsympathetic judge or for an opposing counsel ready to seize the chance⁵. On a different plane, Quintilian dwells on lawyers' need for effective communication, a goal attained more securely by deploying clipped and pithy phrases with straightforward word-order and precise choice of vocabulary, rather than by resorting, for example, to long hyperbata appropriate for writing elegant prose, but lost on judges selected by drawing lots and non-professional⁶.

Ancient Roman sources are thus replete with metalinguistic comment on lawyers' Latin and their command of different registers, or lack thereof. In this paper, however, I intend to dwell mostly on the evidence regarding the interaction between participants in a court debate; in particular I will focus on the questioning of witnesses by counsel or, in the inquisitorial system of late antiquity, by the presiding magistrate.

In introducing the following evidence, I will be adapting methodological insights and vocabulary from linguistic pragmatics, especially the emphasis on speech acts and interactional talk. For example, the study of extant counsel-witness exchanges will show the deployment of various politeness strategies, typically with a hidden motive (for example when an advocate is trying to lead the witness to make a statement contradicting a previous assertion). Similarly, witnesses and defendants often adopt politeness strategies while trying to elude an opposing counsel, without being too obvious and without being patently offensive. Also typical of dialogic interaction in court is the importance of a precise power and authority hierarchy overseeing exchange between the different participants: only counsel and judges can ask questions, and they choose the form in which their queries are couched, which they do with array of intimidating strategies.

⁵ Another interesting source of court debate or extemporaneous bantering is Gellius, usually in connection with the use of inappropriate, far-fetched or obsolete Latin expressions by counsel, who is being rebuked by a presiding judge, as on I 22 *se superesse*, XV 5 *profligata*, XI 7 *bouinator*. It is usually unclear at what point the judge intervenes to comment on the lawyer's expression, but presumably in the introductory speech, not during questioning, assuming there are witnesses. XI 7 is pronounced when counsel objects to a request for adjournment. In a similar vein also Cic. *Brut.* 260 in which counsel Ruscus objects to Sisenna's using unclear language: *quo accusante C. Hirtilium Sisenna defendens dixit quaedam eius sputatilia esse crimina. tum C. Ruscus: 'circumuenior, inquit, iudices, nisi subuenitis. Sisenna quid dicat nescio; metuo insidias. sputatilia, quid est hoc? sputa quid sit scio, tilica nescio.'* maximi risus.

⁶ VIII 2,14 ... *nec sit tam longus ut eum prosequi non possit intentio, nec †transiectio intra modum hyperbato finis eius differatur.* VIII 6,65 ... *uitanda est etiam illa Sallustiana (quamquam in ipso uirtutis optinet locum) breuitas et abruptum sermonis genus: quod otiosum fortasse lectorem minus fallat, audientem transuolat, nec dum repetatur expectat, cum praesertim lector non fere sit nisi eruditus, iudicem rura plerumque in decurias mittant de eo pronuntiatorum quod intellexerit.*

There are of course great differences between the study of ancient and of modern evidence in this perspective. Modern linguists can use accurate court records; they can even produce their own transcripts from tape recordings, in which many suprasegmental features of the spoken language are encoded, such as intonation, pace, pitch. Comparable evidence from the Roman courts does not exist, as no 'tight' transcriptions can be produced, and what does exist is of course discontinuous and much less abundant. Court transcripts, at least in Cicero's time, seem to have been rather loose, mostly summaries of what was said rather than *verbatim* transcriptions of the way in which participants spoke, though the later evidence shows progress towards a more accurate reproduction of the exact words⁷. Written depositions were part of court acts, and were available, as well as widely used, for example by Cicero. They are normally in indirect speech form, but there is evidence that, from the age of Cicero, reports started to be handed down in *oratio recta*.

The evidence transmitted by Cicero in treatises and orations comes in two main shapes: comments on what a previous speaker has said (in the orations) and anecdotes, for examples humorous recollections of a lively, momentous exchange between counsel or between counsel and witness. Cicero has also left us some fictional recreations of dialogue between counsel and defendant or witness in his orations, sometimes as a personal relay of what he claims has taken place on a previous session, sometimes just as a hypothetical reconstruction. Although by definition biased, these sketches are useful to highlight the tactics and, more generally, the linguistic behaviour of lawyers and witnesses during questioning and to show how lawyers succeeded in driving home a point⁸.

In the later period, from the fourth century onwards, reporting seems to have become more accurate, and by chance some full transcripts are extant. I will be drawing on the *Gesta Zenophili*, the *Acta purgationis Felicis episcopi*, and the *Collatio Carthaginiensis*, in addition to using sparse evidence from Egyptian papyri of the Roman period⁹.

⁷ Coles 1966, 10-12 on the earliest evidence regarding *oratio recta* and short-hand in *acta* about the time of Cicero's consulship in 63.

⁸ In general, however, Cicero tends to sum up a witness' deposition, not report the precise words, or only briefly. As perceptively put by Ps. Asconius, *In Actionem primam contra Verrem enarratio*, 56, p. 223 Stangl, the actual words spoken by witnesses would not be appropriate for the style requirements of a published oration: *inducentur enim dehinc a Tullio testes, quorum uerba in oratione conscribere nullius elegantiae fuit*.

⁹ The two most interesting late-antique documents I will be drawing on are the *Gesta apud Zenophilum* and the *Acta purgationis Felicis*. They are transmitted in a single MS containing the work of Optatus Mileuitanus, *Paris, BNF, Lat. 1711*: although often corrupt, both texts provide interesting evidence, both under the aspect of the Latin used by the participants and under the viewpoint of legal history. These texts are sometimes discussed by historians, e.g. Mayer 2008, 244-6 or Shaw 2011, 76-7, but are all but unknown to Latin language historians. The *Acta Felicis*

1. *Aliquo circumitu*

A great deal of interesting linguistic comment on the manner of the confrontation between questioning lawyer and witness is found in rhetorical authors, most of all Quintilian, who in Book 5 of the *Institutio* dwells on the different categories of witnesses and the recommended approach to each of them. The section is interesting also for a number of metaphors, often deriving from such spheres as the military, hunting or athletic competitions (for instance *in laqueos, in gradum componere, subici ab aduersario*).

Quintilian starts from the different treatment to be meted out to friendly and hostile witnesses. Friendly witnesses can be trained beforehand on what to say and how to say it. Some of them may be driven by resentment against the defendant; others will be known by counsel as intending to lie to the court. The latter category is the riskiest, not because of the moral dilemma facing a lawyer who intends to use their testimony (during the Republican and early Imperial periods lawyers appear to have had less compunction about misleading the court in the interest of their clients), but because witness statements are intrinsically slippery, if not utterly inconsistent, or because they may have a last minute change of mind, or even, given their shaky morals, end up conniving with the other side. The prosecuting lawyer had the right to enforce a deposition, but some of these witnesses were often obviously hostile or recalcitrant in their depositions. It was therefore commonly felt that Counsel should try to extract the usable statement by some circuitous, oblique way (*aliquo circumitu ad id peruenire, ut illi quod maxime dicere uoluit uideatur expressum*), so that the witness would not notice that the lawyer's truth was being extorted (*extorquere, exprimere*). The concept was that questions must come from far away, so as to deceive the witness on the stand and catch him unprepared: he must be questioned on the antefact, the ensuing facts, the time, the places, the people until he is tripped up by something and is forced to admit what the barrister wants him to (*multa de ante actis, multa de insecutis, loco tempore persona ceteris est interrogandus, ut in aliquod responsum incidat post quod illi uel fateri quae uolumus necesse sit uel iis*

describe a session in court held in the year 314 CE in Carthage. The defendant was one Alfius Caecilianus, an ex-duovir who in the town of Aptungi had been charged with conniving with bishop Felix to appropriate Christian books instead of burning them as Diocletian had decreed. In the earlier of the two Felix trials, the prosecutor was a barrister, Maximus, acting on behalf of the local Christian clergy (the *seniores*), Donatist Christians who wanted to use the occasion to throw discredit on the Catholics. In the second trial, held in 314 CE, in which the prosecution was led by one Apronianus, a number of earlier documents were read. The *Gesta apud Zenophilum* are the transcript of another trial held in 320 CE, at Circa: here a Catholic clergyman, Nundinarius, prosecuted Silvanus, a bishop who had bribed the community to elect him bishop and in the course of so doing had appropriated money which was to be distributed among the poor.

quae iam dixerit repugnare). Quintilian goes on to say that no instruction can be imparted on how to become a successful and skillful interrogator, but the best precedent is that of Socrates in Plato's dialogues, in which he has always managed to extract from his interlocutors, no matter how reluctant, the conclusions he had intended to reach from the start.

Quintilian also warns against the pitfalls and lures of lawyer's pompous and high register language, often skating on thin ice with the risk of falling prey to his own superciliousness. Alert witnesses are not weaponless against wily barristers, and in fact some are ready to grasp their chance when a lawyer has lost the thread of his own argument by using pompous language: there is nothing so likely to stem the flow of lawyer's rhetoric as a justified 'I don't understand' (*inst. V 7,32*)¹⁰.

Metaphorical language similar to Quintilian's that portrays the attitude of a cross-questioning barrister comes from Cicero's *Pro Flacco* 22:

(1) Cic. *Flacc.* 22 Vbi est igitur illa laus oratoris quae uel in accusatore antea uel in patrono spectari solebat: «bene testem interrogauit; callide accessit, reprehendit; quo uoluit adduxit; conuicit et elinguem reddidit?».

Where, then, is the oratorical skill, which formerly used to be looked for either in the prosecutor or in the counsel for the defence? «He examined the witness cleverly; he came up to him cunningly; he scolded him; he led him where he pleased; he convicted him and made him dumb».

The passage sums up, in the words of the audience at an untypical trial, the expected behaviour of the cross-questioning counsel in the adversarial debate: scolding, laying traps, leading, until the witness is literally lost for words in the end.

Juries and, later, ruling judges listened to and were influenced not only by the witnesses' spoken words but also by their general appearance, social condition, and presumably also by their confidence, self-assurance, and control of language. This comes to the fore explicitly in a set of instructions issued by the Imperial chancery to ruling judges:

(2) *Dig.* XLVII 18,10,5 Plurimum quoque in excutienda ueritate etiam uox ipsa et cognitionis subtilis diligentia adfert: nam et ex sermone et ex eo, qua quis constantia, qua trepidatione quid diceret, uel cuius existimationis quisque in ciuitate sua est, quaedam ad inluminandam ueritatem in lucem emergunt.

¹⁰ *Sed in primis interrogatio cum debet esse circumspecta, quia multa contra patronos uenuste testes saepe respondent eique praecipue rei uulgo fauetur, tum uerbis quam maxime ex medio sumptis, ut qui rogatur (is autem saepius est imperitus) intellegat, aut ne intellegere se neget, quod interrogantis non leue frigus est.*

In investigating the truth, important clues are the voice (of the witness or defendant) and a careful study of the evidence. Indeed, much (lit. some) light is shed on the truth of the matter by how firmly and consistently a deposition is made, or on the contrary by the agitation of the witness and the good or bad estimation in which he is held in his town.

2. *Acting up the counter-interrogating counsel*

From a slightly later period, Donatus' commentary of Terence transmits information about the manner of a cross-interrogating lawyer in a series of notes on *Eunuchus*, in a passage where Phaedria, the older of two brothers, interrogates the eunuch Dorio 'in the manner of lawyers adopting circuitous interrogation tactics' (see *infra*). A servant of Thais, Pythias, has come out of the house calling out for help after the girl in Thais' care has been raped by the eunuch donated by Phaedria as a token of devotion to her. The true author of the rape is in actual fact Chaerea, Phaedria's younger brother, who, in love with the girl, had sneaked into the house in disguise, wearing the eunuch's clothes, unbeknownst to everyone else. But as far as the servants of Thais know, a eunuch is the perpetrator: hence the equivocation. But when Dorio, the falsely incriminated real eunuch, reveals that Chaerea had taken his clothes, Phaedria, gasping at the truth, attempts to cover up his brother by questioning Dorio's reliability in the manner of a defence counsel (here *orator*) cross-questioning a witness (*testis*):

(3) Don. *Comm. Eun.* 700 VNDE IGITVR EVM FRATREM MEVM ESSE SCIEBAS [...] hae sunt obliquae interrogationes, quibus uti oratores uidemus, cum deriuare testimonium nituntur et ideo sic ait Phaedria, ut frustretur omnia, quae confessus est Dorio: uult enim fratri esse consultum. PARMENO DICEBAT EVM ESSE prope infirmatum est testimonium: quod enim Parmeno dicebat eum esse, potest falsum esse. 705 CREDIS HVIC QVOD DICIT a personae qualitate derogat fidem; nam quid credendum est seruo eunucho fugitiuo? QVID ISTI CREDAM RES IPSA INDICAT haec a persona quae conuincebatur oratorie ad factum se rettulit. 712 HEVS NEGATO RVR SVM 'rursum' non ad 'negato' pertinet, sed ad interrogationem, ut sit: 'rursus interrogo te'. 713 NON POTEST SINE MALO FATERI VIDEO ampliatio quaestionis argumentum est nihil constittisse. adde quod poenam minatur non tamquam iam incerto sed iam falso testi. deinde ipsum 'fateri' consideremus quale sit: non est testis, sed rei. hic igitur ut in illum culpam transferat uniuersam, 'fateri' dixit, non 'indicare', ut ipse reus, non alieni facti testis esse dicatur. [...] 714 MODO AIT MODO NEGAT testis aut ab aduersario conuincitur falsitatis aut a se ipso, si uariauerit dicta. ergo priora quia non potuerant conuinci, ab inconstantia testis praesidium defensionis est inquisitum.

