Questioning in Court: The construction of direct examinations

Lucas M. Seuren[1,2]

[1]University of Groningen, [2]Radboudumc Nijmegen

This paper is scheduled to appear in Discourse Studies in December 2018 / February 2019

Lucas M. Seuren

Oude Boteringestraat 23

Office 0012

9712 GC, Groningen

The Netherlands

+31 (0)50 3635819

Lucas.seuren@gmail.com

Abstract

While courtroom examinations are often recognized as a distinct speech-exchange system, little is known about how participants do an examination beyond its unique turn-taking system. This paper attempts to shed some light on this issue by studying the question design during the direct examination in an American criminal court case using Conversation Analysis. It shows that attorneys use different question forms compared to casual conversation: declaratives are far less prevalent and questions are often designed as requests for action. Additionally, attorneys make use of forms that are not found in other types of interaction, such as the tag (*is that*) *correct*. The way in which attorneys design their questions additionally shows that the rules of the courtroom have procedural consequences for how the interaction is done. But these rules have to be enacted, and it is in their violation that participants bring about categories such as leading questions.

Keywords

Conversation Analysis, Courtroom interaction, direct examination, question design, leading questions, question constraints, American, Action Formation

Introduction

Interaction in the courtroom is characterized by a unique turn-taking system (Atkinson & Drew, 1979). While in casual conversation turns are allocated ad hoc and there are few constraints on what participants may do in those turns (Sacks, Schegloff & Jefferson, 1974), in court this is largely predetermined. The majority of talk consists of examinations in which attorneys ask questions and witnesses give answer (Atkinson and Drew, 1979; Dunstan, 1980; Lakoff, 1985). By constructing the interaction in this manner, participants accomplish that any evidence and testimony is introduced by the people who have firsthand experience: the witnesses.

But beyond the turn-taking system, surprisingly little is known about how examinations are done and recognizably done. That is, how attorneys and witnesses make themselves accountable as doing an examination, particularly as there are other forms of institutional interaction that are organized through question-answer sequences such as news interviews (Clayman and Heritage, 2002) and emergency calls (Zimmerman, 1992).

This paper aims to shed some light on the structure of courtroom examinations by focusing on the syntactic practices attorneys use to ask questions during the direct examination. During the direct examination attorneys elicit evidence from witnesses they called to testify, and the evidence elicited in this way is meant to support the case made by the attorneys. The findings of this paper not only provide insights into how questions are designed in a direct examination and how this is

distinct from other speech-exchange systems, but they also have implications for our understanding of one of the central rules that characterizes direct examination: the restriction against asking *leading questions*. This paper thereby addresses the procedural consequentiality (Schegloff, 1991) of this rule for the structure of direct examinations.

Questioning in Court

The rules of evidence that guide a criminal trial at both a federal and state level in the United States entail that during a direct examination testimony should be provided by the witness. While he or she does so in response to questions asked by the attorney, these questions should not bias the witness. The jury should hear the witness' testimony, not the attorney's (Ehrhardt & Young, 1995). One rule that can be used to enforce this practice is the prohibition against asking leading questions. These are questions that suggest how they should be answered. Using them would result in the jury hearing testimony not from the witness, but from the attorney.

What it means to suggest an answer is, however, not clearly defined. There are many dimensions of question design that attorneys have to take into account when examining a witness, and each can contribute to the coerciveness of a question (Heritage, 2009).

First, any question sets an agenda in terms of the topic and the projected response (Hayano, 2013; Heritage, 2009; Raymond, 2003; Schegloff and Sacks, 1973; Simpson and Selden, 1998). Attorneys determine what the witness should provide testimony on and project how the witness should

provide that testimony. With a polar question the attorney makes relevant (dis)confirmation of a candidate description of events, whereas with a content question any description is provided by the witness. Attorneys thus constrain the type of response that witnesses should provide to different degrees (Berk-Seligson, 1999; Danet, 1980; Danet & Bogoch, 1980; Drew, 1992; Eades, 2000; Galatolo & Drew, 2006; Harris, 1984; Luchjenbroers, 1997; Woodbury, 1984).

Second, any question embodies presuppositions that a witness will have to deal with (Heritage, 2009). When a speaker assumes in the design of the question that some state of affairs is true, the witness inherently accepts that presupposition by providing an aligning response, that is, by conforming to the action agenda of the question (Clayman & Heritage, 2002; Raymond, 2003; Stivers & Hayashi, 2010).[1] A third dimension of question design is the epistemic stance it conveys, how knowledgeable the speaker presents him- or herself in relation to information addressed in the question. Questions with interrogative morphosyntax convey a relatively unknowing stance, whereas interrogative tags and declarative morphosyntax are used to take a gradually more knowing stance (Heritage, 2012).[2]

Finally, polar questions convey a preference for a certain type of response (Pomerantz & Heritage, 2013).[3] By using for example a straight or negative interrogative the attorney will convey a preference for a *yes*-response (Bolinger, 1957), whereas negative declaratives or interrogatives with negative polarity items prefer a *no*-response (Heritage, 2009; Heritage et al., 2007).

The rules of evidence on the one hand, and the dimensions of question design on the other make the direct examination a particularly interesting object of investigation. The rules of evidence are unlike other interactional rules in that they are written down and participants are aware of them (cf., Garfinkel, 1967). But what they mean for the participants still has to be established in the interaction itself. They are enacted by the participants: the attorneys who ask the questions and can object to each other's questions and the judge who rules as to whether or not a question did indeed violate a rule. This means that we can see not only how the participants understand the rules of courtroom procedure, what a leading question means to them, but also their understanding of the import of the linguistic design for this rule.

