

## The Ethnography of the Courtroom in American and Romanian Criminal Justice Systems

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**Abstract.** This paper sets out to present an ethnography of the courtroom in American and Romanian Criminal Justice Systems and to show the importance of the physical setting (courtroom), an extra-linguistic factor which places a lot of powerful constraints on the trial participants and thus, on the language they use and on their behaviour.

**Keywords:** courtroom, ethnography of communication, adversarial and inquisitorial justice systems, criminal trial, court attire

### 1. Introduction

The courtroom is the place where the legal and lay participants in a trial meet to settle their differences, being seen over the centuries as very stressful for the uninitiated people. Therefore, in the research on courtroom discourse, the courtroom needs to be analysed as an extra-linguistic factor which places a lot of powerful constraints on the trial participants and thus, on the language they use and on their behaviour. This paper presents an ethnography of the courtroom in American and Romanian Criminal Justice Systems; it starts by emphasising the difference in legal procedures between Anglo-American and European Continental jurisdictions, moves closer to focusing on the differences between the two criminal trials, and finally presents the actual setting, the courtroom, with its rule- and power-governed behaviour. In my attempt to do that, I have relied on the *ethnography of communication*, which is an approach to discourse that is based in anthropology and linguistics and whose aim is to analyse communicative patterns, by using the method of participant observation, in order 'to learn what members of a culture know about how to "make sense" out of experience and how they communicate those interpretations' (Schiffrin, 1994: 141). Since this is a comparative study, being part of my doctoral thesis research on the language in the courtroom in Romania, the information regarding the Romanian courtroom is based on my personal ethnographic observations.

## 2. Criminal Justice Systems

Zlătescu (1995: 5) considers that countries differ in their judicial mentalities. According to the type of court procedure, the Anglo-American system is called *adversarial* and the Continental system *inquisitorial*.

### 2.1. The Adversarial System

The *adversarial system* is the system of law generally adopted in common law countries (England, Wales, Commonwealth countries, United States of America, much of Australasia and Oceania, South Asia, Singapore and Malaysia as well as South Africa and the Middle East) that relies on the skill of the different lawyers representing their party's positions and not on some neutral party, usually the judge, trying to determine the truth of the case.

It has been considered that the origins of the adversarial trial go back to the medieval mode of *trial by combat*, in which some litigants, especially women, were allowed a champion to fight in their place. In fact, the notion of the trial by combat persisted into the present day, the parties being represented by lawyers who engage in a form of combat, with the judge ensuring that the opponents follow proper procedure. The use of the jury in the common law system is considered by many people today as the best way of determining the truth in a dispute. However, the adversarial method is sometimes criticised. Although both sides in a case have a chance to present their arguments, their legal representation may not be equal, e.g. wealthy people can afford to hire better lawyers.

### 2.2. The Inquisitorial System

The inquisitorial system is based on the civil law (originating in the Roman or Napoleonic codes and opposed to 'common law'), which is the basis of the law in many countries of the world, especially in continental Europe and Latin America. It is *an inquiry*, while the adversarial system is a *contest* (Diehm, 2001: 6).

As opposed to the adversarial system, the origins of the inquisitorial system have been attributed to 'inquiries conducted by clerics into alleged wrongdoing, proceedings in which the arbiters initiated the investigation and remained in control of the trial. In these proceedings, the clerics called witnesses, conducted the questioning and ultimately decided the verdict' (Diehm, 2001: 7). The name *inquisitorial system* 'conjures up images of the inquisition' (Diehm, 2001: 7), but some scholars (e.g. Langbein, *apud* Diehm, 2001: 7) consider it superior to the adversarial system.

The judge in an inquisitorial system is actively involved in determining the facts of the case, while the judge in an adversarial system is an impartial referee between the prosecution and the defendant pleading their cases before a jury, who determines the facts of the case. Judges in an adversarial system try to ensure the fair play of the trial because the lawyers control and conduct most of the trial. The judge is passive and becomes involved only to instruct the jury or to rule on motions or other legal issues.

In an inquisitorial system, the judge is quite active, while the lawyers have a more passive role. The judges determine the order of trial and conduct most of the examinations, calling the

witnesses to testify. The trial is thus conducted ‘in a fact-finding, less formal, and less confrontational manner’ (Diehm, 2001: 6).