700 «How did you know then that he was my brother»[...] these are the indirect forms of questions we see lawyers using when they attempt to weaken a testimony. Thus Phaedria's mode of speech is designed to make everything Dorio states seem devoid of foundation, Phaedria being determined, in this context, to shield his own brother. «Parmeno said it was him»: Dorio's deposition risks being undermined, for what Parmeno said may well be false. 705 «do you believe what he says?» (Phaedria) weakens Dorio's credibility on the basis of a social element: how can you trust a slave, a eunuch, a fugitive? «the very thing that happened tells me why I must believe him». The speaker (Pythias) moves from the unreliability of the speaker to the undeniability of the event, with rhetorical ability. 712 «Hey you, deny (everything)- and again»: the word *rursum* does not go with *negato*, but leads to the next question, as if it were «let me ask you again». 713 «he cannot be induced to confess without some form of punishment». The adjournment of the interrogation is proof that the witness gave an inconsistent account. To this should be added that Phaedria threatens the witness, not because the latter has given inadequate evidence, but in order to unmask him as a liar. If we then look at *fateri*, the verb refers to the witness, not to the fact. Phaedria uses this word instead of *indicare*, 'explain', because he is attempting to shift all the blame onto Dorio, so as to make him appear to be the defendant rather than the witness in someone else's suit. [...] 714 «He says now one thing, now the opposite». A witness is shown to be a liar either by the opponent or by some false step, if he makes inconsistent statements. Thus, since Phaedria was unable to deny the facts (*ie* that the girl was raped), he is trying to find a line of defence in the way in which the witness contradicts himself¹¹.

The passage is interesting because the legal implications of the passage are all of Donatus' doing: Donatus talks to an audience of would-be legal speakers and highlights what would be interesting to them, and perhaps what he had been taught to see as relevant. Phaedria's confounding of the unfortunate Dorio is therefore portrayed as a scene from a court drama, with Phaedria acting out the cross-questioning unscrupulous lawyer and trying to cover up his brother's crime. Phaedria starts first by trying to show that Dorio's evidence is flawed: how did Dorio know it was Chaerea who took his clothes, if he had never ever set eye on Chaerea (Dorio is a recent purchase?); Donatus then stresses the weakness of Dorio's answer, based on hearsay (*Parmeno was saying that it was him*). Phaedria then attempts an aggression *a qualitate*, very much as Cicero does quite often for non élite witnesses on the stand (a servant cannot give reliable evidence), after which he attempts to show that Dorio is giving contradictory depositions - and this of

¹¹ An important translation into French of the entire commentary of Donatus is now available online, at the url <http://hyperdonat.tge-adonis.fr/editions/html/corpus.html>, Bureau et al. 2007-2011.

course is exactly what Dorio is doing because he has now realized that he is incriminating his master's brother and will suffer badly if he persists doing so.

3. *Rogo, quaero, postulo*

Our evidence does not allow us to fill all the gaps in our knowledge of procedural rules and trial etiquette. But it is evident that some form of ritual behaviour, certainly evolving over time, was thought to be acceptable, even though trial procedures were certainly more informal than the highly ritualized procedures *in iure*, where everything was conducted according to the stiff system of the formular system¹².

During trial sessions, counsel called his own witnesses and cross-questioned those of the other side. It is likely that he asked for permission to do so, as shown by Cicero, *De oratore* II 245:

(4) Cic. *de orat.* II 245,3 Pusillus testis processit. «Licet - inquit - rogar?» Philippus. Tum quaesitor properans «modo breuiter». Hic ille «non accusabis: perpusillum rogabo».

In this case, Cicero conjures up the scene in direct speech, portraying the word-play that revolves around an infelicitous joke (hinging on the ambiguity of *perpusillum* that can mean both 'a very short time' and 'a very short one', said of a witness of low height, a typical snide comment much favored by lawyers, referring to the physical appearance of the witness). But, as Cicero says, the judge too was a short man, and he took offence at the remark. What emerges from the passage, however, is that counsel asked the president's permission to start his questioning – presumably cross-questioning – and the judge in this case grudgingly allowed it (presumably he could deny it, in certain contexts).

In another passage, a lawyer asks for permission to digress from the immediate issues of the case, which prompted the judge to give a caustic response:

(5) Gell. I 22,6 Memini ego praetoris, docti hominis, tribunali me forte assistere atque ibi aduocatum non incelebrem sic postulare, ut extra causam diceret remque, quae agebatur, non attingeret¹³.

¹² Gaius relates several forms of performative expressions uttered by the claimants and the defendants during the phase *in iure* following the procedure of the *legis actiones* or even in the *per formulas* procedure before the pretor. Among many examples, cf. Gaius, *inst.* IV 17b (fixed phrases pronounced to initiate an *actio per conductionem*), or the description of the ritual accompanying the *legis actio sacramento* at IV 16.

¹³ *postulo* is a stronger expression for requests, so perhaps Gellius is not reproducing the exact wording of the speaker's speech act.

On the available evidence, we ignore to what extent, if any, a judge would cut in on a cross-questioning lawyer, either reacting to an objection (see *infra*), or seeking to shield a witness from intimidation. From the later period, however, we have evidence that ‘leading’ questions were to be avoided:

(6) *Dig.* XLVIII 18,1,21 Qui quaestionem habiturus est, non debet specialiter interrogare, an Lucius Titius homicidium fecerit, sed generaliter, quis id fecerit: alterum enim magis suggerentis quam requirentis uidetur.

The judge who is interrogating a witness is not to ask specifically if Lucius Titius committed a murder, but in general terms, who did that. For the former appears to be a suggestion, not a real question.

Passage (4) is interesting *also* because it preserves the performative verb used in questioning a witness on the stand, *rogare* (*licet... rogare?*). Other extracts from Cicero seem to imply that the formula leading to the question was *te rogo*, used as a performative to stress the institutional situation in which the interlocutor is formally obliged to answer the question:

(7) *Cic. Flacc.* 22-3 Quid tu istum roges, Laeli, qui, prius quam hoc «Te rogo» dixeris, plura etiam effundet quam tu ei domi ante praescripseris? Quid ego autem defensor rogem?

What questions can you ask, Laelius, a man who, even before you have pronounced the words «I hereby ask you», will pour out more assertions than you enjoined him before you left home?

In another passage reporting (in fact, inventing) a cross-questioning scene, Cicero uses the same phrase as a coda capping his question, presumably for the specific purpose of stressing his attitude as claiming a precise response (rather than ‘I’m asking *you*, as opposed to anyone else):

(8) *Cic. Quinct.* 79 Quam longe est hinc in saltum uestrum Gallicanum? Naeui, te rogo.

Here, even if the exchange is fictional, not a real record, Cicero caps the question with *te rogo* as a performative, to mark his speech act and its peremptory nature. An answer is expected, indeed required of Naevius.

Rogo in requests has recently been studied in great detail by Dickey, 2012, who conclusively shows that *rogo* and *peto* are associated with major requests in Classical Latin

(while minor requests are formulated with *uelim* and *quaeso*). *Rogo*, soon after Cicero, or perhaps already in his time, became the parenthetical expression used for ‘please’, in time ousting *quaeso* and earlier expressions (Cf. Dickey 2006). According to Dickey 2012, 745, «*rogo*, which is entirely absent from Cicero’s speeches [...], belongs exclusively to a more informal register when used with requests». However, a sharp distinction between the meanings ‘to ask someone a question’ and ‘to request’ is not easy to maintain, and is further confused by adoption of the same *ut* construction, for example in such phrases as *rogo ut mihi respondeas*. But even if the distinction were acceptable, distribution and register definition in Cicero do not match Dickey’s description exactly. In the speeches Cicero is not normally in a position to put forward major requests for himself, so first-person *rogo* indicating requests does not occur (only «I hereby ask you»). However, Cicero has *rogamus* at *Cluent.* 195 and *rogabimus* at *Font.* 36 in requests addressed to the jury on behalf of his client and in a closing argument¹⁴. Moreover, in the third person, *rogat* occurs frequently even in the speeches, often paired with *orat*, when Cicero describes requests by third parties. None of these occurrences suggest informality, in fact the opposite, contextually (addressing the jury, combination with *oro*), seems to be the case. I would thus suggest limiting the informality/formality categorization to the opposition between an unconstrued *rogo* as a parenthetical for ‘please’ and its use in complete phrases, which must have soon become formal and old-fashioned not long after Cicero’s time (exactly the situation in modern English with *please/if it please you*, with the latter almost exclusively used ironically because too old-fashioned)¹⁵.

Be this as it may, one wonders how the use of *rogo* as a lawyer’s performative fits Dickey’s convincing analysis of requests in a politeness scale. In the context of a courtroom situation, the defendant or witness is obliged to answer, and the advocate is not expected to go on record as having benefited from the answer: the ‘pleading/urgent’ nuance associated with *rogo*-requests elsewhere is relevant in a different way, and it seems better to see *rogo* not as a marker of polite but rather of formal, ritualized language (unlike other cases in which lawyers feign politeness to make a witness lower his or her guard) marking aloofness and peremptoriness¹⁶.

¹⁴ Cic. *Cluent.* 195 *uos ne huius honestissime actam uitam matris crudelitati condonetis rogamus*; Cic. *Font.* 36 *orandus erit nobis amicus meus, M. Plaetorius, ut suos nouos clientis a bello faciendo deterreat [...], aut, si non poterit, M. Fabium, subscriptorem eius, rogabimus ut Allobrogum animos mitiget.*

¹⁵ It is difficult to associate *rogo* with informality, whatever its meaning, considering the phrase *rogare sententiam* used when casting a vote in political meetings, and because of the formal contexts in trial procedures, and in will formulas reported in the Digest, which make the perception of register less well-defined.

¹⁶ *Rogatum* is also the term used to refer to the question posed by counsel. Cicero himself refers to the act of questioning a witness by *interrogo*, presumably a clearer and more specific replacement. Zumpt 1871, 335 argues that *interrogo* referred to cross-questioning, but the evidence is very thin.

Cicero also has *quaero* to introduce his question to a witness, in this case the hated Vatinius, in this extract of what seems to be a fragment of his actual words during cross-questioning:

(9) Cic. *Vatin.* 42 hoc quaero, num P. Sestium, qua lege accusandum omnino fuisse negas, ea lege condemnari putes oportere?

I ask this; - whether you think that Publius Sestius ought to be condemned according to the provisions of a law under which you say that he never ought to have been accused at all?

It is not easy to see why *quaero* is used here in preference to *rogo*, but perhaps it is because there is no personal pronoun construction and because Cicero is placing greater emphasis on the elaborate point he is making, with the casuistic distinction between *quem... condemnandum... negas* and *condemnari putes oportere* (apparently Vatinius, who deposed against Sestius, had been reported as saying that Sestius «ought not» to be accused under the statute *de ui* – but only because it would be difficult to bring about a conviction on the available evidence, not because Sestius had not committed what he was charged with: of course Cicero chooses to stress only the first half of the statement).

In other passages, *rogo* and *quaero* are used without obvious meaning or register differences, as in the following narrative of Cicero's interrogation of Heius, a witness summoned by Cicero to testify against Verres¹⁷:

(10) Cic. *Verr.* II 4,27 cum quaesissem numquid aliud de bonis eius peruenisset ad Verrem, respondit istum ad se misisse ut sibi mitteret Agrigentum peripetasmata. quaesiui eane misisset; respondit id quod necesse erat, scilicet: dicto audientem fuisse praetori, misisse. rogavi peruenissentne Agrigentum; dixit peruenisse. quaesiui quemadmodum reuertissent; negavit adhuc reuertisse. risus populi atque admiratio omnium uestrum facta est.

¹⁷ Other passages showing that *rogo* had a technical currency in the law courts for 'interrogate' and *rogatum* for a lawyer's questioning are Cic. *de orat.* II 303 *mibi turpius uideri nihil solet, quam quod ex oratoris dicto aliquo aut responso aut rogato sermo ille sequitur: «occidit». «Aduersariumne?». «Immo uero - aiunt - se et eum, quem defendit».* and Cic. *Verr.* II 1,84 *Cedo mihi ipsius Verris testimonium: uideamus quid idem iste iuratus dixerit. Recita. Ab accusatore rogatus respondit in hoc iudicio non persequi: sibi in animo esse alio tempore persequi.* Let us see what that fellow said on his oath. Recite it. «Being asked by the accuser, he answered that he was not prosecuting for that in this trial, that he intended to prosecute for that another time», *In Vatinium testem interrogatio* 40.

When I asked, whether any other part of his property had come to Verres, he answered that he had sent him orders to send the tapestry to Agrigentum to him. I asked whether he had sent it. He replied as he must, that is, that he had been obedient to the praetor; that he had sent it. - I asked whether it had arrived at Agrigentum; he said it had arrived. - I asked in what condition it had returned; he said it had not returned yet. - There was a laugh and a murmur from all the people.

