Leading Questions in Courtroom: a forensic Linguistics Study

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Abstract

There are studies that investigate how questioning styles reflect the seriousness of the accusation or compare the use of question types in different legal systems and languages. These studies also analyze the use of reported or quoted speech in lawyer's questions and the impact of cultural differences on courtroom interactions. Overall, these studies provide insights into the role of questions in courtroom activity, the power dynamics involved, and the influence of language, culture, and context on legal discourse.

Most of the studies are basically concerned with questions is criminal cases like murder or rape focusing mainly on questions. None has focus on civil case like defamation for example. And also there is no study concerned with indirect answers in courtroom interrogation. The current study recognizes the need to focus not only on patterns of questions but one answers as well trying to bring out any pragmatic function or relation between questions and answers if there is any.

The data of this study consists of selected sessions of cross-examination between lawyers and witnesses in Johnny Depp and his ex-wife defamation trail. These sessions are downloaded from an internet website. This study focuses on cross-examination because the lawyer of opposite side interrogates the other.

Introduction

The power that demonstrates the asymmetry in the relationships between the companions may be determined by the language used in the courts. This is founded on the idea that language may be used to influence how other people perceive things (Supardi, 2016).

Additionally, it is regarded as a form of media that has the potential to support an unequal distribution of power (Fairclough, 2003). It is anticipated that the authority held by the jury or other investigators during the legal procedure will frequently prevent a decision that is unfair to the members of society who are involved in certain instances. The jury's decision in a court case, though, occasionally deviates from expectations. A suspect who was driving a car that killed and struck a Michigan State Police officer in 2015 was found not guilty in one of the cases in Michigan, United States. After his body was discovered close to a parked trailer, the deceased was confirmed dead. Following an investigation, the defense attorney for the suspect asserted that it was an accident that had not been deliberately caused, and the jury later agreed (Bartkowiak, 2017). This case demonstrates that, in addition to the law being followed, interactions during a court trial, such as cross-examination of a witness by an advocate or lawyer, may have an impact on whether or not an accused person is found innocent.

1. Literature Review

There are some issues concerning the study of question and answers in courtroom interrogation. The literature reveals the previous studies focus on various aspects of courtroom questioning that in legal discourse. They mainly examined question types, questioning styles, and the use of different questioning techniques in different contexts, such as direct examination and cross-examination. Some studies also explored the differences between courtroom questioning and other types of questioning or casual conversation in general.

1.1 Legal Language

For thousands of years, legal language has attracted concern from a variety of perspectives. (Sarcevic, 2000). "Law is necessarily bound to language, and in that sense legal language has existed as long as the law. In certain contexts, the language aspect of the law dominates: legal translation, legal lexicography, and legal rhetoric" **(**Mattila, 2006:6).

In general, the speech used by lawyers, courts, judges, prosecutors, and lawmakers is known as legal language. As a result, this sort of speech goes beyond simply stating the terms of peaceful social interaction, the presence of order, and the avoidance of crime or brutality, "but also regulates the foundations of social relationships such as marriage, contracts, agreements and civil rights such as wills and inheritance" (Crystal and Davy 1969:193).

Due to its intricacy and obscurity, legal language can be distinguished from other languages and reflects the complexity of it (Mellinkoff 1963: 25). Term that are used to emphasize the complexity of legal language are: "professional monopoly" (ibid), "monolithic entity"(Goodrich,1984), "sociolectal status" (Water,1999), and " technolect" (Mattila,2006). These terms all support the idea that the meaning of legal content or communication is reserved for members of the court only.

Gozdz-Roszkowski (2011) refers to legal language as "a sublanguage" because of its atypical construction which are typically marked by the appearance of non- standard grammatical rules and its unusually frequent usage such as passive and multiple negation etc.

Mallinkoff (1963) defines legal language as "the customary language used by lawyers in those common law jurisdictions where English is the official language. It includes distinctive words, meanings, phrases, and modes of expressions", he also claims that it is determined not just by the law but also by the accepted language of the legal system. That is to say, legal language is made possible by the coexistence of dominant common law and dominant English. (Ibid).

1.2 Cross-examination

At this stage, the prosecution attempts to discredit the witness in order to destroy his or her powerfully persuasive account of what happened. It is "the ultimate confrontational theater" in which the prosecutor tries to show a "demonstration of bias, the admission of omissions, and the failure of detail" on the part of the witness' testimony" (Goldberg, 1982:271-272).