### **3. The Criminal Trial**

#### **3.1. The Adversarial Trial**

The participants in the adversarial criminal trial are:

a) a lawyer (or lawyers) representing the accused party on trial (usually an individual – *the defendant*) called the *defence lawyer(s)*;

b) a lawyer (or lawyers) responsible for demonstrating the guilt of the individual on trial called the *prosecuting lawyer(s)* or *prosecutor(s)*;

c) a decision-making party (i.e. a *judge* and *jury*);

d) the *bailiff* (court official whose duty is to preserve and protect orderly conduct in court proceedings);

e) *the court reporter* (responsible for shorthanding or recording the proceedings);

f) *an audience* (often present in the courtroom).

The trial begins when the judge and parties select a jury.

#### **3.2. The Inquisitorial Trial**

The participants in an inquisitorial trial, and more specifically in a Romanian trial, are the same as in an adversarial trial, with a few exceptions. There is no jury. The state prosecutor, who supervises the criminal investigation, is usually present during the trial. S/he performs an active role in the judicial investigation and debates in order to reveal the truth and to ensure compliance with the legal provisions. The prosecutor is free to present the conclusions s/he considers justified, under the law, taking into account the evidence administrated. The two parties (defendant and victim) are entitled to counsel representation: defence lawyer (counsel) and prosecuting lawyer (counsel). Another participant in the Romanian trial is the court clerk who has an active role in the development of the proceedings (calls the case, keeps the case files in order and gives the specific file to the judge, takes notes, types the witness’s statement which is dictated to him/her by the judge and gives it to the witness to sign). In the United States, the court reporter is often also a notary public who is authorised to administer oaths to witnesses. The Romanian courtroom does not have a bailiff. In cases where there are arrested defendants, they are brought into court and guarded by prison guards. The courthouse is guarded by peace officers to whom the judge may appeal in case of trouble.

### **4. The Courtroom**

The courtroom is a setting that proves to be ‘extremely complex and unusually daunting’ (Aust, 2000) for the uninitiated people. The organisation of the courtroom is a very rich source for analysing the power and the asymmetrical situation of a trial. Courts and courtrooms, just like presidential palaces, are a ‘signature of power’ (Lasswell and Fox, 1970, *apud* Tait, 2001: 202).

In what follows, I will present in detail the architecture of the courtroom in the two systems of justice.