Most forceful of all verbs for conducting an interrogation is *postulo*, as used in Cic. *Verr.* II 2,188-9 where Cicero describes his cornering of one of Verres' associates, the banker Carpinatius, who had falsified his registers to hide payments made to Verres:

(11) Cic. *Verr.* II 2,188-9 *postulo ut mihi respondeat qui sit is Verrucius, mercator an negotiator an arator an pecuarius, in Sicilia sit an iam decesserit. clamare omnes ex conuentu neminem unquam in Sicilia fuisse Verrucium. ego instare ut mihi responderet, quis esset, ubi esset, unde esset; cur seruus societatis qui tabulas conficeret, semper in Verruci nomine certo ex loco mendosus esset. atque haec postulabam non quo illum cogi putarem oportere, ut ad ea mihi responderet inuitus, sed ut omnibus istius furta, illius flagitium, utriusque audacia perspicua esse posset. itaque illum in iure metu conscientiaque peccati mutum atque exanimatum ac uix uiuum relinquo.*

I demand that Carpinatius shall give me an answer as to who that Verrutius is; whether he is a merchant, or a broker, or an agriculturist, or a grazier; whether he is in Sicily, or whether he has now left it. All who were in the court cried out at once that there had never been anyone in Sicily of the name of Verrutius. I began to press the man to answer me and say who he was, where he was, whence he came; why the servant of the company who made up the accounts always made a blunder in the name of Verrutius at the same place? And I made this demand, not because I thought it of any consequence that he should be compelled to answer me on these points against his will, but that the robberies of one, the dishonesty of the other, and the audacity of both might be made evident to all the world. And so I leave him in the court, dumb from fear and the consciousness of his crimes, terrified out of his wits, and almost frightened to death.

In two passages in Cicero, a reluctant or evasive witness is summoned to answer the question with *ad rogata responde*:

(12) *Vatin.* 40 *Sed ut aliquando audiamus quam copiose mihi ad rogata respondeas, concludam iam interrogationem meam teque in extremo pauca de ipsa causa rogabo.*

But that we may hear at length how fully you reply to my interrogations, I will

now conclude my examination of you, and at the end I will ask you a few questions relating to the cause itself.

In later documents describing judicial or near-judicial procedures¹⁸, as we are going to see, Republican Latin *responde quod rogo* is substituted by *responde quod interrogo*, perhaps because *rogo* had become common for parenthetic ‘please’ or for more pleading, major requests, almost ‘to beg’, or ‘to pray’, and a more precise or technical term was needed:

(13) *Gesta concilii Aquileiensis*, 34 Palladius dixit: «Ego quae interrogo non respondetis?».

(14) *Gesta collationis Carthaginiensis. Cognitiono* 3,199 Augustinus, episcopus ecclesiae catholicae, dixit: «ergo ad interrogata responde».

(15) *Gesta collationis Carthaginiensis. ibid.* Receditis a criminibus traditionis? respondeant ad breue interrogatum nostrum.

(16) *Gesta collationis Carthaginiensis. Cognitiono* 3,246 Marcellinus, uir clarissimus, tribunus et notarius, dixit: «ad interrogata respondere dignare».

(17) *Acta purgationis Felicis* p. 201, 12 Ziwsa: Aelianus proconsul dixit: «Quoniam fingis te non intelligere quod interrogaris, dicam apertius».

Aelianus: «Since you pretend not to understand the question you’re being asked, I will repeat it more clearly».

The technical expression for ‘answering the question’ in the form *ad interrogatum respondere* occurs in the following extract from the *Digest* dealing with inheritance cases (the *Digest*, though a collection of extraordinary interest for linguistic reasons as well, is

¹⁸ A significant lapse of time separates evidence culled from Cicero and evidence from papyri and gesta, but the diachronic element does not seem to be crucial. More important is the evolution of administrative and legal procedures from the Republican to the Imperial periods, and particularly the change from the procedures of the quaestiones perpetuae, standing courts dealing with specific charges or types of crimes, active in the Republican period, to the cognitio extra ordinem of the Imperial period. The main difference lies with the presence, in the quaestio trials, or non-professional juries and the adherence to what appears to be a system similar to the adversarial Common Law procedure, for Cicero, whereas in the Imperial period a trial is presided over solely by an imperial administrator, in varying degrees of importance (from prefect to local magistrate or community official), who leads the investigative and judicial procedure, with the lawyers assuming a relatively more contained role.

less revealing under the viewpoint of trial language because it is a collection of, mostly, civil law commentaries):

(18) *Dig. XI 1,10,5 De interrogatoriis actionibus* Quod autem ait praetor «omnino non respondisse», posteriores sic exceperunt, ut omnino non respondisse videatur, qui ad interrogatum non respondit, id est πρὸς ἔπος.

Concerning the praetor's phrase «he did not answer at all», later interpreters read this as meaning that he who did not answer exactly according to the tenor of the question, that is, 'word for word', is said not to have given an answer.

(19) *Dig. XI 1,9,5 Qui interrogatus heredem se responderit nec adiecerit ex qua parte, ex asse respondisse dicendum est, nisi forte ita interrogetur, an ex dimidia parte heres sit, et responderit 'heres sum': hic enim magis eum puto ad interrogatum respondisse.*

he who when the question was put to him answered that he was the heir, but did not specify for what fraction, must be taken to have answered in toto, unless the question put to him was explicit, if he was heir to the half estate, and he answered 'I am'. In this case I think he rather gave a precise answer.

More generally, in later court proceedings, performatives are less in evidence, because trial and court procedures had fundamentally altered. The adversarial system of the Republican period had changed to an inquisitorial system, in which the judge conducted the interrogation, and counsel could only address the court, not the witness, although they could and did feed the judge with possible questions. Whereas the Republican advocate needed to reassert his position as an authorized questioner, the Imperial judge wielded unchallenged authority: for example, he could order that a witness be beaten or tortured, and he had perhaps less need of deploying such performative expressions¹⁹. Therefore the greater power wielded by the presiding judge while questioning must be the reason why in the *Gesta apud Zenophilum*, and the *Acta purgationis Felicis*, or the *Gesta collationis Carthaginiensis rogo* and *quaero* as performatives are not present. Questions are suggested by the advocates to the judge, who then addresses the witness. The only verb used is the clearer *interrogo*, next to *quaero*, but only for describing the questioning in abstract terms or for describing actual questions: first-person performatives marking the witness's speaking turn (*de hoc te rogo* and such like) do not occur in these later documents.

In the following extracts, Apronianus, acting as advocate on behalf of Caecilianus, an

¹⁹*Flacc. 10 numquam nobis ad rogatum respondent, semper accusatori plus quam ad rogatum, numquam laborant quem ad modum probent quod dicunt, sed quem ad modum se explicent dicendo.*

ex-public officer, asks the judge to put a number of questions and refers to the intended actions with *quaerere*²⁰:

(20) *Acta purgationis Felicis*, p. 201, 3-6 *Apronianus*: «Qua de re igitur de Ingentio quaerendum est, quatenus haec machinata sint ac fabricata, et quatenus uoluerit circumscribere magistrum ad mendacium».

Apronianus: «Therefore, the question must be put to Ingentius as to why all these charges have been fabricated and what prompted him to induce the officer to lie».

(21) *Acta purgationis Felicis*, p. 203, 12-3, *Apronianus*: dixit: «**Dignare de eo quaerere**, qua auctoritate, quo dolo, qua insania circuierit Mauritanias omnes, Numidias etiam, qua ratione seditionem commouerit catholicae Ecclesiae».

Apronianus: «May it please your Lordship to ask him on what authority, with what deceitful purpose, for what madness he started travelling through the entire Mauritania, even through Numidia, with what intentions he started to stir dissent against the Catholic Church».

(22) *Acta purgationis Felicis*, p. 201-2, 24-35, 1-4 Ziwsa: *Apronianus* dixit: «non ita, uenit ad Caecilianum, <dignare> **quaerere** de Caeciliano».

Apronianus: «That's not true, he came up to Caecilianus, **may it please your Lordship** to ask Caecilianus himself».

(23) *Gesta apud Zenophilum* p. 193, 37-8 Ziwsa: Zenophilus u. c. consularis Nundinario dixit: «Quid aliud putas ex his esse quaerendum?».

The right honourable Zenophilus, ex-consul, said to Nundinarius: «what else do you think I should ask of them?».

(24) *Gesta apud Zenophilum* p. 194, 32-3 Ziwsa: Zenophilus u. c. consularis Nundinario dixit: «De quadringentis follibus quos putas interrogandos?».

The right honourable Zenophilus, ex-consul, said: «Whom do you think I should question about the four hundred coins?».

²⁰ In the same text *rogo* as a performative no longer occurs, or in the technical sense 'interrogating on the stand', whereas it is used in the more current meaning of asking, or even begging someone to do something, for example *Gesta collationis* 3,253 *Nihil absque mandato est; immo ut audientiam praestantia tua praebeat, hoc rogamus*; *Gesta collationis* 1,208 *Felix, Nouasinnensis episcopus, dixit: «ipse me rogauit in itinere, et ego pro ipso subscripsi»*.

(25) *Gesta apud Zenophilum* Zenophilus u. c. consularis Nundinario dixit: «Quid aliud de Crescentiano putas esse requirendum?». Nundinarius dixit: «Ipsud est».

In the last example, Apronianus's interruption with the typical Late Latin 'no' answer formula (*non ita*)²¹ sounds very abrupt, and even strikes a disrespectful note, which, *a priori* seems implausible, and even an unnecessary loss of control at a point where the course of debate does not need it. On the other hand, on reading this and similar Roman proceedings, one cannot help feeling that these transcripts are not fully objective but have been recast from the viewpoint of the winner, and the author of such minutes clearly sympathizes with the Caecilian party.

One category of first-person performative expressions which do occur in the late-antique records are those related to the request made to the court that a given set of documents, letters, and such like, bearing on the evidence, be entered into the record.²² In these cases, counsel uses *oro* or even an antiquated expression, *quaesumus*, from *quaeso*, which was by then obsolete, but had remained in usage for 'I pray', especially God. *Quaeso*, which after Cicero's time was mostly used in parentheses for 'please', is also used for a request that a witness be summoned to speak before the judge (Greek ἀξιῶ in juridical papyri: cf. e.g. *PLips.* 1.40 l. 9 ἀξιῶ τὸν σκριβὰ εἰσελθεῖν καὶ εἰπεῖν 'I ask that the scribe be deposed'; *P.Col.* 7.175 col. 3 l. 56 ἀξιῶ πύσματι σε αὐτο[ῦς] προσαγαγεῖν, 'I ask you to let them come for interrogation'). See for example (26), where Maximus, counsel for the Catholic Church Elders, appears against Caecilianus and asks him to testify and declare whether a particularly incriminating letter was indeed written by him:

(26) *Acta purgationis Felicis*, p. 199, 1-6 Ziwsa: *Maximus*: «**quaeso** [...] apud acta deponat, utrumne iam de pactione secundum acta ab eodem habita litteras dederit, et utrum ea quae in litteris contulerit uera sint».

Maximus: «I ask him [...] to make his deposition in the Acts as to whether he gave (as is stated in the Acts) a letter in accordance with an agreement which he had already made (*de pactione... ab eodem habita*), and as to whether the statements which he has made in the letter are true» (transl. Vassall-Phillips).

Observe however that *quaeso* does not address the defendant, as in the English translation: Maximus is using the very formal expression because he is asking the court that Caecilianus be called on as a witness. These documents therefore draw a distinction between *quaero*, used to describe the act of interrogating someone of inferior status, and

²¹ Cf. *Act. Apost.* 16,37 *non ita*; *Vitae patrum* 3,165 (PL 73).

²² See also Meyer 2004, 245-246.

quaeso (interchangeable with *oro*), when an advocate addresses the presiding judge to prompt a line of inquiry, but also to ask that a given document or evidence be put on the record, no doubt for the judge to use it when passing sentence. See also:

(27) *Acta purgationis Felicis* p. 199, 24-5 *Maximus*: «hanc lego et **oro** plena actis inseratur».

(28) *Acta purgationis Felicis* p. 200, 12 *Maximus*: Quoniam eius epistolae lectio apud acta recitata est, quam ipse agnouit se misisse, quae dixit, **quaesumus** actis haereant.

4. Turn-taking, intervening, interrupting

All interaction in dialogue requires a controlled procedure of turn taking: people who 'do all the talking' and fail to allow others any time to cut in and venture an opinion are blamed as uncouth or bad mannered. Interaction in court proceedings is of course ritualized and hierarchical. The presiding judge is the umpire of the turns, but he need not always intervene and rule who will speak. During interrogations of witnesses, lawyers and witnesses can follow normal conversational rules, and detect such signals as intonation and pauses as a cue for cutting in. At the same time, counsel may choose to interrupt a reticent or digressing witness to rein him or her in to answer the question more precisely.