This paper shows how attorneys balance the rules of evidence on the one hand and the dimensions of question design on the other. It argues that attorneys are not only concerned with how coercive a question is in the type of answer it elicits (cf., Danet & Bogoch, 1980), that is, the action agenda it sets, but also with the epistemic stance and presuppositions it conveys. In doing so, this paper also shows that leading might better be thought of as a gradual scale (see also Melilli, 2003). The dichotomy that is suggested by the legal definition where a question does or does not suggest an answer is an interactional accomplishment that arises only after a question has been asked, and either answered or successfully objected to.

This paper is organized as follows. After briefly introducing the data, I discuss the various syntactic constructions attorneys use for their questions, how these findings differ from those for casual conversation, and how this relates to the constraint that they should not lead the witness. First I compare declarative to yes/no-type interrogative requests for confirmation, showing that while both offer a description to be confirmed, interrogatives are used to introduce new information, whereas declaratives are used to address information already in evidence. Interrogatives are therefore also often used to launch larger sequences about a single topic. Second I discuss content questions: *wh*-interrogatives and imperatives. I show that they make relevant more extensive responses and are therefore used to have the witness tell a story. Third I show that alternative questions can be more or less coercive: depending on whether the candidate responses are exhaustive and equivalent. In closing, I provide additional evidence that leading is an interactional accomplishment, meaning that the rules are established by enacting them.

Data & Methodology

Zimmerman Trial

The data in this paper consist of video recordings of the trial State of Florida v. George Zimmerman from 2013. In this case George Zimmerman was accused of second degree murder for shooting Trayvon Martin on February 26th of 2012. On that night he saw a man, who turned out to be Trayvon Martin, walking in his neighborhood while it was dark and raining, which Zimmerman

thought suspicious, and so he called a non-emergency line to request the police to investigate. Shortly afterwards he and Martin got into a struggle during which Zimmerman shot and killed Martin. The trial was conducted over the course of fifteen days, after which the jury rendered a verdict of not guilty.

Description of data

An initial viewing of the data suggested that question design depends in part on the type of witness: examinations of expert witnesses were structured differently from eye and character witnesses. Tanford (2009) states that examinations consist of three phases: background, setting the scene, and telling the story and all three are present with eye and character witnesses. For expert witnesses, however, attorneys focused on the evidence. The questions in this phase seem to be almost exclusively designed as yes/no-type interrogatives. Because examinations of expert witnesses are so different, they are not part of the analysis presented here.

Of the available data, eight examinations were analyzed for this paper, which provided a combined 649 question/answer sequences. Additional data were viewed, but as the question design in these data was entirely consistent with the initial findings, they were not added to the analysis. The data were transcribed according to Jeffersonian conventions (Jefferson, 2004), and analyzed using conversation analysis (Ten Have, 2007).

Questions categorization

The questions were initially categorized based on their syntactic design: declarative, declarative + tag, yes/no-type interrogative, alternative, *wh*-interrogative, or imperative (Sadock and Zwicky, 1985). Many of the yes/no-type interrogatives and imperatives, however, also had embedded *wh*-interrogatives, alternatives, or declaratives. Witnesses would treat these questions as indirect questions, meaning that they would answer based on the embedded format. Questions such as *could you describe*… were not treated by witnesses as polar questions, but as requests for a description (Curl and Drew, 2008). These indirect questions were therefore categorized based on the format of the embedded clause. Questions were multiple formats were used, for example a *wh*-interrogative followed by an alternative, were categorized as combinations.[4]

Analysis

Polar questions

During the direct examination attorneys use two syntactic formats to make relevant confirmation as a next action by the witness: yes/no-type interrogatives and declaratives, hereafter YNI and YND (Raymond, 2003, 2010). An overview of their respective frequencies is presented in table 1. Both the design and frequency of these questions show a clear contrast with casual conversation. First, many YNDs have a TCU-final phrase: (*is that*) *correct*. This tag displays an orientation both to the witness as the expert and to the state of affairs described as something that has relevance for its factuality, that is, as evidence. Second, while YNDs are used more frequently than YNIs in casual

conversation (Stivers, 2010), in the direct examinations studied in this paper, YNIs are far more prevalent.[5]

Table 1.

Frequency distribution of morphosyntactic practices for polar questions

Syntactic design		Frequency (N)			
Yes/no-type interrogatives		238	(64%)		
Declaratives		134	(36%)		
	Main clauses			74	(55%)
	Tag, (*is that*) *correct*			47	(35%)
	Tag, interrogative			7	(5.2%)
	Tag, particle			3	(2.2%)
	Embedded			3	(2.2%)
Total		372			

Polar questions represent the majority of the 649 questions (57%) analyzed for this paper. At first glance both types of confirmation requests function in the same way: both offer a description for witnesses to confirm. And in fact, as can be seen in table 2, there is little between them in terms of the type of response that witnesses provide.[6] While elaboration and transformative responses are

provided more frequently in response to YNIs, and consequently YNDs more frequently receive just confirmation, both formats are overwhelmingly responded to with just confirmation.

Table 2.