According to Morrill (1973:55), a cross-examination will aim to accomplish one of the following purposes:

1. to prove that the witness is not telling the truth on one or more important topics.
2. to highlight the witness' bias.
3. to prove the invalidity of witnesses' testimony.
4. to push the witness to confess specific facts.
5. to reinforce the witness's previously given testimony.
6. to indicate the inability of an expert witness.
7. to embarrass a witness by revealing that they previously made an untrue statement.

The use of leading questions by lawyers can achieve these purposes in a more powerful and coercive way. In general, a leading question seeks to "guide" the witness to the conclusion that there is only one appropriate response, implying that there is only one correct answer.(Tiersma, 1999:164)

Leading questions can be in different forms (Stygall, 2012:378). There are three typical forms of proposing a leading question (Tiersma,1999:164-165):

1. They can be formed by a negative yes/no question, such as, "Did you eat broccoli last night?". Although the expectation conveyed by negative yes/no questions can occasionally be fairly complex, this question seeks a positive response.
2. They can also be formed by a tag question as in “You ate broccoli last night, didn't you?”, “You ate broccoli last night, isn't that correct?” and “It is true, isn't it, that you ate broccoli last night?”
3. The third is a typical form which is a a statement as a question with a rising tone such as "You ate broccoli last night?".

Stygall (2012) adds another technique of cross-examination that the lawyers employ to forma question which is the turn-initial so question, As in "So you don't have any precise information about the time the event happened," the lawyer inserts the word

"so" at the beginning of the query in this way. The lawyer might stress the witness's lack of knowledge by using the so question in this way.

Lawyers use cross-examination as a chance to explain their interpretation of the facts to the jury. The responses of witnesses are a clear technique to influence the jurors' thoughts. Nonetheless, skilled cross-examination lawyers are aware that a question in and of itself may be a vital tool. The instant the jury hears the question with an additional implicit message, their eyes are opened to numerous possible interpretations. Hobbs (2002: 416).

1.3 Overview of Courtroom Practice

What makes the procedure effective is the interaction that takes place in a courtroom during a series of question-and-answer sessions between the judge, counsel, and witness, during which the evidence or facts of a case are produced. Luchjenbroers (1997: 89) claims that the goal of the inquiries and answers that take place during court proceedings is to assist the judge in determining the best course of action by building the case narrative. Additionally, it is anticipated that questions and answers would be used throughout the court trial to elicit or gather more information about the issue in order to achieve a just resolution. In order to carefully listen to the witness' testimony while conversing, judges or attorneys frequently urge them to speak up. However, because he is only allowed to answer the question, a witness is a powerless participant (Gibbons & Turell, 2008: 58). The stages, techniques, and genres employed in courtroom practice are structured differently. Heffer (2005) and Gibbons (2003) classified courtroom genres into three categories: procedural, adversarial, and adjudicative. Discourse philosophies known as procedural genres place a ritualistic emphasis on the foundations of institutionalized tradition. Page | 2004 concentrates on the legal framework of the closing stages and has a deliberative discourse orientation, according to Gibbons (2003) and Heffer (2005). During court proceedings, the legal practice of cross-examination takes place. The oral presenting of the evidence is a requirement of the adversarial legal system. Ng (2010) claims that the purpose of a cross-examination is for the attorney or counsel to question the witness in order to

ascertain or corroborate the truth of the case. However, a lawyer's objective in this phase is to refute a witness's testimony by pointing out any contradictions that would give the jury or the judge cause for skepticism.

1.4 Leading Questions

Leading questions are those that provide or imply to the listener an answer or response to the initial question. This could mean that the interviewer is directing the listener's attention toward the information that ought to be discussed. The goal of this type of question, according to Oxburgh, et.al (2010), is to generate the kind of response the interviewer is seeking for. Leading questions or suggestive interrogations were considered improper types of inquiry in the context of a courtroom, particularly during the cross-examination of the opposing counsel (Catoto, 2017). This is due to the fact that this type of question might restrict or narrow the precise information required, which is why the examination's goal is to elicit more thorough and complete information from the witness. Furthermore, it is unlawful for anybody to inquire in this manner of a witness, suspect, or complaint who is testifying in a court of law. Tag questions and declarative questions are other ways to convey this type of query, in which the speaker makes an assertion and offers a suggestion in an effort to change the listener's mind. According to Gibbons & Turell (2008), two unconventional ways to pose a "question" in court that conveys the attorney's interpretation and pressures the witness to concur are the declarative question and tag question types. Another unorthodox approach is to ask the question directly, as opposed to in an interrogative manner, and then wait for the witness to concur.