In several late-antique reports of court proceedings, some abrupt interruptions are highlighted by dint of a repeated formula, an adversative *cum* construction. For example in the *Gesta collationis* (not a real trial, but a confrontation between ecclesiastical lawyers under the supervision of an Imperial official), the chancellors who took the minutes routinely marked an interruption with phrases such as *cum diceret* (in Greek judicial proceedings papyri a similar phrase is found, see e.g. below, *P. Col.* 7.175 καὶ ἐξῆς λέγοντος, Ἀλέξανδρος ῥήτωρ εἶπεν 'and while he was speaking Alexander the lawyer said'),

In the Republican adversarial system, counsel objected to what his opposite number did, for example during cross-questioning. We do not have the exact phrase in direct speech ('objection, your Honour') in the Latin evidence, but we have some passages in which such an interruption was recorded along with the motivation which had prompted it. For example Hortensius, during the Verres trial, made a very apt interruption when Cicero was accusing Verres of being responsible for the death of the Lampsacus notable Philodamus:

(29) *Quint. inst.* VI 3,89 ut Cicero fecit cum ei testem in iudicio Verres roganti dixisset Hortensius: «non intellego haec aenigmata»; «atqui debes - inquit - cum Sphingem domi habeas»; acceperat autem ille a Verre Sphingem aeneam magnae pecuniae.

(30) Cic. *Verr.* II 1,71 in Tetti testimonio priore actione interpellauit Hortensius [...] hoc tum dixit, Philodamum et filium eius a C. Nerone esse damnatos.

(31) Cic. *Brut.* 260 fuit accusator, inquit, uetus, quo accusante C. Hirtilium Sisenna defendens dixit quaedam eius sputatilica esse crimina. tum C. Rusius: «circumuenior - inquit - iudices, nisi subuenitis. Sisenna quid dicat nescio; metuo insidias. sputatilica, quid est hoc? sputa quid sit scio, tilica nescio». maximi risus.

Interpello, however, is a description of the ‘interruption’, not the performative verb which must have marked the act. Objection on a point of law in Latin is *excipio* and even if we have no law-suit contexts in Latin in which an advocate stands up to pronounce this phrase, nor do we have the judge’s reactions to it (for example ‘sustained’, or ‘overruled’), it is possible that *excipio* was the expression thus used²³.

It is only in a few Greek papyri and inscriptions of the Roman period that we have the vignette of the opposing counsel interrupting an incorrect statement by his opposite number, with the phrase *παραγράφομαι*²⁴:

(32) *P. Columbia* 7.175 col. 2, 20-25 (*Theodorus*) καὶ ἀναγνοὺς προσέθηκεν· οὐχ ἀπλῶς οὐδ’ ὡς ἔτυχεν αἰ συνηγορούμεναι λιβέλλον ἀντέειπεν ἐπὶ τὴν ἐπαρχικὴν ἐξουσίαν· καὶ ἐξῆς λέγοντος, Ἀλέξανδρος ῥήτωρ εἶπεν· παραγράφομαι. / ὁ σύνδικος αὐτῷ εἶπεν· εἰπὲ τὴν παραγραφὴν. Ἀλέξανδρος εἶπεν· εὐκταῖον μὲν ἦν τοῖς συνηγορούμενοις τὸν ἀγῶνα συστήσασθαι ἐπὶ τοῦ μείζονος δικαστηρίου πρὸς τὸ συκοφάντας φανείσας τὰς ἀντιδίκους τιμωρίαν ὑποστήναι· πάντα γὰρ ἐσυκοφάντησαν δι’ οὗ ἀνήνεγκαν λιβέλλου ἐπὶ τὴν ἐπαρχικὴν ἐξουσίαν²⁵.

²³ *Exceptio* was in origin a clause qualifying the *formula* under whose provisions a defendant was brought to trial: if the object of the *exceptio* was found to be true, the charge was to be dismissed. *Exceptiones* were therefore included in the pre-trial formula (*in iure*) in the Republican period, but we know from various sources that the term, at a later period, became more vague in application, when the procedure became the *cognitio extra ordinem*, no longer bound to the formular system or the double stage *in iure / in iudicio*. Since the trial procedure was not so tightly regulated, it is not clear what use defence and prosecution counsel made of *exceptiones* and *replicationes*, and to what extent a presiding judge would be bound to rule or alter the course of questioning on the basis of points of law and procedure raised by such interruptions. In Cic. *Verr.* II 1,71 Hortensius’ objection is clearly a point of relevance (the execution of Philodamus was the result of a death sentence issued by the lawful provincial governor, Nero, and therefore Verres could not be blamed for it). In the proceedings from *P. Col.* 175 (AD 339), Alexandros raises a point of law, the *praescriptio longi temporis* whereby it is shown that the claimants, although absent for a period of five years, are still in possession of the land and are therefore liable for all taxes pertaining to it.

²⁴ In quoting extracts from papyri I have normalized the Greek and I have deleted diacritics for abbreviations.

²⁵ Several Egyptian papyri of the Roman period provide interesting evidence, especially when the transcripts reveal signs of speakers’ embarrassment or irritation. Here is a very provisional list

After reading this, he added, «Neither thoughtlessly nor at random did my clients submit a petition to the Prefect». As he was continuing, Alexandros, advocate, said «Objection!». The defensor civitatis said to him, «State your objection». Alexandros said, «It would have suited my clients to plead the case before the higher court in order to have our opponents undergo punishment when their malice became evident, or there is nothing but malice in the petition which they submitted to the Prefect».

Interruption could be motivated, naturally enough, by the need to bring to everyone's attention what counsel wanted to be perceived as a lie, during witness questioning. In the second Donatist record extant from *Parisinus Latinus* 1711, the *Acta purgationis Felicis*, Caecilianus' counsel Apronianus interrupts the interrogation of Ingentius, his client's accuser:

(33)p. 203, 15-20 Ziwsa: *Aelianus proconsul dixit*: «Ad Numidias fuisti?». *Respondit*: «Non, domine: sit qui probet». *Aelianus proconsul dixit*: «Nec in Mauritania?». *Respondit*: «Negotiarum illo fui». *Apronianus dixit*: «Et in hoc mentitur, domine (nam ad Mauritaniae situm non nisi per Numidias pergitur), quatenus dicit se in Mauritania fuisse, non fuisse in Numidia».

Aelianus: «Where you in Numidia?». *Answer*: «No, my lord - I have [someone] who could prove it». *Aelianus*: «Nor in Mauritania». *Answer*: «I went there to trade». *Apronianus*: «In this too, my lord, he is lying (indeed, it is impossible to reach anywhere in Mauritania unless through Numidia), inasmuch as he says he has been in Mauritania, but not in Numidia».

Ascertaining whether Ingentius ever was in Numidia seems a small gain, and Ingentius's assertion that he never was in Numidia may be read as a shortcut (he meant that he never 'stayed' in Numidia), but Apronianus is quick to point out the impossibility of reaching Mauritania without crossing Numidia, so as to throw discredit on the witness and undermine the whole of Ingentius's deposition.

In general, however, the records of court proceedings which have come down to us in papyri and inscriptions are not reliable enough, from a linguistic viewpoint, or alert enough to the subtleties of linguistic interaction to give a sound basis for interpreting the linguistic behaviour of the participants.

It is unlikely, for example, that the turns were so abrupt and the manner of address of the two lawyers to the sitting judge, the emperor in appeal to boot, was so direct in the

of papyri where I have found features of some linguistic interest in terms of linguistic interaction: *P.Oxy.* 2955; 3117; 3758; 3619; *P.Strasb.* 1.41 (an old man called Peison on the witness stand); *P.Flor.* 1.61; *P.Lond.* inv. 2565; *P.Oslo* 80; *P.Lips.* 1.38; *P.Lips.* 1.32.

following inscription from Syria, the *Cognitio Imperatoris Caracallae de Goharienis a. 216* (= *SEG* 17, 1960, 759), in which two lawyers debate the rights to appeal of a local Syrian community, the Gohareni, who had tried to challenge the tax immunity of a local notable²⁶. See for example

(34) col. II 25-6 *Antoninus Augustus dixit*: «λέγεις οὖν ὅτι οὐκ ἔξεκαλέσατο;». *Aristaenetus dixit*: «οὐκ ἔχουσιν ἔκκλητον ὅτι οὐκ ἔξῃ». [...] 31-5 «οὐ θέλεις ἐμὲ ἀκούσαι τοῦ πράγματος;». *Aristaenetus dixit*: «λέγω». *Antoninus Augustus dixit*: «Ἐγὼ εἰ ἔσπευδον ἐντεῦθεν ἀναστῆναι ἔλεγον· ἢ παραγραφὴ χώραν ἔχει· ἐν τίσιν οὖν μέμφομαι;». *Lollianus dixit*: «λέγω ἐντὸς ἡμισείας *et subiunxit*» [...]

Antoninus Augustus said: «you say, then, that there was no appeal procedure?». *Aristaenetus said*: «there is no appeal because it was not lawful». [...] *Antoninus Augustus said*: «You don't want me to hear the cause?». *Aristaenetus said*: «No». *Antoninus Augustus said*: «If I had to hurry to get up from here, I would say 'the objection is upheld.' So in what respects is the cause to be heard?». *Lollianus said*: «I can tell you in a half hour, *and he added*» [...]

The two lawyers are never reported as addressing one another, but they invariably talk to the emperor. Caracalla sounds caustic at times, but the two lawyers are equally curt. It is, I think, reasonable to assume that this is a false impression determined by loose reporting in the document (an inscription, but no doubt taken from court minutes), because the two lawyers' phrases could easily be construed as disrespectful: Aristaenetus's answers (ὅτι οὐκ ἔξῃ... λέγω) are implausibly blunt, especially considering that he is addressing an emperor, and Lollianus's 'give me half an hour' seems to call for some very cutting response from the emperor, who presumably wants to go straight to the heart of the matter.

Other examples where the suspicion arises that the minutes are not precise enough to allow for the niceties of verbal exchange are from some other bilingual reports of sessions. When two speakers speak in different languages, some gesture of apology is needed. But in the following two documents speakers each use their language without any accommodation or apologetic measure. Presumably because of the need of the notarius for concision, the ceremoniousness is cut down to zero, and the two speakers interact each in his or her own language, without the expected apologetic gestures by the less important speaker, who is using a native language without regard for the other:

²⁶ For a full commentary and further references of all problematic issues cf. Laffi 2013, 80-3. As usual, I have resolved all abbreviations and included all supplements in the text without diacritics. ἐν τίσιν οὖν μέμφομαι is of contested interpretation, and probably corrupt.

(35) *Codex Theodosianus* VIII 15,1 Agrippina dixit: «τῷ τόπῳ ἐκείνῳ οὐκ ἐπαγάρχει». Constantinus A. dixit: «sedi iure continetur, nequis in administratione constitutus aliquid compararet, unde quidem nihil interest, an in suo pago an in alieno comparauit, cum constet contra ius eundem comparasse». Et adiecit: «ignoratis fiscale effici totum, quidquid administrantes comparauerint?». Agrippina dixit: «τοῦ τόπου ἐκείνου πραιπόσιτος οὐκ ἦν· ἐγὼ ἠγόρασα παρὰ τοῦ ἀδελφοῦ αὐτοῦ, ἴδε αἱ ὠναί». Constantinus A. d(ixit): «recipient a uenditore Codia et Agrippina competens pretium».

Agrippina said: «he was not in charge of that district». Constantinus Augustus said: «But the law states that no public administrator can acquire property while in office, therefore it makes no difference if he bought land in his district or in another's, since he appears to have acted all the same in contravention of the law». And he added: «are you ignorant of the fact that whatever officials have purchased (in this manner) is requisitioned by the public purse?» Agrippina said: «he was not the president of that district; I bought (the land) from his brother: here are the contracts». Constantinus Augustus said: «Codia and Agrippina will receive from the seller appropriate compensation».

In (35), the emperor Constantine sits in judgement at the appeal hearing of a landowner, one Agrippina also acting for her sister Codia. Her land has been confiscated because the previous owner had acquired it illegally (he was a state official and was therefore not allowed to buy property while in the tenure of office). The two claimants reply that the official was not in charge in that district, but Constantine rules that the prescription applied generally to all administrators regardless of where they have jurisdiction. However, the two women will receive compensation from the previous owner for the sum paid over the purchase of the estate. What is noteworthy in this document is the articulation of the exchanges between Agrippina and the emperor (unfortunately a page must have been missing in the antigraph of the MS preserving the text, *Par. Lat.* 9643 f. 118, and the initial parts of the scene are lost). In her second reply, Agrippina speaks in Greek, and her reply is clearly intended to counter the emperor's assertion. Her final lines τοῦ τόπου ἐκείνου πραιπόσιτος οὐκ ἦν· ἐγὼ ἠγόρασα παρὰ τοῦ ἀδελφοῦ αὐτοῦ, ἴδε αἱ ὠναί, besides repeating (if the text is sound) a previous point, dangerously take no notice of what the emperor just said ('no matter where he had jurisdiction, whatever administrators purchase in contravention of the law becomes confiscated'); she then tries to bring in new evidence in the shape of documents proving that the seller was the officer's brother, evidence to which Constantine seems to pay no attention. Equally strange is the immediate succession of Latin (Constantine) and Greek in the exchange of the two speakers: especially the way in which Agrippina, as the dialogue has come down to us, fills in her Greek phrases in the most natural manner is very surprising, and unlikely to reflect realistically the course of the exchange, in which she must either have addressed

an interpreter or a lawyer who then spoke to the emperor. It is inevitable to assume that this document is a selective report²⁷.