Frequency of answer types to polar questions

Answer Format	Question Format				Total (N)	
	y/n-interrogative (N)		declarative (+ tag) (N)			
(Dis)confirmation	181	(76%)	115	(86%)	296	(80%)
Confirmation+	28	(12%)	13	(9.7%)	41	(11%)
Transformative	16	(6.7%)	5	(3.7%)	21	(5.6%)
Disconfirmation+	11	(4.6%)	0	(0%)	11	(2.9%)
No Answer	2	(0.8%)	1	(0.7%)	3	(0.8%)
Total	238		134		372	

But the types of response tell only part of the story. YNIs and YNDs are used in different sequential environments for different interactional goals: while YNIs are frequently used to request confirmation of new information, often to implement a *preliminary question*, YNDs are recurrently used to request confirmation of something that is already *in evidence*.

Consider the following case where the prosecutor is examining an eye witness. He uses a YNI to move from the phase where he sets the scene, to the phase where the actual events of the case are discussed.

(1) Bahadoor-00:48:38.1

```
01  Pro: -> at some point did you hear a noice outsi:de.
02          (0.7)
03  Wit:    yes:.
04  Pro:    °okay°.
    ((7 lines with repair omitted))
12  Pro:    .hh and if you cou:ld as best you can recall:
13          .h the noise that you heard can you descri:be that to
14          the jury please.
```

The prosecutor's question addresses an event that has not yet been discussed: the witness hearing a noise. By inquiring about this event with a YNI he makes relevant confirmation, which is provided by the witness. Although the prosecutor formulates an experience of the witness which she merely confirms, he uses this question to focus her attention on an event, and this is a necessary step to progress the testimony. He can subsequently inquire about the event in lines 12–14 where he asks the witness to describe that noise.

Less than a minute later the prosecutor asks a similar question, again as a means to call the attention of the witness to a particular event, in this case movement she heard.

(2) Bahadoor-00:49:21.1

```
01  Pro: -> .pt.hhh did you also hear some kind of movement
02       -> outside in the back of your residence.
03          (0.7)
04  Wit:    yes.
05  Pro:    okay. can you descri:be that to the jury please.
```

Again we see that the prosecutor requests confirmation of some event that the witness has not brought up in order to establish some preliminary fact. Once the witness has confirmed that she heard movement, the prosecutor asks her to describe it to the jury.

In excerpt (1) and (2) the prosecutor introduces new information using YNI; he is the one progressing the story. Now compare this to the following case where the prosecutor requests confirmation with a YND. The witness has answered a series of questions about what she was doing and what she heard during the night of the shooting. At an earlier point she mentioned that she heard a very loud voice, but in line 3 she uses the plural *voices*.

(3) Serdyka-00:09:22.7

```
01  Wit:    .pt.hhh so (0.4) I heard it I just sat on my #be:d
```

```
02          a:nd# (0.4) you know I started to rea:d .hh and I
03          hear:d (0.2) the loud voices again.
04          (0.2)
05  Pro: -> .h now you said (.) voices plural, so you
06       -> were hearing at this point more than once voice?
07          (0.3)
08  Wit:    .pt.hh (0.7) I could only say that I heard a very
09          LOU:d do:minant voice. [at that [point.
10  Pro:                           [°okay°  [°allright°
```

When asking whether she heard more than one voice, the prosecutor designs his question as an upshot of the witness' answer by (i) repeating part of that answer, (ii) articulating that these were her words, (iii) asking his question using declarative word order and (iv) prefacing it with *so* (Heritage and Watson, 1979; Schiffrin, 1988). The prosecutor goes to great lengths to show that he is asking the witness to confirm something she said; these are not his words.

As further evidence that YNDs are used to request confirmation of established matters, consider the following extract where the defense attorney is examining a character witness. The topic is a recording of the non-emergency call George Zimmerman made the night of the shooting. In this call he can be heard saying *these assholes* in his description of Trayvon Martin's actions. The attorney has been asking a series of questions to inquire whether George Zimmerman sounded angry or hostile on the phone.

(4) OstermanS-00:29:19.1

```
01  Def: -> so using that wo:rd, >assholes<, I think you
02       -> testified that did not (0.6) evidence to you
03       -> any ill will or hatred?
04  Wit:    no.
```

The attorney asks the witness to confirm that the way George Zimmerman sounded on the phone did not seem to evidence any ill will or hatred. He uses declarative word order, and makes clear that he is seeking confirmation of something the witness has already said: *you testified*. So here too a YND is used to repeat the witness' testimony, and it is designed as a repetition.

In fact, the first time the attorney asked this witness whether the use of *assholes* made George Zimmerman sound hostile, he used a YNI. The question in the previous excerpt is produced during the re-direct examination of the witness. When the attorney asked during the direct examination—the moment he refers to with *I think you testified*—he used a YNI:

(5) OstermanS-00:15:20.2

```
01  Def: -> did that (.) wo:rd the way he said assho:les, did
02       -> that give you a sense that he was acting: .hh with
03       -> spite, or ill will: or hatred, (.) in that sense,=
04  Wit:    =↑no.
```

This shows that while YNIs and YNDs are both used to request confirmation of some state of affairs, they are not treated as interchangeable practices. When introducing information not yet in evidence, attorneys make use of a YNI. Only when information has already been established, do they use a YND. Additional evidence that this is normative behavior can be found in the following, deviant case, where the attorney implements repair to show that he used an inappropriate form. In a move to direct the witness' attention to the shot and what she did after hearing it, he asks her to confirm that she heard a shot using a YND, but she has not testified yet that she heard one.