### Symbolism of the Courtroom

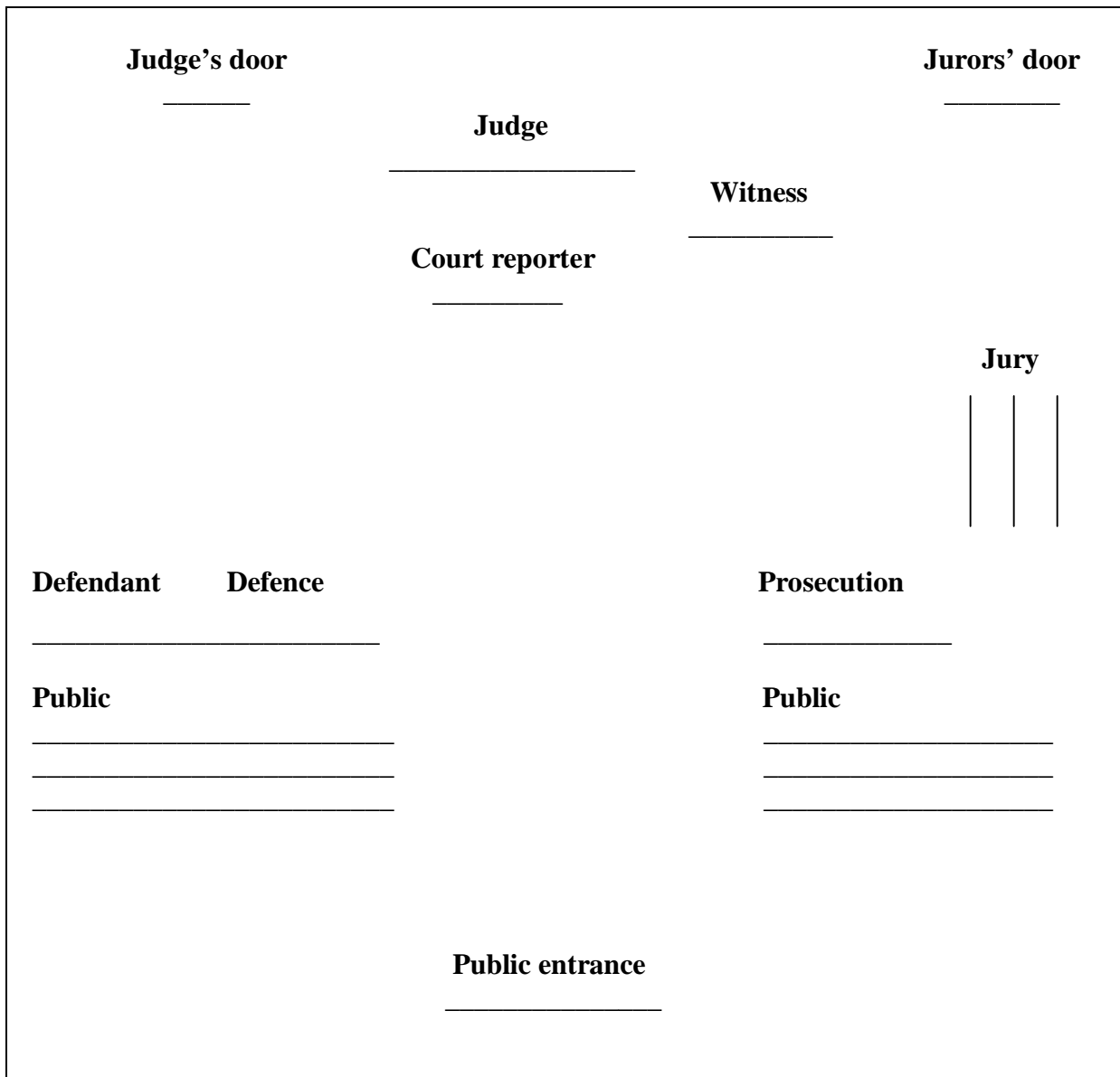


Figure 1. Entrances and seating arrangements in an American courtroom

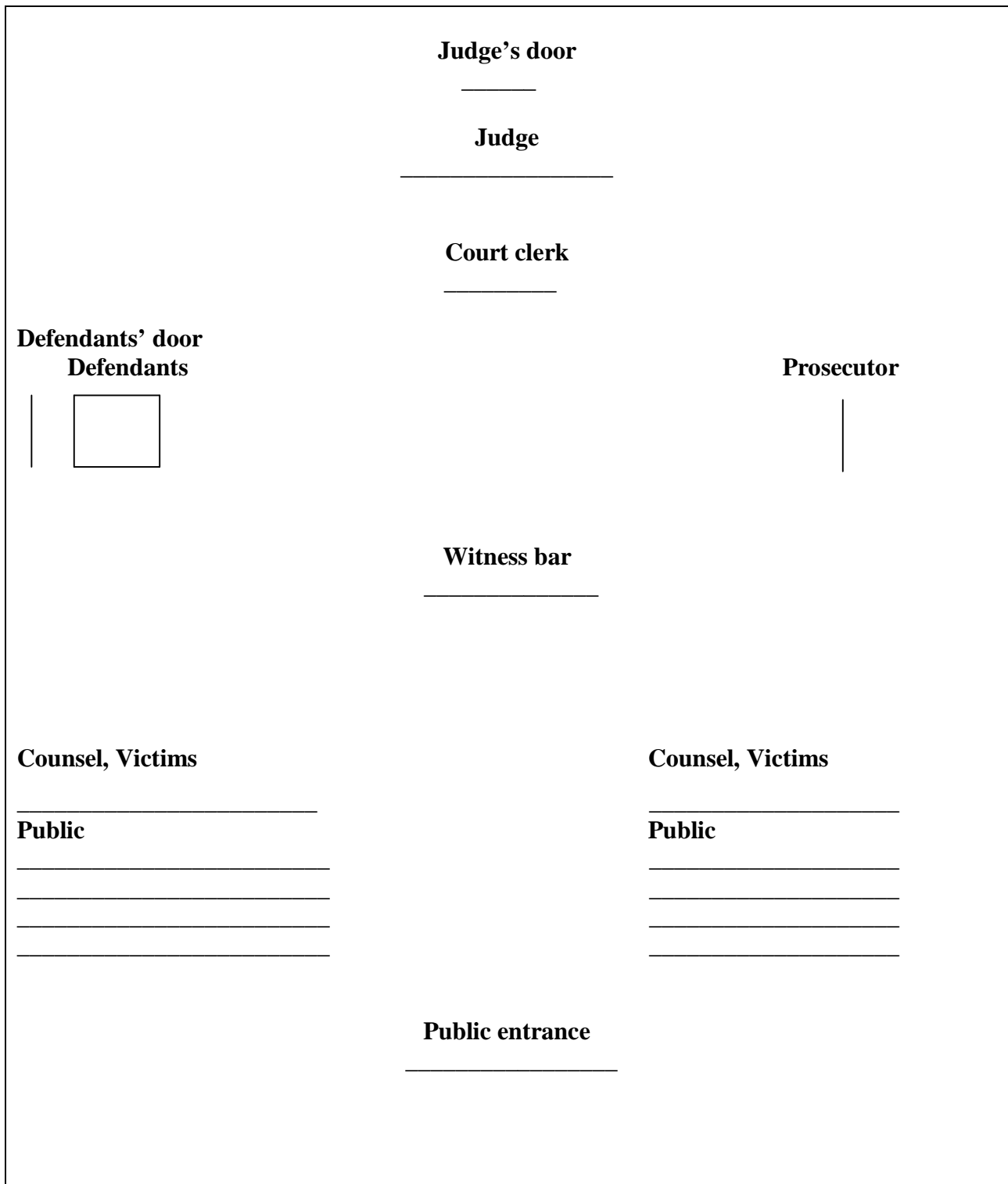


Figure 2. Entrances and seating arrangements in a Romanian courtroom

Everything in a courtroom breathes symbolism. A symbolism of power, hierarchy, asymmetry and authority.

#### ***4.1. Physical Setting***

The first interaction the laypeople have with the courtroom is through the door. The door in itself bears the signs of authority. The judges in both jurisdictions enter the courtroom through a special door. The jury in the American trial enter through another door, symbolising their non-relation to the legal community. The Romanian arrested defendants are brought into the courtroom through another door and are seated in a specially designed box. In both jurisdictions, laypeople enter through a different door, usually facing the judge's.

The seating positions of the active participants are also symbolic. In both courtrooms, the judge's place is on an elevated platform, showing the judge's authority and dominance. The Romanian prosecutor also sits on a raised platform, showing his/her position of importance. Even the chair(s) of the Romanian judge(s) is/are more imposing, having a higher back. To put it differently, the judge(s) and the prosecutor regard the others (even the lawyers) from above, being the real decision-makers. In the American courtroom, the prosecution as well as the defence sit on the same level. Psychologically speaking, their words have the same impact for the judge and the jury. In the Romanian courtroom, however, the clear distinction between the state prosecutor and the other lawyers is seen at first in the positions they occupy in the courtroom.

In the American courtroom, the witness sits on a lower chair, at the side of the judge, in a box. The jury is seated at the side of the witness and opposite the defendant in order to get the best view of all the participants.

In the Romanian courtroom, the witness is facing all the important actors in the 'play': the judge, the prosecutor and the defendant. The defendant faces the prosecutor, while the lawyers sit in the back, with the public, and address the court from the witness stand.

#### ***4.2. Symbols of Office***

American judges have ceremonial gavels to maintain order in the courtroom, besides having bailiffs to help them in that respect. Romanian judges do not have bailiffs to help them, only gavels (rarely used) and their authority, which is also given by other symbols of office, such as the court attire.