A slightly more realistic situation emerges from the report preserved in *Digesta* XXVIII 4,3, where the heirs of one Nepos appealed to the emperor against the testator's change of mind in his dying moments, when he had deleted from the will the names of the inheritors (in this case, the intestate's estate went to the emperor):

(36) *Dig.* XXVIII 4,3 «Cum Valerius Nepos mutata uoluntate et inciderit testamentum suum et heredum nomina induxerit, hereditas eius secundum diui patris mei constitutionem ad eos qui scripti fuerint pertinere non uidetur». Et aduocatis fisci dixit: «Vos habetis iudices uestros». Vibius Zeno dixit: «Rogo, domine imperator, audias me patienter: de legatis quid statues?», Antoninus Caesar dixit: «Videtur tibi uoluisse testamentum ualere, qui nomina heredum induxit?». Cornelius Priscianus aduocatus Leonis dixit: «Nomina heredum tantum induxit». Calpurnius Longinus aduocatus fisci dixit: «Non potest ullum testamentum ualere, quod heredem non habet». Priscianus dixit: «Manumisit quosdam et legata dedit». Antoninus Caesar remotis omnibus cum deliberasset et admitti rursus eodem iussisset, dixit: «Causa praesens admittere uidetur humaniorem interpretationem, ut ea dumtaxat existimemus Nepotem irrita esse uoluisse quae induxit».

«Since Valerius Nepos, changing his mind, re-opened his last will and deleted the names of the heirs, his property, following the statutes of my late father the emperor cannot be assigned to those who were previously the recipients». And he then said to the treasury lawyers: «You have your ruling». Vibius Zeno said: «Your Highness, I beg you to listen to me with indulgence: what will you decide concerning the bequests?». Antoninus Caesar said: «Do you think he wanted a will to be valid when he struck out the names of his heirs?». Cornelius Priscianus, acting on behalf of Leo, said: «He struck out only the heirs' names». Calpurnius Longinus, the treasury lawyer, said: «No testament can be valid if there is no heir». Priscianus said: «He manumitted some of them and left bequests». Antoninus Caesar dismissed all present and withdrew to deliberate; when he later let everyone in again, he said: «The present cause seems to be compatible with a more humane interpretation (of the law), and we will rule that Nepos only made null and void what he blotted out».

²⁷ A similar type occurs in PSI 1309, e.g. *u(ir) c(larissimus) pr(aeses) Rufino d(ixit): confides negotio tuo? Rufinus d(ixit): πέποιθα τῷ ἐμῷ πράγματι*. Both passages are discussed in Adams 2003, 386-7, where the lack of accommodation is seen in the context of Latin as the language of power, with use of Latin showing the president's aloofness as a representative of Roman authority.

One of the appeal lawyers, Vibius Zeno, asks for permission to speak after the emperor has finished speaking, with the appropriately respectful tone (*rogo, domine...*), to raise a point about the legates, i.e. that they should require a separate ruling from the rest of the estate as set out in the will. The emperor replies with a vaguely reproachful phrase, almost challenging the sense of the objection (does it seem to him that the intention of a man who blotted out the heirs' names was to make the will valid?), but the lawyers doggedly insist that only the names were cancelled, not the provisions/legates. The public attorney makes a point of law and, finally, the emperor retires to his chambers, presumably with his *consilium* and, when court sits again, rules that a more humane interpretation is in order: the court will assume that the testator, Nepos, intended that only the parts he cancelled should be invalid, so that presumably manumitted slaves will be permitted to be free.

Here the dynamics of the linguistic interaction seems more realistic. The lawyer who speaks first begs for indulgence when he makes a point in which he very tactfully draws attention to an aspect ignored by the general ruling of the emperor, namely the fate of bequests if the will is void. The emperor replies with words which may be construed as slightly polemical ('it seems to you...'), but then the dialogue is carried out by other lawyers present, each one suggesting a forgotten point as if acting in concert, so that in the end the emperor's subsuming the suggestion in his final ruling is a reflection of his wisdom and humanity.

Finally, a protracted scene of altercation between two groups of lawyers comes from the *Gesta collationis Carthaginensis*, a very complicated and unique record of a conference held in 411 before the imperial legate Marcellinus. The opposing parties were the representatives of the Catholic and the Donatist Church of Africa, who were to set out their grievances before the imperial arbitrator. In this extract, containing a record of a preliminary session, seven lawyers for each party check out the genuineness of the signatories who have undersigned the two competing documents to be deposited with the court, containing the respective charges against the other party, and disagreement arises because the authenticity of some signatures is disputed. In the following extract Donatist and Catholic lawyers (who were mostly also bishops) argue about the authenticity of one Quodvultdeus's signature, who, despite not being present at the session and said to have died on the journey to Carthage, appears to have placed his signature on the court's document. The passage is noteworthy because it records the sequence of interventions in seemingly very spontaneous form and order, and gives a very vivid picture of an unstructured court altercation. The main speaker is Petilianus, a Donatist bishop and lawyer, who tries to defend the authenticity of Quodvultdeus's signature. He is questioned by the judge and the other lawyers present exactly as a witness could be questioned about a fact, and so his attempts to find a tenable version seem appropriately set in this context (NOTE: bold type is for Donatist lawyers; all other speakers except the president, Marcellinus, are Catholic lawyers):

(37) *Gesta collationis Carthaginensis* 207-208 Lancel: Quodvultdeus episcopus Cessitanus. 207. **Petilianus episcopus dixit.** In itinere defecit. *Fortunatianus episcopus Ecclesiae catholicae dixit.* Qui in itinere dicitur defecisse, quemadmodum inuenitur subscripsisse doceatur. **Petilianus.** Non de ipso dictum est, calumniose agis, de altero suggestum est. *Fortunatianus.* De quo? **Petilianus.** Qui decessit in uia.

Petilianus is openly trying to buy some time. When the court usher reads Quodvultdeus's name, Petilianus cuts in and says «he died during the journey», and that's the reason why he is not present today to confirm his mandate. One of the opposing lawyers, Fortunatianus, counters «[with regard to the one] who is stated to have died during the journey, let the other side show how he can be found to have signed». The following phrase pronounced by Petilianus seems an open attempt to confuse the issue: «that's not being said about him, that's defamatory, it was said of the other one». «which one?». «He who died during the journey».

(38) *ibidem* 208 Lancel: Alypius episcopus Ecclesiae catholicae dixit. Recitentur nomina, ut eadem agnoscat. *Fortunatianus.* Si in uia defecit, quomodo subscripsit? *Aurelius episcopus Ecclesiae catholicae Carthaginis dixit.* Clericus pro mortuo subscripsit? *Alypius.* Eligat sibi ut ostendam quomodo mentiatur. *Marcellinus uir clarissimus tribunus et notarius dixit.* Doceatur quomodo is qui in itinere dicitur defecisse, subscripserit. *Alypius.* Recitetur utrum clericus ex nomine suo subscripserit, an ex nomine defuncti. *Marcellinus.* Recitetur cuius nomine subscripserit qui in itinere dicitur defecisse. *Item recitauit.* Quodvultdeus episcopus Cessitanus aeger subscripsi.

The subsequent section (38) of the record shows the Catholic lawyers plunging in to attack the weak spot of the Donatist side, with a series of more and more scathing suggestions and comments, up until the point when the judge halts this to summon the clerk to read 'how the signature of him who is said to have died while on the journey is certified.'

(39) *ibidem* 208 Lancel: *Fortunatianus.* Aduertit nobilitas tua, nullius cleri- ci nomen pro defuncti nomine subscripsisse, sed tamquam uiui, mortui nobis, qui in uia iuxta eorum professionem dicitur defecisse, subscriptionem obtulisse. **Petilianus.** Quid si et iste moriatur, qui aeger subscripsit? quasi hodie non unus defecit. *Aurelius.* Sed in itinere defecisse dixisti. *Alypius.* Sufficiunt ista deprehensa. Cetera subsequantur. **Petilianus.** Nihil deprehendisti, argumentaris contra ueritatem. *Alypius.* Tu dixisti. 208. *Marcellinus.* Si uerum est, ut asseritis, quod in itinere defecit, constat eius subscriptionem falsissime recitatam: sin uero ipse subscripsit, non potuit in itinere deperire. **Petilianus.** Non est humanum mori?

Non etiam morientes testamentis suis subscribunt? *Alypius*. Humanitatis est mori, sed inhumanitatis est fallere. **Petilianus**. Non est hoc fallere, quia potuit reuertens in itinere mori. Mandatum adhuc modo accipio. Dico quid moneat.

Petilianus attempts to parry the other side's sneering comments with similar irony, but feebly: «what if he who signed while sick subsequently died—as if there weren't many who die every day». He succeeds in devising a form of credible explanation only after a great deal of cut and thrust with the other side, and even the judge leans towards a negative conclusion. At this point Petilianus says: «there is no deception here, because he may well have died on the journey back. I can still receive his mandate. I say now what it contains». To which the judge responds by asking the clerk to read the date of the subscriptions again, and while the date and names are being read Aurelius (Augustine) interrupts with a caustic comment: 'a little while ago he had signed himself, now a clerk has signed for him, now the bishop did it.

(40) *ibidem* 208 Lancel: *Et cum recitaret, Aurelius episcopus Ecclesiae catholicae dixit. Iamdudum ipse subscripsit. Modo dixit clericus subscripsit, modo episcopus. Et cum diceret, Marcellinus [...] dixit. Aduertitis, praesentes praesentibus peragendi negotii dedisse mandatum. Quomodo igitur hic qui praesens in hac urbe se inter ceteros sine dubio mandasse professus est et in itinere dicitur defecisse, et in hac urbe subscripsisse mandato? Adeodatus. Octo dies emensi sunt, ut mandatum confectum est. Is qui mandauit, de cuius nomine nunc agitur, cum aegrotare coepisset, ad propria remeans in itinere defecit. Vincentius episcopus Ecclesiae catholicae dixit. Dicat quo in loco defecit. Adeodatus. Non noui locum. Marcellinus. Quoniam probabilis est uestrae sanctitatis prosecutio, qua eum hic fuisse et aegrum ad propria remeantem defecisse testaris, saltem hoc docere te conuenit, ut utrum in hac urbe fuerit sub Dei testificatione designes. Fortunatianus. Si praecipit sublimitas tua, Petiliani uiri clarissimi prosecutio recitetur, ut ex lectione cognoscant uniuersi, quam non uere nunc dicatur eum repedantem de Carthagine, in itinere defecisse, quia aliter eum eius prosecutio demonstrat. Marcellinus. Legatur prosecutio postulata. Cumque ex codice legeretur, Marcellinus [...] dixit. Nihil mihi uidetur amplius de hac parte quaerendum, nisi ut sub testificatione diuina utrum hic praesens fuerit de quo agitur, simplici professione pandatur.*

Finally, the judge decides in favour of accepting the signature as deposited before the old man died on his way back, provided the Donatists lawyers make a sworn statement to this effect. An interesting remark is that of Fortunatianus, who asks the judge to allow the clerk to read his learned friend Petilianus's previous statement, where it was not clear that the man had died 'on his way back', but the judge seems to conclude (though this is not made explicit in the record) that Petilianus' statement was not a straightforward lie and allows the signature to be admitted.

5. *Opining witnesses in Roman courts*

An interesting description of a witness's deposition is found in Cicero, *Pro Fonteio* 29, an oration in which Cicero defended a Roman governor of *Narbonensis*, charged with embezzlement. The prosecution was brought about by various parties, including some Gaulish tribes whose spokesman was the Romanized chief Indutiomarus. Cicero, who had an obvious interest in trying to belittle his testimony, dwelt on his being deposed in 29:

(41) *Font.* 28-9 Recordamini, iudices, quanto opere laborare soleatis non modo quid dicatis pro testimonio sed etiam quibus uerbis utamini, ne quod minus moderate positum, ne quod ab aliqua cupiditate prolapsum uerbum esse uideatur; uultu denique laboratis ne qua significari possit suspicio cupiditatis, ut et, cum proditis, existimatio sit quaedam tacita de uobis pudoris ac religionis et, cum disceditis, ea diligenter conseruata ac retenta uideatur. Credo haec eadem Indutiomarum in testimonio timuisse aut cogitauisse, qui primum illud uerbum consideratissimum nostrae consuetudinis 'arbitror', quo nos etiam tunc utimur cum ea dicimus iurati quae comperta habemus, quae ipsi uidimus, ex toto testimonio suo sustulit atque omnia se 'scire' dixit.

Recollect, O judges, with what great pains you are accustomed to labouring, considering not only what you are going to state in your evidence, but even what words you plan to use, lest any word should appear to be used too moderately, or lest on the other hand any expression should appear to have escaped you due to any private motive. You take pains even so to mould your countenances, that no suspicion of any private motive may be aroused; that when you come forward there may be a sort of silent opinion of your modesty and scrupulousness, and that, when you leave the box, that reputation may appear to have been carefully preserved and retained. I suppose Indutiomarus, when he gave his evidence, had all these fears and all these thoughts; he, who left out of his whole evidence that most considerate word, to which we are all habituated, 'I think', a word which we use even when we are relating on oath what we know by our own knowledge, what we ourselves have seen; and said that he 'knew' everything he was stating.