(6) Surdyka-00:18:48.7

```
01  Pro: -> .hh and the:n you heard a shot,
02          (0.9)
03  Wit:    (while/well) I called [(the)
04  Pro: ->                       [(   ) (uh) TELL US WHAT you
05       -> hear:d.=I apologize. you tell us what you heard.
```

The witness begins to answer the question in line 3, but the prosecutor interrupts to repair his initial question, now asking the witness to tell what she heard. He asks this question twice, with an apology in between. By using an overt second person pronoun as subject the second time, *you tell us,* the prosecutor emphasizes that he is asking the witness to testify in contrast with his question in line 1 where he asked her to confirm his description of what she heard. He thereby orients to

the norm that he should not be leading her, showing that a YND is not the appropriate format to request confirmation of information not yet in evidence.

As a final comparison between YNIs and YNDs, consider the following excerpt. The defense attorney is examining the trainer of a gym George Zimmerman frequently visited before the night of the shooting.

(7) Pollock-00:46:01.7

```
01  Def: -> .pt.hh and u:hm (.) .hh so: uh (.) within the context
02       -> of MMA >there are a lot of< different (.) disciplin-
03       -> or are there many different disciplin:es that (0.9)
04       -> can be folded into: MMA?
05  Wit:    absolutely.
```

The attorney initially asks his question with a YND, as an upshot of the witness' prior talk (Heritage and Watson, 1979). Halfway through producing that TCU, however, he breaks it off and replaces the YND with a YNI. The issue seems to be that the witness has just said that MMA consists of various martial arts, which is not necessarily the same as multiple disciplines folded into MMA. The attorney thus has to choose between two formats that might both be suited to this environment. And in fact by *or*-prefacing his repair he treats both formats as alternatives but the YNI as more suitable (Lerner and Kitzinger, 2015).

This section has shown that while both YNDs and YNIs are used to request confirmation, they are treated as practices with a different procedural consequentiality. For addressing new information, attorneys use and normatively have to use a YNI, whereas they make use of YNDs to request confirmation of information that is already in evidence. They only take a knowing stance, when that stance has been licensed by the witness in the interaction.

Content Questions

The previous section focused on polar questions and argued that attorneys use YNDs differently from YNIs and that in doing so they distinguish between new information and information that is in evidence. Linguistic form thus makes a contribution to whether or not a question can be considered leading. . This section focuses content questions for which attorneys use two morphosyntactic practices: *wh*-interrogatives and imperatives, hereafter WHIs and IMPs.

Content questions are used a lot less frequently than requests for confirmation, making up only 31% of all questions. One reason is that they attract long answers, and so witnesses can provide a lot of information in response to one question; there is less need for more than one question. Another reason is that these forms give attorneys less control over the witness, which might be a problem given their goal of eliciting a testimony that is maximally supportive of their argument. A frequency distribution can be found in table 3. Note that most embedded *wh*-interrogatives have

an imperative as their main clause, for example: *tell the jury what you saw*. Attorneys thus design these questions as actual requests.

Table 3

Frequency of morphosyntactic practices for content questions

Grammatical form		Frequency (N)			
Wh-interrogatives		172	(84%)		
	Main clause			43	(65%)
	Embedded			23	(35%)
Imperatives		32	(16%)		
Total		204			

Attorneys use both WHIs and IMPs to ask questions in which they ask the witness to testify, to provide their version of events. This is evidenced by the types of responses witnesses provide: they do not simply confirm, but give extended tellings, and these are only acknowledged by the attorney when they have come to completion. This is most salient when witnesses are simply asked to describe what happened. Consider the following case. The witness has just stated that while staring out the window of her bedroom she saw two people on top of each other and heard

three popping noises. The prosecutor subsequently asks in line 1 what happened afterwards using a WHI.

(8) Surdyka-00:19:24.4

```
01  Pro: -> .hh and then what happened.
02          (0.5)
03  Wit:    .pt.hhh (0.9 hh u:hm (0.6) .pt >like I said< it was
04          (.) it was still dar:k, I heard the (.) <popping
05          noises>, I was (0.8) shaking, £huh£ .hh and u:hm:
06          (0.4) just a little while later, (.) °u:hm° (0.3) one
07          person: got u:p, .hhh a:nd that person got up and
08          started walking: (.) u:h s- (0.9) uh right towards my
09          window. (0.3) where I could see that perso[n >really
10  Pro:                                              [okay.
11  Wit:    clear now<.
```

The witness' response is far more elaborate than what we find for YNIs or YNDs. She recaps what she has been saying in lines 3-5, adds that she was *shaking*, and that shortly afterwards one of the two people started walking towards her (line 6-9). She thus provides a more elaborate description of the events she witnessed, a description that was in no way suggested by the attorney.

Note that the prosecutor's question in the prior example does not constrain the length of the witness' answer: theoretically she could describe everything that happened after the popping noises. And some witnesses do provide very elaborate answers. In the following case the defense attorney is examining a friend of George Zimmerman who helped him with learning to shoot and selecting an appropriate firearm for self-defense, two areas in which the witness is particularly knowledgeable as a law enforcement official. The witness has just explained that he recommended Zimmerman to buy a Keltec 9.