### **4.3. Court Attire**

Differences arise between the two courtrooms as far as the court dress is concerned. The court dress, another old symbol of respect and dominance, has a long history.

After the American Revolution, in an attempt to remove all the English aristocratic symbols, the Americans decided to get rid of the wigs and keep only the black robes as a symbol of judicial power for the judges. The other participants in the trial wear normal clothes, e.g. formal suits.

In Romania, after the 1989 Revolution, the court dress code from the inter-war period was reinstated (Romanian Official Gazette, No. 311 of 29 December 1993). Judges and prosecutors wear black robes with white scarves. The court clerks wear the same type of robe, but in grey. Lawyers also wear black robes with a band hanging over one shoulder, with white edges.

## **5. Conclusions**

This paper has shown the importance of the physical setting (courtroom) in which the trial takes place over the discourse as well as the constraints and power it imposes on it. In order to get a better understanding of the whole process, I have first compared the two systems of justice, the adversarial (American) and the inquisitorial (Romanian) one. Then, I have moved on to compare the adversarial and the inquisitorial criminal trial, by describing the participants and their stages of development.. I have provided a visual representation of each of the courtrooms, discussing the symbolism of the entrances and of the seating arrangements of all the participants in terms of the power they exert, as well as the symbolism of the court attire. Similitudes between the two courtrooms were observed in the symbolism of power and dominance exerted by the entrances and seating positions of the judges. The dress code was observed to be stricter (i.e. robes for all the legal participants) in the Romanian courtroom than in the American courtroom. The American and Romanian courtrooms were also shown to have means for establishing order (gavels and bailiffs in the American courtroom and only gavels, rarely used, in the Romanian courtroom). This description is intended to show the reinforcing factors of hierarchy and power in the courtroom and stress that these symbols lay the foundation of the subsequent 'legal-lay discourse' (Heffer, 2005) present during the judicial proceedings, and mark the constraints that affect the spoken legal discourse.

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