The passage is of interest also for its description of the outward appearance of the good witness, impassive and impartial, not motivated by private acrimony or favour. But I am discussing the passage here by virtue of its reference to the form of Indutiomarus's deposition. According to Cicero, Indutiomarus offended convention by introducing his assertion with 'I know', *scio*, rather than with *arbitror*. There is no reason to doubt that Cicero was reporting acceptable habit, indeed the only acceptable way of answering, even if we are used to witnesses being rebuked for airing an opinion rather than a fact. Indeed,

there may have been no clear-cut procedural rule (Cicero does not say that the presiding judge rebuked Indutiomarus, and he surely would not have missed the chance had that been the case). I suggest that the issue was not legal, but one of linguistic politeness and etiquette: *arbitror* had a sort of vagueness and understatement that was in principle expected of Roman upper-class speakers, as I believe I have shown in my article (Ferri 2012) while talking of the language of Terence's *senes*. Indutiomarus, a second-language speaker of Latin, although presumably a fairly fluent one, is tendentiously shown by Cicero as an arrogant know-it-all, perhaps with an innuendo that such assertiveness masked an attempt to fabricate an untruth. In this way, Cicero was trying to make prejudice weigh against the reliability of a non-native speaker who merely spoke in a somewhat unidiomatic manner²⁸.

The sociolinguistic interpretation of Indutiomarus' fault is perhaps confirmed by Cicero's phrase describing *arbitror* as a *uerbum consideratissimum nostrae consuetudinis* 'among the most highly prized words of our current language': *consuetudo* is of course ambiguous, since it may refer to the 'current practice' of courts: it is however also a strongly connotated word describing the 'current language', and this may be very well its meaning here.

Only Cicero has transmitted evidence for this manner of deposing, in

(42) Cic. *Ac.* II (*Lucullus*) 146, qui testimonium diceret ut arbitrari se diceret etiam quod ipse uidisset.

(our ancestors decided that) he who acted as witness was to say «I think» even in relation to what he had seen.

and, though in slightly different words, in

(43) *Caecin.* 73, Iste uester testis qui ausus est dicere «fecisse uideri» eum de quo ne cuius rei argueretur quidem scire potuit.

That very witness of yours who dared to say «that he had been seen to do» in a case in which there was no way he could even know what the man was accused of.

²⁸ The inarticulateness of foreigners on the stand is again made a target for ridicule by Cicero in *Pro Flacco*, 22, where - he complains - the Greek witnesses summoned by his learned colleague for the prosecution can only say the words *dedi, dedimus* (Cic. *Flacc.* 23 *Nam aut oratio testium refelli solet aut uita laedi. Qua disputatione orationem refellam eius qui dicit: «dedimus», nihil amplius? In hominem dicendum est igitur, cum oratio argumentationem non habet. Quid dicam in ignotum?*). Here Cicero is on purpose trying to fudge the issue, suggesting that linguistic embarrassment hides corruption and intentional reticence.

However this passage of Cicero refers to an abstract witness, not one of the ten whose depositions he has just outlined²⁹.

In short, Cicero is our only straightforward source for this form of deposition, from which we seem to learn that witnesses, even when deposing about what was supposed to have happened, presented the facts as ‘opinions’; in Cicero’s view, this was done to avoid giving an impression of arrogance, and because all human beings are subject to being deceived by false impressions, a point which he discusses in further detail from a philosophical perspective in *Lucullus*.

On the other hand, witnesses were indeed often called to the stand to give their opinions, as Cicero reports in *De oratore*, where Crassus was called to testify against Sextus Titius:

(45) Cic. *de orat.* II 48 nam et testimonium saepe dicendum est ac non numquam etiam accuratius, ut mihi etiam necesse fuit in Sex. Titium, seditiosum ciuem et turbulentum; explicavi in eo testimonio dicendo omnia consilia consulatus mei, quibus illi tribuno plebis pro re publica restitsem, quaeque ab eo contra rem publicam facta arbitrarer, exposui; diu retentus sum, multa audiui, multa respondi.

One often has to give a deposition as a witness, sometimes in great detail, as happened to me against Sextum Titium, a troublesome agitator. While deposing I took the opportunity to explain my reasons in my consulate for standing up to that tribune in defence of the state and I outlined all I believed he had done against the state. I was kept on the stand for some time and was asked a great many questions, and I answered many.

The support of influential personages was very important in Roman trials. Lawyers and witnesses spoke at length about a claimant’s or a plaintiff’s character as a decisive element influencing the jury, and by all accounts it seems that witnesses on the stand, if socially eminent, were allowed to give personal opinions. So for example in (39) Asconius, the imperial commentator of Cicero, relates the charges laid against Cornelius by the prosecution witnesses at the Cornelius trial: they simply “saw” Cornelius as he read out the new law before the assembly. As was normal for depositions of witnesses of exalt-

²⁹ Another not very straightforward piece of evidence comes from Livy, III 13 *premebat reum praeter uulgatam inuidiam crimen unum, quod M. Volscius Fictor... testis extiterat se [...] in iuuentutem grassantem in Subura incidisse. ibi rixam natam esse, fratremque suum [...] pugno ictum ab Caesone cecidisse, semianimem inter manus domum ablatum mortuumque inde arbitrari* (he had been picked up half-alive and carried home, and his death, Volscius considered, had resulted from this injury). Here however *arbitrari* need not necessarily represent the form of the witness statement praised by Cicero, since an element of subjectivity is always implied in establishing the cause of death of an individual.

ed status, they threw their weight about, and ‘wanted it to be known widely that they regarded Cornelius’ actions as relevant to the charge of *imminuta maiestas*’—a consideration which should be left to court and jury in modern proceedings, where a witness would probably be rebuked if he was to utter similar pronouncements.

(46) Asconius, *In Cornelianam* p. 49, 20-4 Stangl: Dixerunt autem hoc: uidisse se cum Cornelius in tribunatu codicem pro rostris ipse recitaret, quod ante Cornelium nemo fecisse existimaretur. Volebant uideri se iudicare eam rem magno opere ad crimen imminutae maiestatis tribuniciae pertinere; etenim prope tolleretur intercessio, si id tribunis permetteretur.

This is what they said: they had seen when Cornelius, during his office as tribune, had read out the text of the law at the *rostra*, which no one had done before him. They wanted to go on record publicly as upholding the view that Cornelius’ actions fell within the operations of the charge *imminutae maiestatis tribuniciae*. In fact, in their view, the tribunician intercession was almost without force, if actions such as these were to be permitted to the future tribunes³⁰.

A witness deposition with *scire* occurs in the written statement included in the acts pertaining to Petronia Iusta, one of the *Tabulae Herculanaenses*, an inheritance action from the year 74 CE, in which the claimant needed to prove that she had been born free:

(47) *Tabulae Herculanaenses* 17 Q(uintus) Tamudius Optatus scripsi iura/uique per Genium Imp(eratoris) Ves/pasiani Caes(aris) Aug(usti) liberorumque / me adfuisse Petroniae Vitali / cum haberet cum Calatoria / Themide de pu[e]lla filia / sua ibi me audisse dicen/tem Stephanu(m) [mari]t[um] / Themidis Petroniae / Vitali quid inuides f[i]/liae cum eam nos / filiae loc[o fa]ciamus / ex eo me [scire] mulie/rem q(ua) d(e) a(gitur) Petroniae / Vitalis fi[l]iam et ingenuam esse q(uae) r(es) a(gitur) /)

I, Quintus Tamudius Optatus, hereby testify under oath in the name of the Emperor Vespasian Augustus and his sons that I was at the side of Petronia Vitalis when she discussed with Calatoria Themis the matter of the girl her daughter. There I heard Stephanus, Themis’s husband, say to Petronia Vitalis ‘why do you act against the daughter, since we consider her the same as a daughter’. Hence I state that I know that the woman about whom the present procedure is held was a daughter of Petronia Vitalis, as well as free-born, about which the present procedure is held³¹.

³⁰ See, for a translation, Squires.

³¹ Translation and interpretation of the documents pertaining to Petronia Iusta in Crook 1984, 48-9. The text is very uncertain: for example *haberet cum* meaning ‘discussing with’ is an

scire also occurs in the *Gesta apud Zenophilum* in the depositions of several workers. The *Petronia Iusta* and the *Gesta* together suggest that no rule about the form of the deposition was in force, but *arbitror* was part of an accepted etiquette. People of lower standing were not expected to abide by this unwritten rule.

(48) p. 193, 7ss. Ziwsa: *Zenophilus u. c. consularis dixit*: «Silvanum scis esse traditorem?». *Saturninus dixit*: «Scio lucernam tradidisse argenteam». *Zenophilus u. c. consularis Saturnino dixit*: «Quid aliud?». *Saturninus respondit*: «Aliud nescio, nisi quia de post orcam eam eiecit». [...] *Zenophilus u. c. dixit*: «Tabulam argenteam quis tradidit?». *Victor respondit*: «Non uidi. quod scio, hoc dico».

Zenophilus said: «Do you know that Silvanus is a Betrayer?». *Saturninus said*: «I know that he gave up a silver lamp». *Zenophilus said to Saturninus*: «What else?». *Saturninus said*: «I do not know of anything else, excepting that he took the lamp from behind a tun.» [...] *Zenophilus said*: «Who gave up the silver table?». *Victor answered*: «I did not see what I know I will tell you».

6. Lawyers' Latin: intimidation, ambiguity, and evasion.

The aggressive linguistic behaviour of barristers in a trial was commonly in evidence during cross-questioning, where it was expected that a witness would be accused of lying, and counsel tried to make a witness contradict himself or herself. The lawyer was expected to have tried to confuse a witness, at least in the eyes of the jury, or to represent his narrative as contradictory and therefore unreliable. A long and probably exemplary sample of this manner comes from the *In Vatinius*.

(49) Cic. *Vatin.* 2-3, 40-41 Sed <te> hesterno <die> pro testimonio esse mentitum, cum adfirmares nullum tibi omnino cum Albinouano sermonem non modo de Sestio accusando, sed nulla umquam de re fuisse, paulo ante imprudens indicasti, qui et T. Claudium tecum communicasse et a te consilium P. Sesti accusandi petisse, et Albinouanum, quem antea uix tibi notum esse dixisses, domum tuam uenisse, multa tecum locutum dixeris, denique contiones P. Sesti scriptas, quas neque nosset neque reperire posset, te Albinouano dedisse easque in hoc iudicio esse recitatas. In quo alterum es confessus, a te accusatores esse instructos et subornatos, in altero inconstantiam tuam cum leuitate tum etiam periurio implicatam refellisti, cum, quem a te alienissimum esse dixisses, eum domi tuae fuisse,

interesting construction but so far unparalleled. The entire set of these *tabulae*, after the princeps by Pugliese Carratelli and Arangio Ruiz, is now being republished by G. Camodeca, with new additional documents.

quem praeuaticatorem esse ab initio iudicasses, ei te quos rogasset ad accusandum libros dixeris dedisse. [...] Extremum illud est quod mihi abs te responderi uelim; cum multa in Albinouanum de praeuaticatione diceres, dixerisne nec tibi placuisse nec oportuisse Sestium de ui reum fieri, quauis lege, quouis crimine accusandum potius fuisse? [...] sed hoc quaero, num P. Sestium, qua lege accusandum omnino fuisse negas, ea lege condemnari putes oportere? aut, si te in testimonio consuli noles, ne quid tibi auctoritatis a me tributum esse uideatur, dixerisne in eum testimonium de ui quem negaris reum omnino de ui fieri debuisse?

But you unintentionally showed a few moments ago that you spoke falsely in the evidence which you gave yesterday, when you asserted that you had never had the least conversation with Albinouanus, not only about the prosecution of Sestius, but about anything whatever; and yet you said just now that Titus Claudius had been in communication with you, and had asked your advice with respect to the conduct of the prosecution against Sestius, and that Albinouanus, who you had said before was hardly known to you, had come to your house, and had held a long conversation with you. And lastly, you said that you had given Albinouanus the written harangues of Publius Sestius, which he had never had any knowledge of, and did not know where to find, and that they had been read at this trial. And by one of these statements you confessed that the accusers had been instructed and suborned by you; and by the other you confessed your own inconsistency, thus becoming liable to the double charge of folly and of perjury; when you stated that the man who you had previously said was an entire stranger to you, had come to your house, and that you had given the documents which he asked for to aid him in his accusation against a man whom you had from the beginning considered a trickster and a prevaricator [...] The last thing which I wish you to answer me is this: -As you said a great deal against Albinouanus with respect to his prevarication, I wish to know whether you said or did not say that you were not pleased at Sestius being prosecuted for violence, and that he ought not to have been so prosecuted; and that there was no law and no charge on which he was no longer liable to impeachment? [...] But I ask this; - whether you think that Publius Sestius ought to be condemned according to the provisions of a law under which you say that he never ought to have been accused at all? or, if you think that your opinion ought not to be asked while you are giving your evidence, lest I should appear to be attributing to you any authority by so doing, I ask whether you gave evidence against a man on his trial for violence, who you say never ought to have been prosecuted for violence at all?

In this long extract from what is regarded as a rielaboration of a court document, perhaps from Cicero's own notes during his cross-questioning of Vatinius, Cicero is bent on trying to cast Vatinius as a liar before the jury, and conniving with the accusers. But Cicero is also twisting and distorting a phrase reported to have been pronounced by

Vatinius, that Sestius should not have been brought to trial under the provisions of the law *De vi*, against political violence. Cicero is staking his hand on Vatinius not being in a position to explain himself at leisure, as we presume that witnesses were expected to give short factual answers. Cicero is therefore intentionally confusing a phrase containing *non oportet*, genuinely uttered by Vatinius and referring to opportunity (because of the lack of solid proof in the incrimination of Sestius), and a deontic meaning of the same verb which he construes, for the benefit of the jury, to refer to lack of guilt and perjury.