(9) OstermanM-00:37:00.4

```
01  Def:    what where the: e:hm characteristics then of the
02           keltec ni:ne that ↑you focused on in assisting
03           mister zimmerman to: .hh purchase that weapon.
04           #for self defen[se#.
05  Wit:                    [.pt.hhh eh it's a reliable. (.)
06           firearm, .h ehm it i::s: (0.5) it is without the
07           exterior safety. .hh and e:h (.) some some firearms
08           ha:ve (.) two or ↑three exteriors types of safeties.
     ((9 lines elided))
18           right no:w, (0.2) .h the the keltec was the (.) was
19           the type of weapon that was: (.) wa[s °good for it°.
20  Def:                                       [°and eh°
```

The attorney requests the witness to name the characteristics of the Keltec 9. While this list is inherently finite, its length is not specified, and so the witness has control over the length of the answer. And indeed the witness takes a very long turn to provide the answer. He does not just give the reasons for recommending the Keltec 9 such as its reliability and its lack of an external safety, but also explains why these are good characteristics for a firearm that is primarily used for self-defense.

An even more extreme case can be found in the following excerpt. The witness has just confirmed that he discussed with George Zimmerman what type of weapon he should buy and why. In line 1 the defense attorney then requests that the witness explain those things to the jury . The witness subsequently launches into a very extensive answer, taking more than 1.5 minutes (only a few lines are shown).

(10) OstermanM-00:35:10.5

```
01  Def: ->                [and if you would ex↑plain to the
02       -> jury (.) [about that.
03  Wit:             [.pt
04          well (.) there ar:e (.) >many different types of
05          firearms ((video error)) urposes. .hh e:h <some are
06          for> (0.2) competition. if you wish to: (.) compe:te
    ((34 lines elided))
```

40 an ex:tended trigger pull to where .hhh it can't
41 be just accidentally (0.5) s:queezed an:d have
42 the firearm go o:ff.

In his answer the witness discusses the various purposes for firearms such as competition and self-defense, the weapon they chose, the characteristics of that weapon, why those are good characteristics, which features law enforcement values, and he ends with an elaborate description of the primary safety feature of the Keltec 9: an extended trigger pull. At no point does the attorney show any sign that the answer is too long or does not adequately address his question: this response is treated as an adequate answer to his question. This shows that like WHIs, IMPs do not constrain the length and content of the answer: they are used to have the witness provide his or her own testimony.

While elaborate answers are not completely absent in response to requests for confirmation, they are rare and indeed oriented to as not normative. In the courtroom requests for confirmation seem to prefer only confirmation as a response. We see this not only in the low frequency with which elaboration is provided (16.6%), but also in how the responses are taken up: when witnesses elaborate they sometimes overlap with the attorney's receipt of the confirmation. In other words, attorneys treat these questions as adequately answered after the confirmation. See for example the following case where the attorney's sequence-closing *okay* (Beach, 1993; Schegloff, 2007) overlaps with the witnesses' elaboration.

(11) OstermanM-00:34:17.4

```
01  Def:    .pt.hh and did you ha:ve e:hm discussions with him
02           abou:t gun safety.
03           (0.3)
04  Wit: ->  o:ften. [.h eh ↑we had (0.2) we had gone to a
05  Def: ->          [°okay°
06  Wit:     shooting range .hh on: several occasions.
```

By using a WHI or IMP attorneys thus exert little control over the answer that the witness is to provide. They set a topical agenda and an action agenda such as explaining, but the manner in which the witness responds and the contents of the response are not suggested through the syntactic design. They thus contribute to making a question non-leading.

This difference between the two categories of questions is made salient in cases where the issue of leading is treated as central: where opposing counsel has successfully objected to a question on grounds of leading. The attorney subsequently has to redesign the question to be non-leading (Romaniuk and Ehrlich, 2013). The following extract is a case in point. It takes place during the re-direct examination of the 911 operator who took George Zimmerman's call on the night of the shooting. The prosecutor asks in line 1 whether Zimmerman's use of the terms *assholes* and *fucking punks* suggest ill will. Ill will is a technical term, and one that is at the heart of the case: for

a conviction of second degree murder, the prosecution has to prove that Zimmerman shot Martin with ill will, hatred, spite or an evil intent.

(12) Noffki-01:10:43.1

```
01  Pro: -> u[:h (.) might it suggest (0.7) things such as ill will?
02  Wit:     [hh
03           (0.4)
04  Wit:     yes.
05           (0.6)
06  Def:     objection your honor. again leading, (lea- lea-) (0.5)
07           leading question °your honor°.
08  Jud:     °okay°. well rephrase your ↑question.
 ((9 lines elided, preamble to the question))
18  Pro: -> okay. (0.5) uhm (0.5) an:d (0.3) the u:h (0.6)
19       -> f:eelings that follow with tho:se (.) wor:ds in your
20       -> experience are what.
21           (1.1)
22  Wit:     hostile,
```

After the prosecutor has asked the question in line 1, the defense attorney successfully objects on grounds of leading. In his subsequent question in line 19-22 the prosecutor uses a WHI—the question word *what* is left in situ—to avoid leading. While the issue here is not just the syntactic

design of the question, but also the candidate answer *ill will*, the attorney does not rephrase his question to replace only that candidate answer, he changes the syntactic format, soliciting a description from the witness. He thereby orients to the WHI as non-leading when compared to the YNI.

This section has discussed content questions, questions that are implemented with wh-interrogatives or imperatives. It was shown that questions that are implemented with WHIs or IMPs do not suggest an answer to the witness or constrain the length of the witness' response, and they are responded to far more elaborately than YNDs or YNIs. They make relevant tellings instead of confirmation. Furthermore, they are used to replace YNDs or YNIs in order to avoid leading the witness.