2.4.1 The use of "So"

The "so" summary, which is always followed by the particle "so," is a language device that can be used to control the direction of a topic discourse during an interaction. The "so" summary is used to play an evaluative role and in a way that anticipates and assumes the addressee's agreement, Gibbons (2003). This indicates that a person makes an effort to condense previously discussed ideas in order to make their arguments more understandable or to support a consensus among the interlocutors. Additionally, in

courtroom interactions, the counsel or attorney uses the language device "so" summary to prelude queries in order to make the proposition in the question sound like the only logical one given the circumstances (Gibbons, 2003: 88). Furthermore, Johnson (2002: 90) contends that 'so' summaries can be used to summarize a witness's comments when it is presumed that the witness agrees with the examiner's perspective.

1.4.2 Reformulation

Reformulation is a linguistic ability that grants one power by altering the structure of an earlier statement while keeping the same meaning. According to Gibbons (2003: 76), reformulation is one technique for ascertaining whether a witness's past statements were accurate or lacking in detail in order to generate more incriminating responses. One may also argue that utilizing a reformulation form is the best way to deliver a similar message while using a different vocabulary or sentence structure. Reformulation is to preserve the witness's responses to the attorney's queries asked throughout the examination.

1.4.3 Landscaping of Vocabulary

It is believed that a person can have significant control on a relationship by the vocabulary or word choices they make. This is a widely accepted theory since language choices influence how the public perceives something, whether positively or negatively. Additionally, the words used can either validate the circumstance or undermine someone's beliefs. Thornborrow (2014) and Danet (1980) both contend that the vocabulary a lawyer uses during an examination can be a powerful tool. The language picked should reflect the reality the examiner wants to present. The terms "infant" and "foetus," "freedom warrior" and "guerrilla," or "terrorist," for instance, frequently refer to the same thing, but their use may also imply a favorable or unfavorable evaluation of the pertinent objects (Danet, 1980).

1.4.4 Evaluative Third Turn

When contesting an answer, especially on a test, a person can use the third turn as a potent tool. The objective of the third round is to provide someone with feedback regarding whether or not their responses were appropriate. The third turn is additionally

employed during a trial to challenge the reliability of a witness' testimony. The third turn, which comes after the elicitation-reply order, can be used to assess the witness's evidence in a positive way, like "correct," "good," or "that's right," or in a negative way, like "no," "that's not what I asked you," or "no, no, no," according to Gibbons (2003: 116). Luchjenbroers (1997: 84) continues by stating that the lawyer uses the evaluative third turn as a language device to make positive or unfavorable observations regarding the witness's responses to a question. This is a logical outcome of the attorney's goal to discredit the witness's version of events throughout the cross-examination.

1. **Results and Analysis**

The data of this study consists of selected two sessions of cross-examination between lawyers and witnesses in Johnny Depp and his ex-wife defamation trail. These sessions are downloaded from an internet website. This study focuses on cross-examination because the lawyer of opposite side interrogates the other.

Using the Griffiths Question Map (GQM), which Griffiths and Milne (2006) developed, this chapter discusses several question categories. During the courtroom processes of the various types of cases.

2.1 Types of Questions

There are two sorts of questions used in legal proceedings. These are examples of good and bad questions, respectively. Only the lawyers for both parties are permitted to raise questions that the court considers to be productive. Conversely, unproductive inquiries are those that the court forbids or that focus on a narrow context, and the lawyers themselves were aware that the court forbade these. Its goals are to preserve the credibility of the witness and to provide clarification on how vaguely the crime actually occurred.

2.1.1 Productive Questions

These forms of inquiries were seen as the greatest and most acceptable manner to interrogate the witness, the defendant, and the victim during the courtroom hearing in order to extract crucial information and provide clarity on the murky legal issues at

hand. At the witness stand, they were required to take an oath promising to speak only the truth and nothing but the truth. Questioning in the courtroom was essential and necessary to elicit the relevant facts that would ultimately serve as the foundation for the prosecutors' and judges' final conclusions.