(50) Cic. *Quinct.* 79 Bona postulas ut ex edicto possidere liceat. Quo die? Te ipsum, Naeui, uolo audire; uolo inauditum facinus ipsius qui id commisit uoce conuinci. Dic, Naeui, diem. «Ante <diem> v Kalend. intercalaris». Bene ais. Quam longe est hinc in saltum uestrum Gallicanum? Naeui, te rogo. «DCC milia passuum». Optime. De saltu deicitur Quinctius - quo die? possumus hoc quoque ex te audire? Quid taces? dic, inquam, diem. Pudet dicere; intellego; uerum et sero et nequiquam pudet. Deicitur de saltu, C. Aquili, pridie Kalend. intercalaris; biduo post aut, ut statim de iure aliquis cucurrerit, non toto triduo DCC milia passuum conficiuntur.

You demand to be allowed to take possession of his goods according to the edict. On what day? I wish to hear you yourself, O Naevius. I want this unheard-of action to be proved by the voice of the very man who has committed it. Mention the day, Naevius. «The twentieth of February». Thank you. How far is it from hence to your estate in Gaul? I ask you, Naevius. «Seven hundred miles». Very well: Quinctius is driven off the estate. On what day? May we hear this also from you? Why are you silent? Tell me the day, I say. He is ashamed to speak it. I understand; but he is ashamed too late, and to no purpose. He is driven off the estate on the twenty-third of February, O Caius Aquillius. Two days afterwards, or, even if any one had set off and run the moment he left the court, in under three days, he accomplishes seven hundred miles

This passage from the *Pro Quinctio* is a fictional vignette in which Cicero, in his speech, conjures up his interrogation of the defendant (notice the representation of a spoken, spontaneous structure with the interrogative expression at the end in *De saltu deicitur Quinctius quo die*, for ‘on what day was Quinctius ousted from the estate?’). Naevius is made out to be an avid swindler bent on appropriating the claimant’s share of the estate by dint of legal subterfuge, Quinctius’ failure to repay a debt. The legal argument employed by Cicero in this passage is that Quinctius was ousted from his land illegally, because the arbitrator’s ruling could not have reached Narbonensis in less than three days. In a manner which must have been all too typical of several courts, especially when the witness, as in this case, was perceived as a social inferior (Naevius was

a *praeco*, a ‘public crier’), Cicero combines patronizing, polite language (*bene ais*, ‘thank you’) and false agreement (*optime*) with pressing and intimidating expressions (*te ipsum, Naeui, uolo audire* and later *Naeui, te rogo [...] possumus hoc quoque ex te audire?*). Also interesting is the way in which the interrogating lawyer plays to the audience as he shifts from second-person address to Naevius (*Te ipsum, Naeui, uolo audire*) to treating him as a third party in explicitly derogatory terms *uolo inauditum facinus ipsius qui id commisit uoce conuinci*, before resuming cross-questioning in direct address³².

Of course Cicero is not interested in giving a realistic representation of the case, let alone reproducing the exact words of the witness. We may have some fragments when, in oratorical works, he is narrating a particular exchange in other lawyers’ cases, as in (51) and (52):

(51) Cic. *De orat.* II 285 cum laesisset testis Silus Pisonem, quod se in eum audisse dixisset, «potest fieri, - inquit - Sile, ut is, unde te audisse dicis, iratus dixerit». Adnuit Silus. «Potest etiam, ut tu non recte intellexeris». Id quoque toto capite adnuit, ut se Crasso daret. «Potest etiam fieri - inquit - ut omnino, quod te audisse dicis, numquam audieris». Hoc ita praeter expectationem accidit, ut testem omnium risus obrueret.

Serious damage had been done to the case of a certain Piso by a witness named Silus, who had said that he had heard something against him. «It may be the case,

³² The same technique of a fictional questioning to expose the weakness of the opposing side can be found in *Pro S. Roscio Amerino*, where however the imagined interlocutor is not a witness but the main prosecutor, Erucius, treated here as if it was possible to interrogate him: cf. Cic. *Pro S. Roscio Amerino* 52-5 *Odiū igitur acerrimū patris in filium ex hoc, opinor, ostenditur, Eruci, quod hunc ruri esse patiebatur. Numquid est aliud? «Immo uero - inquit - est; nam istum exheredare in animo habebat». Audio; nunc dicis aliquid quod ad rem pertineat; nam illa, opinor, tu quoque concedis leuia esse atque inepta: «Conuiuia cum patre non inibat». Quippe, qui ne in oppidum quidem nisi perraro ueniret. «Domum suam istum non fere quisquam uocabat». Nec mirum, qui neque in urbe uiueret neque reuocaturus esset. Verum haec tu quoque intellegis esse nugatoria; illud quod coepimus uideamus, quo certius argumentum odi reperiri nullo modo potest. «Exheredare pater filium cogitabat». Mitto quaerere qua de causa; quaero qui scias; [...] Exheredare filium uoluit. Quam ob causam? «Nescio». Exheredauitne? «Non». Quis prohibuit? «Cogitabat». Cogitabat? cui dixit? «Nemini». Similar also is a passage in *Pro Quinto Roscio comoedo* 8,2 *illud uero quod ad rem uehementer pertinet, quaero: quam pridem hoc nomen, Fanni, in aduersaria rettulisti? Erubescit, quid respondeat nescit, quid fingat extemplo non habet. Sunt duo menses iam, dices. Tamen in codicem accepti et expensi <referrī> debuit. Amplius sunt sex menses. Cur tam diu iacet hoc nomen in aduersariis? Quid si tandem amplius triennium est? quo modo, cum omnes qui tabulas conficiant menstruas paene rationes in tabulas transferant, tu hoc nomen triennium amplius in aduersariis iacere pateris?**

Silus, said Crassus, that the person whose remark you say you heard was speaking in anger». Silus nodded assent. «It is also possible that you misunderstood him». To this Silus also nodded very emphatic assent, so putting himself into Crassus's hands. «It is also possible, he continued, that what you say you heard you never really heard at all». This was so entirely unexpected a turn that the witness was overwhelmed by a burst of laughter from the whole court. (transl. Sutton, Loeb).

(52) Cic. *De orat.* II 265 ut ille Gallus olim testis in Pisonem, cum innumerabilem Magio praefecto pecuniam dixisset datam idque Scaurus tenuitate Magi redargueret, «erras, - inquit - Scaure; ego enim Magium non conseruasse dico, sed tamquam nudus nuces legeret, in uentre abstulisse».

as when Gallus, who was once a witness against Piso, said that a countless sum of money had been given to Magius the governor, and Scaurus tried to confute him, by alleging the poverty of Magius, You mistake me, Scaurus, said he, for I do not say that Magius has saved it, but that, like a man gathering nuts without his clothes, he has put it into his belly (transl. Watson)

In (51) the lawyer lays a trap for the witness: in particular Crassus leads Silus to believe that they are co-operating, on good terms: they are both extracting the truth from the evidence in co-operative manner. This is the direction where Silus is seemingly led through a series of acceptable admissions and concessions introduced by *potest fieri*, down to the final *aprosdoketon*, where Silus is accused a straightforward lying. We may wonder why Silus was so accommodating from the start: a hostile witness should have expected obstructing behaviour from the opposing counsel, but perhaps Silus was intimidated by Crassus' clout and tried to be friendly as long as it was possible, not realizing that he would be made to look ridiculous in the end. In (52) the witness ably retorts to the lawyer's attempt to deconstruct his deposition, arguing that the apparent state of Magius was one of poverty, not flagrant proof of embezzlement: the witness retorts with a comparison verging on the vulgar, in which the defendant is likened, possibly with a proverbial expression, to a man gathering nuts without his clothes and eating all of them because he has nowhere to place them, a comparison in which the speaker succeeded in conveying various negative innuendos, which were therefore very damaging for the defendant.

Another patent strategy of intimidation is in (53), from the *Pro Caecina*, although the details are not clear. In the civil case of the *Pro Caecina*, one of the hostile witnesses cross-questioned by Cicero was an eminent man, although notorious for a previous corruption conviction, Fidiculanus Falcula. Cicero reports that he gave the ablest response among the other side's witnesses, because he had understood that the defendant for whom he was appearing needed to appear to be acting under provocation, and he

said therefore that he had come to the estate with only one or two slaves in attendance. Cicero admits that Fidiculanus perceived what would serve the defendant best, but he later reports how he had intimidated the witness by reminding him and the jury of his unreliability because of the previous corruption conviction. The exact way in which Cicero came to phrase this question and exactly why it was relevant to ask Fidiculanus how far his land was from the claimant's is unclear, but we understand that Cicero sought the unwitting complicity of the audience, who burst into loud laughter when Fidiculanus, asked by Cicero how far his land lay from the claimant's, answered *minus quinquaginta milia*: in Latin this phrase ambiguously means both 'less than fifty miles', the intended meaning, and 'less than fifty thousand', the latter being the bribe he was alleged to have taken and which is said by Cicero to have been what the audience took the answer to mean. The exact dynamics of the pun, and especially how came it to be that the audience were so ready to grasp at the bait, is unclear, but we clearly see how Cicero set about his intimidation and defamation strategy designed to undermine the credibility of his antagonist.

(53) Cic. *Caecin.* 29 ita eum placidum mollemque reddidi, ut non auderet, sicut meministis, iterum dicere quot milia fundus suus abesset ab urbe. Nam cum dixisset «minus quinquaginta milia», populus cum risu adclamavit ipsa esse. Meminerant enim omnes quantum in Albiano iudicio accepisset.

I made him so tranquil and gentle that he did not dare, as you recollect, to say a second time even how many miles his farm was distant from the city. For when he had said that it was fifty-three miles away, the people cried out with a laugh, that was exactly the distance. For all men recollected how much he had received on the trial of Albius.

Cicero then goes to relate a sudden change of mind of this witness, who, he concedes, was an experienced old rascal and knew what would be against his friend, but failed to pay attention to what had been said before him, thus ending up by weakening his deposition. This was no doubt because he was absent-minded, projecting his thoughts onto some other perjury or some other bribe to get:

(54) Cic. *Caecin.* 30 Verum tamen is testis, - ut facile intellegeretis eum non adfuisse animo, cum causa ab illis ageretur testesque dicerent, sed tantisper de aliquo reo cogitasse - cum omnes ante eum dixissent testes armatos cum Aebutio fuisse compluris, solus dixit non fuisse. Visus est mihi primo ueterator intellegere praeclare quid causae obstaret, et tantum modo errare, quod omnis testis infirmaret qui ante eum dixissent: cum subito, ecce idem qui solet, duos solos seruos armatos fuisse dixit.

A typical strategy of intimidation set in motion by lawyers and judges (when presiding over questioning) is that of rephrasing the same questions³³.

In the *Gesta* we have the continuous transcript in which a witness is seen to be made to waver in his deposition. Victor, the grammarian, at first does not want to incriminate Silvanus, the bishop, charged with several different crimes from *traditio* (delivery of ecclesiastical property under duress during a pagan persecution, which was, for a member of the clergy, dishonourable at the very least), to bribery and appropriation of Church property and embezzlement of goods destined to be distributed among the poor. However, a very pressing interrogation slowly makes him change his version:

(55) *Gesta apud Zenophilum*, p. 185, 24 ss. Ziwsa: *Zenophilus u. c. consularis dixit*: Siluano communicas. *Victor respondit*: Ipsi. [...] *Et adiecit*: Asseueratur praeterea te aliud certissime scire, quod Siluanus traditor sit, de eo confitere. *Victor respondit*: Hoc nescio. [...] *Nundinarius diaconus dixit*: Scit ipse, nam tradidit codices. *Victor respondit*: Fugeram hanc tempestatem; et, si mentior, peream. [...] *Cum absens essem, ascensum est a magistratibus, et sublatis sunt codices mei. Cum ego uenissem, inueni codices sublatis. Nundinarius diaconus dixit*: Tu ergo respondisti apud acta, quoniam dedisti codices. *Quare negantur haec quae prodi possunt?...* *Zenophilus u. c. consularis dixit*: Et actis et litteris quae recitatae sunt traditorem constat esse Siluanum; *et Victori dixit*: Simpliciter confitere utrum scias eum aliquid tradidisse. *Victor dixit*: Tradidit, sed non me praesente... *Zenophilus u. c. consularis Victori dixit*: Dictum est a populo, Siluanus traditor? *Victor dixit*: Ego ipse luctatus sum episcopus. *Zenophilus u. c. consularis Victori dixit*: Ergo sciebas traditorem? De hoc confitere. *Victor respondit*: Traditor fuit.

Are you in contact with Silvanus? *Victor*: I am [...] *and Zenophilus added*: it is maintained moreover that you know very well that Silvanus has handed in-confirm this. *Victor answered*: I don't know this. [...] *Nundinarius the church dean said*: He does know this: indeed he himself handed in some books. *Victor replied*: I fled at the time- may I die if this is a lie [...] when I was away, the officers came up to the house and my books were taken away. When I came back I found that the books had been taken away. *Nundinarius the church dean said*: But you deposed in the record that you gave those books. Why are the facts denied: they can be proved... *Zenophilus*: both the public records and the documents that have been read before you show that Silvanus surrendered church property *and, to Victor*: Just declare if you know that he surrendered something. *Victor*: He did, but not in my presence.