Alternative Questions

The previous two sections discussed four of the five main syntactic constructions in English, and what their use reveals about the participants' understanding of these formats as to whether or not a question suggests a specific answer, that is, whether the question is leading. The category I have so far not discussed is the alternative question where the witness is given a choice between two or more candidates. One reason is that they are rarely used: only 23 of the 649 questions examined were alternatives. Second and crucial to this section is that alternatives cannot be folded into either the category of polar questions or content questions.

First, in terms of the action agenda, alternatives are used to constrain the response to the provided options. Whereas in a polar question one candidate is highlighted by requesting confirmation, with alternatives all options are made explicit. And so the witness is not asked to confirm one option, but to select the correct one.

Second, in terms of epistemic stance, it is not clear from the syntax alone how knowledgeable the attorney presents him- or herself. He or she claims to know that one of the provided alternatives is the correct one, but if the options are mutually exclusive, exhaustive, and equivalent then the attorney of course does not claim to be knowledgeable at all. If on the other hand the options are not exhaustive, the attorney already presents him- or herself as at least somewhat knowledgeable. Similarly, if the options are not equivalent, the attorney might suggest that one is preferred over the other.

Consider a simple case where the witness has to choose, but where the question seems entirely unproblematic. The witness has confirmed that she heard a noise outside (see excerpt 1), after which the prosecutor tries to narrow down where outside she heard the noise.

(13) Bahadoor-00:48:47.9

```
01  Pro:    and when I say outsi:de .hh (0.7) in terms of
02       -> th- your residence was it in the ba:ck or was it in
03       -> the front.
```

```
04          (0.9)
05  Wit:    it was in the rear.
```

While the prosecutor forces the witness to choose between two options, *back* or *front*, using an alternative does not make his question leading. The witness lived in a townhouse in between two others, so the noise couldn't come from one of the sides. So the options provided are mutually exclusive, exhaustive and, equivalent. In fact, had the attorney asked confirmation of the noise being in the back, that option would have clearly been highlighted over the other. Alternative syntax as it is used here thus makes the question less leading than it would have been as a YNI.

But alternative questions do not always present exhaustive and equivalent options, and so can suggest a specific answer. By asking an alternative question, a speaker claims that one of the options is true. If the attorney presents a limited set of non-exhaustive options, he already narrows down what could be the case. In the next extract the witness has just said that she saw two figures outside, and the prosecutor asks what she did next.

(14) Bahadoor-00:58:28.4

```
01  Pro: -> did you (.) keep looking at those individuals,
02       -> the whole time? or did you end up going back to the
03       -> sto:ve.
04          (0.5)
05  Wit:    .pt.hh after he said what he sai:d (.) an:' he: shut
```

06 his door and went ba:ck, (.) I went to take the stove
07 off.

The prosecutor presents two options in his alternative question, but they are not exhaustive. There is an infinite number of other things the witness could have done. The question is still not treated as problematic though, so while the options are not exhaustive, which already constrains the witness in how she can testify, it is not treated as a leading question by opposing counsel. While it goes beyond the scope of this paper to give an in-depth analysis of this excerpt, one reason for asking the question in this way is that the prosecutor can in one Q/A-pair establish both that the witness did not watch the entire time and that she went back to the stove.

Because alternatives provide the witness with multiple options that are presented as equivalent, attorneys can use them strategically. By offering two options, they give the witness a choice, which is less leading than simply asking them to confirm one description. But this does not always work, as can be seen in the next extract. The defense attorney is asking the witness about screams that were audible in the background of a 911-call made by one of the residents near the place where Martin was shot.

(15) OstermanS-00:31:09.1

01 Def: =did they >seem to be< screa::m (.) m- (.) m- (.)
02 ti:me (.) screa:m ti:me scream time? [o:r

03 Pro: [objection

04 Def: [o:r [was it

05 Pro: [( ) [leading.

05 Def: or: (.) [which is the alternative,

06 Jud: [objection sustained,

07 (0.3)

08 Def: okay.

09 Jud: rephrase your question.

10 (0.3)

11 Def: may I give an al↑ternativ:e; (which)

12 (0.2)

13 Jud: rephrase your questi[on.

14 Def: [okay.

The attorney designs his question as an alternative, with a strong rising pitch towards the end of the first alternative immediately followed by the disjunction *or* (Sadock, 2012). The prosecutor, however, immediately objects, which the judge sustains. The attorney attempts to get his question on record nonetheless by making clear that he was going to ask an alternative question, first in line 5 in overlap with the judge and then in line 11. He thus claims that providing an alternative would avoid suggesting a specific answer to the witness, that is, an alternative is not leading while a YNI would be.

This section has shown that while alternative questions are presented as non-leading questions—they give the witness a choice between multiple, equivalent, exhaustive options—the degree to which they suggest a specific answer can actually be tweaked. Because the alternatives are presented as exhaustive, the alternative is more constraining when the options are in fact not exhaustive. Additionally one option can be presented as the preferred answer, thereby making the options non-equivalent as well.

Leading as an interactional accomplishment

The data so far may suggest that although the participants do not necessarily agree on each individual case, there are relatively clear guidelines for leading questions. As was pointed out earlier, however, the category of leading is an interactional accomplishment. It is up to the participants in each interaction to come to a public understanding of what leading means. Syntax is thus only part of the equation.