2.1.1.1 Appropriate Closed Yes-No Question

During the court processes, the victim/complainant, suspect/accused, and the victim were each subjected to the proper closed-yes-no inquiries that belonged to the productive questions. It can be demonstrated that although though the question could only have a yes or no response, it prompted the witness to give a conclusion or provide clarification depending on the question's context. This is also known as an extended yes-no response or over-answering. The opposing attorney questioned the mother of the victim, who is the complainant in the case, and used a suitable yes-or-no question:

2.1.1.2 Appropriate Closed Specific Questions

The following lists the closed-ended questions that Griffiths and Milne (2006) identified as suitable sorts of inquiries. These include the 5WH, which, in contrast to the probing inquiries, merely required a brief and specific response. It can be inferred that these kinds of inquiries were used to question the victim/complainant, suspect/accused, and the witness.

2.1.1.3 Probing Questions

The use of probing questions in court is examined in the next section. The fact that it asked the witnesses to explain made it a suitable form of question, according to Griffiths & Milne (2006). During the hearing, it looks into the truthfulness and validity of the witnesses' statements. The phrase itself is intertwined to create validations through additional justifications of the information provided in court by the witnesses. These include interrogative phrases like "how," "why," "what," and "when," followed by a detailed justification. These have been used by attorneys in court to solicit clarification, clarify the issue, and prod the witness to paint a clear picture of the entire case by outlining the circumstances around the incident.

2.1.1.4 Open Questions

In this study, a different kind of acceptable inquiry is identified. When a witness is testifying, open questions are utilized to get more information from them as well as confirmation and affirmation of the scene's specifics. Five different types of interrogatives are included after "tell" and "describe" in its definition.

2.1.2 Unproductive and Poor Questions

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2.1.2.1 Multiple Questions

There were many enquiries in the courtroom. As a result, the lawyer questioned the rape victim who is testifying in court on various times.

2.1.2.2 Opinion/Statement

The judge typically upholds the objection, forcing the interrogator to reword his or her question. Opinion/statement questions are another form of inappropriate questions. Eventually, the witness's attorneys raise an objection.

2.1.2.3 Leading Questions

Leading questions and suggestive questioning techniques were discovered to be ineffective, particularly during the cross-examination of the opposing attorneys. The Rules of Court (2005) prohibit anybody from asking this kind of question to anyone who is testifying in court, including witnesses, suspects, and complainants. During the direct examination, the hostile witness will only be permitted to respond to leading questions so that the proponent's attorney can provide coaching rather than endanger his or her own witness.

3. Findings and Discussion

The data collected from

Table (1): Freguency of types of questions in DEPP - WASS

Types of Question	Frequency of Occurrence	%
Multiple question	5	16.66%
Opinion statement	4	13.33%
Leading question	13	43.33%
Open question	0	0%
Appropriate closed Yes – No question	8	26.66%
Total	30	100%

It is noticed in table (1) that used Austin's Classification of Speech Acts in " Medical Report" under have frequency of (30) and its percentage is (100%) which are distinguished as follows:

1. Multiple question 5 (16.66 %).
2. Opinion statement 4 (13.33%).
3. Leading question 13 (43.33%).
4. Appropriate closed Yes – No question 8 (26.66%).

There is a great deal of variation in the frequency of questions tries in almost every category . Some categories are highly recurrent like "Multiple question" and "Opinion statement". This may be due to the fact that some laws want to avoid the ideas relate to each other while the high use of " "Leading question" and " Appropriate closed Yes – No question" show that he wants to clarify the meaning and to avoid ambiguity and misunderstanding in report.

4. Conclusion

The paper might conclude with following points:

1. 1. The attorneys usually employ various questioning techniques throughout analysis trials sessions to further their interrogation objectives and compel confessions from the respondent. The answerers also follow various patterns of answer techniques, such as directly or indirectly responding to the question. This is consistent with the first assertion: The interrogators' (Ms. Wass and Ms. Laws') and the answerers' (JohnnyDepp and Amber Heard's) utilization of various patterns of question-and-answer techniques.
2. The questions in courtroom have goals. For example, some of them seek agreement and some demand a yes or no answer. The answer that is responded directly to the addressed question is a result for the goal of the question. So the questions affect the use of answers. This corresponds the second hypothesis: **Some patterns of questions can affect the selection of answers.**
3. Although the special formula questions are one of the Courtroom questioning strategies, they don't have been used in the selection data. Besides the indirectness strategy "metaphor", none of the answerers have used it. This invalidates the third hypothesis: **All the question and answer strategies have realization in the data**.

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