A feature of Zenophilus' questioning is repetition and rephrasing of questions, both with Victor, who is patently loath to admit to Silvanus' guilt at the start, and

³³ Modern examples in Gibbons 2003, 217.

with a series of non hostile witnesses, in this case to make them state the point clearly for the record.

(56) *Gesta apud Zenophilum*, p. 193, 15-23 Ziwsa: Zenophilus u. c. consularis dixit Victori: «Licet iam constiterit ex responsione eorum qui supra sunt interrogati, tamen tu confitere utrum Silvanus traditor sit». Victor dixit: «Secundo petito quomodo hoc dimisit ut duceremur ad Carthaginem, ore ipsius episcopi audiui: “data est mihi lucerna argentea, et capitulata argentea, et has tradidi”». Zenophilus u. c. Victori Samsurici dixit: «A quo audisti?». Victor dixit: «A Siluano episcopo». Zenophilus u. c. consularis Victori dixit: «Ab ipso audisti quod tradidisset?» Victor dixit: «Ab ipso audiui quod suis manibus tradidisset illas».

Zenophilus said to Victor: «Although it has now become certain from the replies of those whom we have already questioned, nevertheless, do you tell us whether Silvanus is a Betrayer». Victor said: «When it was demanded a second time how it was that he dismissed this matter that we should be led to Carthage, I heard from the mouth of the Bishop himself: “I was given a silver lamp and a silver casket, and these I gave up”». Zenophilus said to Victor of Samsuricum: «From whom did you hear that?». Victor said: «From Silvanus the Bishop». Zenophilus said to Victor: «Did you hear from himself that he had been a Betrayer?». Victor said: «I heard him say that he gave up these things with his own hands».

(57) *Gesta apud Zenophilum*, p. 194, 1-5 Ziwsa: Nundinarius dixit: «Viginti folles dedit, et factus est presbyter Victor?». Saturninus dixit. Et cum diceret, Zenophilus u. c. consularis Saturnino dixit: «Cui dedit?». Saturninus dixit: «Siluano episcopo». Zenophilus u. c. consularis Saturnino dixit: «Ergo, ut fieret presbyter, Siluano episcopo uiginti folles praemium dedit?» Saturninus dixit: «Dedit».

Nundinarius said: «Did Victor give twenty pieces of money and was he made a priest?». Saturninus said: «Yes.» And when he had said this, Zenophilus said to Saturninus: «To whom did he give the money?». Saturninus said: «To Silvanus the Bishop». Zenophilus said to Saturninus: «Then he gave twenty pieces of money as a bribe to Silvanus the Bishop, that he might be made a priest?». Saturninus said: «Yes».

(58) *Gesta apud Zenophilum*, p. 196, 26-37; p. 197, ll. 1-7 Ziwsa: Zenophilus u. c. consularis Crescentiano dixit: «Ex quadringentis follibus quos Lucilla donauit, populus aliquid accepit?». Crescentianus dixit: «Nihil inde nemo accepit, nescio, nec quis illos erogauerit». Nundinarius dixit: «Aniculae numquam inde aliquid acceperunt?». Crescentianus dixit: «Nihil». Zenophilus u. c. consularis dixit: «Certe quotiens aliquid tale donatur, omnes inde populares

publice accipiunt». Crescentianus dixit: «Non audiui uel uidi dedisse illum aliquos». Zenophilus u. c. consularis Crescentiano dixit: «Nihil ergo datum est de quadringentis follibus populo?». Crescentianus dixit: «Nihil». Vtique peruenisset aliqua partiuncula ad nos. Zenophilus u. c. consularis dixit: «Quo ergo sublatis sunt?». Crescentianus dixit: «Nescio. Nemo nihil accepit». Nundinarius dixit: «Victor quot folles dedit ut fieret presbyter?». Crescentianus dixit: «Vidi allatos cophinos cum pecunia». Zenophilus u. c. consularis Crescentiano dixit: Cui dati sunt cophini?». Crescentianus dixit: «Episcopo Siluano». Zenophilus u. c. consularis dixit: «Siluano dati sunt?». Crescentianus dixit: «Siluano. Zenophilus u. c. consularis dixit: Populo nihil datum est?». Respondit: «Nihil. Necesse est ut et nos aliquid acciperemus, si distribuarentur sicut solet».

Zenophilus said to Crescentianus: «Did the people get any of the four hundred pieces of money, the gift of Lucilla?». Crescentianus said: «No one to my knowledge had any of it, nor do I know who spent the money». Nundinarius said: «Did no old women ever get any of it?». Crescentianus said: «No». Zenophilus said: «It is certain that whenever any gift of this kind is made, all the populace receive their part of it in public». Crescentianus said: «I neither heard nor saw that he gave any». Zenophilus said to Crescentianus: «None then of the four hundred pieces of money were given to the people?». Crescentianus said: «None otherwise surely some small trifle would have come to us». Zenophilus said: «Where then was the money taken?». Crescentianus said: «I do not know. No one got anything». Nundinarius said: «How much money did Victor give to be made priest?». Crescentianus said: «I saw that he brought baskets with money in them». Zenophilus said to Crescentianus: «To whom were the baskets given?». Crescentianus said: «To Silvanus the Bishop». Zenophilus said: «Were they given to Silvanus?». Crescentianus said: «Yes, to Silvanus». Zenophilus said: «Was nothing given to the people?». He answered: «Nothing. We too would necessarily have received something if the distribution had been made in the usual manner».

Of the witnesses called by Zenophilus in the late-antique *Gesta* as he investigates the charge of simony against bishop Silvanus, Victor 'the grammarian' is the most articulate, and makes some feeble attempt to nuance his assertion, for example when Zenophilus asks him to identify responsibilities for the divisions and tensions between local Christians:

(59) *Gesta apud Zenophilum*, p. 185, 14-23 Ziwsa: «Memor fidei et honestatis tuae simpliciter designa quae causa fuerit dissensionis inter Christianos». *Victor dixit*: «Ego dissensionis originem nescio: unus sum de populo Christianorum. Siquidem cum essem apud Carthaginem, Secundus episcopus cum Carthaginem tandem aliquando uenisset, dicuntur inuenisse Caecilianum episcopum nescio quibus non recte constitutum, illi contra alium instituerunt. Inde illic apud

Carthaginem coepta dissensio est; et inde originem scire dissensionis plene non possum, quoniam semper ciuitas nostra unam Ecclesiam habet, et si habuit dissensionem, nescimus omnino».

Zenophilus said: «Be mindful of your honour and character, and tell me with simplicity what was the cause of the dissension amongst Christians?» Victor said: «I do not know the origin of the dissension. I am one of the Christian people. However, when I lived at Carthage and the Bishop Secundus had at length arrived there, they are said to have discovered that Caecilian had been wrongfully made a Bishop, by whom I know not; and they set up another in opposition. From that time forward the dissension at Carthage began, but I cannot know its origin fully, for our city has always had one church, and if dissension there was, we know nothing about it».

Victor answers the question using a different word, *originem* rather than *causam*, in which responsibility seems to be shifted onto some indefinite agent. Even the rest of his deposition is vague, without a clear direction, and non-committal when it comes to identifying the initiators of any action: *dicuntur... nescio quibus constitutum*.

Without giving the exact words, a description of another witness trying to evade a question comes from Cicero's first oration *de praetura urbana* where Cicero describes the deposition of Lucius Domitius

(60) Cic. *Verr.* II 1,139 cum hoc, ut dico, sciret L. Domitius, me scire ad eum res omnis Mustium solitum esse deferre, tamen de Chelidone reticuit quoad potuit, alio responsonem suam deriuauit. Tantus in adulescente clarissimo ac principe iuuentutis pudor fuit ut aliquam diu, cum a me premeretur, omnia potius responderet quam Chelidonem nominaret; primo necessarios istius ad eum adlegatos esse dicebat, deinde aliquando coactus Chelidonem nominauit.

A blatant case of evasion and reticence is Ingentius's answer *ubi?* in the following extract. By modern standards, however, both the questioning and the answering are flawed. The judge asks leading questions (*quis te misit*), whereby it is already assumed that Ingentius has been set up to something by somebody else (a sort of presumption of guilt).

(61) *Acta purgationis Felicis*, p. 201, 15-24 Ziwsa: Et astante Ingentio Aelianus proconsul dixit: «Cuius praecepto ea suscepisti agenda, quae tibi obiciuntur?». Ingentius dixit: «Vbi?». Aelianus proconsul dixit: «Quoniam fingis te non intelligere quod interrogaris, dicam apertius: Quis te ad magistratum Caecilianum misit?». Ingentius dixit: «Nemo me misit». Aelianus proconsul dixit: «Quomodo ergo uenisti ad magistratum Caecilianum?».

Ingentius skirts around by taking a long detour to a trial of one Maurus, charged with simony, but a long-standing friend from the times of the great persecution. Bishop Felix of Autumnae had been a persecutor, and Ingentius claims to have gone, alongside three Elders, to Felix's hometown to seek evidence to substantiate the rumoured charges of *traditio* against Felix. It is at this point that his accuser, Apronianus, interrupts to point out that Ingentius is omitting to relate his visit to Caecilianus the city magistrate, pretending to bring a message from Felix.

(62) *Acta purgationis Felicis*, p. 201, 15-24 Ziwsa: Ingentius dixit: «Cum uenissemus, et ageretur causa Mauri ab Vtica episcopi, qui episcopatum sibi redemit, ad urbem ascendit Autumnitanus episcopus Felix, ut tractaret, et dixit, 'Nemo communicet, quia falsum admisit'». Et dixi illi ego e contra: «Nec tibi, nec illi, qui traditor es». Dolui enim causam Mauri hospitis mei, quia communicaueram cum illo in peregre, quia euasi persecutionem. Exinde iui in patriam ipsius Felicis, duxi mecum tres seniores, ut uiderent an uerum tradidisset, an non. Apronianus dixit: «Non ita uenit ad Caecilianum quaerere de Caeciliano». Aelianus proconsul Caeciliano dixit: «Quomodo ad te uenit Ingentius?». Caecilianus respondit...

Caecilianus gives two different versions of his encounter with Ingentius. In the first version Ingentius simply inquires about whether the books were burned, but he is sent packing and comes back with Augentius, who relates Felix's alleged request to write a statement that certain books were burned; in the second answer, Ingentius is reported to have voiced Felix's request directly. However, Caecilianus is not called to task about this apparent inaccuracy, but the passage is noteworthy for manner of the deposition, which seems to have preserved the literal wording of the speaker:

(63) *Acta purgationis Felicis*, p. 201-2, 24-35, 1-4 Ziwsa: *Caecilianus respondit*: «domi ad me uenit, prandebam cum operarios, uenit illuc, stetit in ianua». «Caecilianus ubi est», dixit. *Respondi*: «hic» ego dico ei: «quid est? Omnia recte?» «omnia» dicit. *Respondi illi*: «si non fastidis prandere, ueni, prande». *Dicit mihi*: «reuertor huc». *Venit illuc solus. Dicere mihi coepit, ecce sic mihi curare et inquirere an adusta fuerit scriptura anno duouiratus mei. Dico illi ego*: «molestus es mihi, tu homo immissus es, laxa hinc te a me». *Et spreui illum a me. Et uenit illo iterato cum collega meo, cum quo fui aedilis. Ait mihi collega meus*: «Felix noster episcopus misit huc hominem, ut facias illi litteras, quia accepit codices pretiosos, et noluit revocare illos: scribas illo, quod anno duumuiratus tui combusti sunt». *Et dixi ego*: «Haec est fides Christianorum?» *Ingentius dixit*: «Domine, veniat et Augentius. Et ego honorificus sum, et honor meus pereat, et huius litteras habemus»³⁴.

³⁴ *et honor meus pereat, et huius latera habemus* should probably be altered to *et honor meus pereat, ut huius litteras habemus*, on the pattern of asseverative sentences such as *ita uiuam ut*.

He came to me at home. I was at dinner with the workmen. He came in and stood in the doorway. «Where is Caecilianus?» said he. I answered «Here». I said to him «What is it? Is everything all right?». «Everything», said he. I answered him «If you feel like it, come and have dinner with us». He said to me «I am coming back». He came alone. He began to speak, and there he is asking me if the Scriptures had been burnt in the year when I was Duovir. I said to him «You annoy me. You are a man who has been suborned. Be off with you. Take yourself away from me». And I spurned him from me. And he came yet a second time together with my colleague with whom I had been aedile. My colleague said to me «Felix, our Bishop, sent this man here that you might give him a letter, because he has received precious codices, and is unwilling to give them back. Write for him that they were burnt in the year when you were Duovir». And I said «Is this the faith of Christians?». Ingentius said: «My lord, let Augustus also be called, for I too have held honourable office, and it will be all over with my honour, and we hold written evidence from him».

The translation is tentative: many passages are probably corrupt in the MS, but *notarii* had probably great difficulties coping with and trying to transcribe spoken depositions which they perceived to be ungrammatical (here see especially the transition from *dicere mihi coepit* to *ecce sic mihi curare*). The passage is however a vivid testimony of the linguistic vivacity of court records such as this, and their importance for study in a linguistic perspective.

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