As a particularly anomalous case, consider the following extract where the prosecutor's rephrased question is almost identical to his leading question, but nonetheless the judge overrules the defense attorney's second objection.

(16) Noffki-01:10:17.9

```
01  Pro: -> >does it suggest to you< that he: (.)
02       -> had nice feelings and wa[rm thoughts a-
```

```
03  Def:                          [I'm sorry >your honor<.
04          this would be: redirect still: with the rules. I
05          object to it as leading of the witness °your [honor°.
06  Jud:                                                 [okay
07          (0.7)
08          please rephrase your question?
09  Pro: -> du- does it suggest (.) uh to you that the caller had
10       -> n- nice (0.7) thoughts or something el[se?
11  Def:                                          [leading.
12          again your honor?
13  Jud:    °overruled°.
```

Cases such as these are rare, but they show that the difference between questions that do and do not suggest an answer is very subtle. The prosecutor changes the syntactic form to an alternative question—*and* is replaced by *or*—and the turn-final *something else* provides the witness the opportunity to give his own answer. At the same time, the continuously rising pitch suggests the question is in fact a disjunctive polar question and not an alternative (Sadock, 2012), meaning that the question is still steering towards (dis)confirmation of whether the witness thinks the caller had nice thoughts or something equivalent. Syntax thus contributes to whether or not a question is leading, but is only part of the picture. It is up to the participants in the moment to decide what the rules are and when they apply.

Conclusion

This paper has shown that through the syntactic design of questions attorneys orient to the direct examination as a distinct speech-exchange system. This conclusion was supported both quantitatively, by showing that yes/no-type interrogatives are far more prevalent than declaratives, where in casual conversation it is the other way around, and qualitatively, by demonstrating the various distinct forms of question design, such as the tag (*is that*) *correct*.

It was argued that these findings are at least in part a procedural consequence of the restriction on asking what are called leading questions: questions that suggest how they should be answered. Attorneys use declaratives to request confirmation on information that is already in evidence, while they use yes/no-type interrogative to introduce new information. Thereby showing that declaratives tilt the question towards a leading one. Content questions on the other hand are used to request testimony, and thus contribute to making a question non-leading. Alternatives are in between these two categories: they seem to be non-leading as they provide the witness with options, but by claiming one of those options is correct, attorneys can steer the witness towards a particular type of response.

While the focus of this paper has been on syntax, other factors may contribute as well. As was shown, the use of specific technical terms can make a request for confirmation or alternative question more leading. One aspect that was not considered is whether embodied practices also

play a part. Simpson and Selden (1998) suggest that they can, but no evidence was found in the data. Further research could show if and how non-linguistic practices matter.

O'Barr (1982: 2) states that 'language strategy is generally recognized by participants, but poorly understood by them.' One thing researchers of interaction can do is provide them with the necessary understanding. It may not solve the problems that participants face, but it can provide them with the necessary tools to better deal with them.

Acknowledgments

I am grateful to Steven Clayman, Tom Koole, and an anonymous reviewer for their comments on an earlier draft of this paper.

Funding

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Notes

[1] For this reason questions of the form "When did you stop beating your wife?" are generally not allowed in court. But they are not leading questions, as they do not suggest how they are to be answered.

[2] During a direct examination attorneys know how the witness will answer (Dunstan, 1980). The epistemic stance thus cannot be taken to provide insight into whatever the attorney knows.

[3] As preference is a technical term, it should not be conflated with leading: just because a question prefers a certain type of response, does not mean it suggests that response.

4 Due to their opaque linguistic nature combination questions as well as fragment clause questions (N=50) are not included in the analysis here.

[5] The nature of this difference is unclear. It may be that in casual conversation taking a knowing stance is less problematic (see the analysis below), but it could also be because the types of questions differ between the two speech-exchange systems.

[6] Because they are responded to in the same way, declaratives have been categorized together with tags and embedded declaratives.

References

Atkinson JM and Drew P (1979) *Order in Court: The Organisation of Verbal Interaction in Judicial Settings*. London, UK: MacMillan.

Beach WA (1993) Transitional regularities for 'casual' 'Okay' usages. *Journal of Pragmatics* 19(4): 325–352.

Berk-Seligson S (1999) The impact of court interpreting on the coerciveness of leading questions. *Forensic Linguistics* 6(1): 30–56.

Bolinger D (1957) *Interrogative Structures of American English*. Tuscaloosa, AL: University of Alabama Press.

Clayman SE and Heritage J (2002) *The News Interview: Journalists and Public Figures on the Air*. Cambridge, UK: Cambridge University Press.

Curl TS and Drew P (2008) Contingency and Action: A Comparison of Two Forms of Requesting. *Research on Language and Social Interaction* 41(2): 129–153.

Danet B (1980) Language in the Legal Process. *Law & Society Review* 14(3): 445–564.

Danet B and Bogoch B (1980) Fixed Fight or Free-for-all: An Empirical Study of Combativeness in the Adversary System of Justice. *British Journal of Law and Society* 7(1): 36–60.

Drew P (1992) Contested Evidence in Courtroom Cross-Examination: The Case of a Trial for Rape. In: Drew P and Heritage J (eds.), *Talk At Work: Interaction in Institutional Settings*, Cambridge, UK: Cambridge University Press, pp. 470–520.

Dunstan R (1980) Context for Coercion: Analyzing Properties of Courtroom 'Questions'. *British Journal of Law and Society* 7(1): 61–77.

Eades D (2000) I don't think it's an answer to the question: Silencing Aboriginal witnesses in court. *Language in Society* 29(2): 161–195.

Ehrhardt C and Young S (1995) Using Leading Questions During Direct Examination. *Florida State University Law Review* 23(2): 401–415.

Galatolo R and Drew P (2006) Narrative expansions as defensive practices in courtroom testimony. *Text and Talk* 26(6): 661–698.

Garfinkel H (1967). *Studies in Ethnomethodology.* Englewood Cliffs: Prentice-Hall.

Harris S (1984) Questions as a mode of control in magistrates' courts. *International Journal of the Sociology of Language* 49: 5–28.

Hayano K (2013) Question Design in Conversation. In: Sidnell J and Stivers T (eds), *The Handbook of Conversation Analysis*, Chichester, UK: Wiley-Blackwell, pp. 395–414.

Heritage J (2009) Questioning in Medicine. In: Freed A and Ehrlich S (eds), *Why Do You Ask?,* Oxford, UK: Oxford University Press, pp. 42–68.

Heritage J (2012) Epistemics in Action: Action Formation and Territories of Knowledge. *Research on Language and Social Interaction* 45(1): 1–29.

Heritage J, Robinson JD, Elliott MN, Beckett M and Wilkes M (2007) Reducing patients' unmet concerns in primary care: The difference one word can make. *Journal of General Internal Medicine* 22(10): 1429–1433.

Heritage J and Watson R (1979) Formulations as Conversational Objects. In: Psathas G (ed.), *Everyday Language*, New York, NY: Irvington Press, pp. 123–162.

Jefferson G (2004) Glossary of Transcript Symbols with an Introduction. In: Lerner GH (ed.), *Conversation Analysis: Studies from the First Generation*, Amsterdam, The Netherlands: John Benjamins, pp. 13–31.

Lakoff R (1985) My life in court. *GURT '85*: 171–179.

Lerner GH and Kitzinger C (2015) *Or*-Prefacing in the Organization of Self-Initiated Repair. *Research on Language and Social Interaction* 48(1): 58–78.

Luchjenbroers J (1997) 'In your own words {…}': Questions and answers in a Supreme Court trial. *Journal of Pragmatics* 27(4): 477–503.

Melilli KJ (2003) Leading Questions on Direct Examination: A More Pragmatic Approach. *American Journal of Trial Advocacy* 27: 155–168.

O'Barr WM (1982) *Linguistic Evidence: Language, Power, and Strategy in the Courtroom*. New York, NY: Academic Press.

Pomerantz A and Heritage J (2013). Preference. In: Sidnell J and Stivers T (eds), *Handbook of Conversation Analysis*, Chichester, UK: Wiley-Blackwell, pp. 210–228.

Raymond G (2003) Grammar and Social Organization: Yes/No Interrogatives and the Structure of Responding. *American Sociological Review* 68(6): 939–967.

Raymond G (2010) Grammar and Social Relations. In: Freed A and Ehrlich S (eds), *Why Do You Ask?*, Oxford, UK: Oxford University Press, pp. 87–107.

Romaniuk T and Ehrlich S (2013) On the interactional import of self-repair in the courtroom. In: Hayashi M, Raymond G, and Sidnell J (eds), *Conversational Repair and Human Understanding*, Cambridge, UK: Cambridge University Press, pp. 172–197.

Sacks H, Schegloff EA and Jefferson G (1974) A simplest systematics for the organization of turn-taking for conversation. *Language* 50(4): 696–735.

Sadock JM (2012) Formal Features of Questions. In: de Ruiter JP (ed.), *Questions: Formal, Functional and Interactional Perspectives*, Cambridge, UK: Cambridge University Press, pp. 103–122.

Sadock JM and Zwicky AM (1985) Speech act distinctions in syntax. In: Shopen T (ed.*), Language typology and syntactic description vol. I: Clause structure*, Cambridge, UK: Cambridge University Press, pp. 155–196.

Schegloff EA (2007) *Sequence Organization in Interaction*. Cambridge, UK: Cambridge University Press.

Schegloff EA and Sacks H (1973) Opening Up Closings. *Semiotica* 8: 289–327.

Schegloff EA (1991) Reflections on talk and social structure. In: Boden D and Zimmerman DH (eds), *Talk and social structure: Studies in ethnomethodology and conversation analysis*, Berkeley,CA: University of California Press, pp. 44–70.

Schiffrin D (1988) *Discourse Markers*. Cambridge, UK: Cambridge University Press.

Simpson FA and Selden DJ (1998) Objection: Leading Question! *Texas Bar Journal* 61: 1123–1135.

Stivers T (2010) An overview of the question-response system in American English conversation. *Journal of Pragmatics* 42(10): 2772–2781.

Stivers T and Hayashi M (2010) Transformative answers: One way to resist a question's constraints. *Language in Society* 39(1): 1–25.

Tanford JA (2009) *The Trial Process: Law, Tactics and Ethics*. New Providence NJ: LexisNexis.

Ten Have P (2007) *Doing Conversation Analysis: A Practical Guide*. London, UK: SAGE.

Woodbury H (1984) The strategic use of questions in court. *Semiotica* 48(3–4): 197–228.

Zimmerman DH (1992) The interactional organization of calls for emergency assistance. In: Drew P and Heritage J (eds), *Talk At Work: Interaction in Institutional Settings*, Cambridge, UK: Cambridge University Press, pp. 418–469.