A Discoursal Approach to Categorising Questions in English Legal Settings

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Abstract:

This study is an investigation into questions in English legal discourse. It attempts at categorizing questions in varied police and court interviews. Such interviews are considered to be a speech event in which questions are discrete speech acts grouped into act sequences. It is found that questions involve six broad categories arranged according to how far they restrict witnesses in their answer. They are given in order from the least restrictive to the most restrictive.

منحى خطابي لتصنيف الأسئلة في الوقائع القانونية

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ملخص البحث:

تستقصي هذه الدراسة الأسئلة في الخطاب القانوني الإنكليزي. إذ تستهدف تصنيف الأسئلة في المقابلات التي تجرى في مراكز الشرطة والمحاكم. وتعد هذه المقابلات حدثاً كلامياً أما الأسئلة التي تتضمنها فهي أفعالً كلامية متميزة مصنفة إلى سلسلة من الأفعال.وقد تبين أن الأسئلة تتضمن ست مجموعات واسعة النطاق مرتبةً على وفق ما تقيد به الشهود في أجوبتهم. إذ رُتبت من الأدنى تقييداً إلى الأقصى.

1- Introduction:

The Q/A (question / answer) structure that typifies evidentiary discourse gives candidacy to Q/A exchanges as appropriate units of analysis. However, rather than isolating individual Q/A adjacency pairs for attention, clusters of Q/A adjacency pairs, where each cluster is defined functionally in dealing with a single point (topic), will form, for most purposes, the principle base unit. The police interviews and courtroom testimony can be seen as a series of Q/A exchanges moving

from topic to topic. These divisions readily conform to the ethnography of communication framework (Saville-Troike, 1982; Schiffrin, 1994: 137-89). The police or court interview can be seen as a speech event within the police inquiry or court case as the speech situation. Individual questions or answers become discrete communicative (or speech) acts that are grouped into act sequences, and transition points may be discernible as utterances that close one sequence and / or open the next (e.g. Right. Now I want to ask you about…).

Grammars often deal with questions as a special category. Since the question is generally considered as a particular class of sentence, the structural description of the question is normally a must in most grammars.

However, most grammars have not dealt with questions in discourse. This study aims at exploring and categorizing questions in legal discourse taking into account their form and function. The typology is based on the type of answer sought.

The research data consists primarily of official transcripts of police interviews and court testimony as well as witness statements, where what was said and what was meant is clarifiable in some cases by recourse to videorecordings. In other words, the study is corpus-bound encompassing large number of interviews of which only some transcripts will be included in the appendix for lack of space.

2. The Place of Context :

An important principle within the ethnography of communication framework is that the interpretation of utterances proceeds together with analysis of their context and, as Schiffrin (1994: 146) observes in the case of questions, this entails an analysis of the interview itself. This emphasis upon context in the investigation of meaning is also central to the paradigms of interactional sociolinguistics and linguistic pragmatics. Furthermore, as noted by Goodwin and Duranti (1992: 1), there is a trend across these approaches “toward increasingly more interactive and dialogically conceived notions of contextually situated talk”. An interactive conceptualization of dialogue and context, where each is seen as constructive of the other, requires the investigation of dialogue to encompass this interaction between context and dialogue (Ibid. : 31):

> Instead of viewing context as a set of variables that statically surround strips of talk, context and talk are now argued to stand in a mutually reflexive relationship to each other, with talk, and the interpretive work that it generates, shaping context as much as context shapes talk.

Context can be regarded as a frame that surrounds the event being examined (the focal event) and be conceived as “involving a fundamental

juxtaposition of two entities : (1) a focal event; and, (2) a field of action within which that event is embedded" (Ibid. :3). The decision as to what constitutes the "field of action" may not appear a straightforward one in some cases of police and courtroom interviews. For example, a witness and a lawyer from different cultures may have a quite different conceptualization of the proceedings, people and events which conceptualize a courtroom examination. In some respects, the form and content of each party's utterances are affected by specific contextual factors that the other is ignorant of. For example, lawyers are constrained from leading their own witnesses with the result that some of their questions are bafflingly circumspect to a certain witness who knows nothing of leading questions.

Goodwin and Duranti (1992) state that, in any given communicative environment and at any given moment, the decision as to what constitutes context should proceed from the perspective of the participant(s) whose behaviour is being analysed. The analyst must consider "how the subject himself attends to and organizes his perception of the events and situations that he is navigating through" (Ibid. : 4). This requirement is complicated since participants also constitute environments for each other and may even "rapidly invoke within the talk of the moment alternative contextual frames" (Ibid. : 5). This last factor: the capacity of participants to invoke rapid switches from one discourse pattern to another through the deployment of linguistic contextualization cues (i.e. elements such as back-channeling devices, conversational opening and closing conventions, formulaic expressions and intonation contours) - is a key insight provided by Gumperz (1982a) within the framework of interactional sociolinguistics.

An analysis of dialogue within interactional sociolinguistics emphasises the situational aspect of context with interlocutors making inferences about what the other is meaning in response to often subtle cues or signals which enter the dialogue (for example, sarcasm in a courtroom question may be signalled by a linguistic cue like "So I suppose you think …", or even by a particular look, a pause or the tone of voice). Gumperz takes account of the specificity of verbal contextualization cues to individual communities in his definition of a speech community as: "any human aggregate characterized by regular and frequent interaction by means of a shared body of verbal signs and set off from similar aggregates by significant differences in language use" (Dil, 1971: 114 quoted in Schiffrin, 1994: 98). This perspective introduces the possibility of identifying and explaining intercultural mis-communication where it can be attributed to cross-cultural differences in contextualization practices, even where interlocutors may share the same language. Gumperz (1982b) applied this understanding to the analysis of

courtroom questioning. He showed that negative judgments about a Filipino witness's truthfulness in giving evidence were flawed by failure to take into account the linguistic features-at the level of discourse of his Filipino style of English (whereas his grammatical knowledge of English showed little deviation from the American English norm) leading to probable misinterpretation of his messages.

3- Courtroom Questions : Form and Function:

Courtroom questioning is governed by the conventions, rules and purposes of legal process and is distinctive compared to discourse patterns found in society at large. It is not that the grammatical structures of question forms used in the courtroom context are particular to that context; rather, it is that the controlling function of courtroom questions is reflected in a preponderance of those question forms which are suited to this function (Harris, 1984: 10).

From a judicial standpoint the purpose of courtroom questioning of witnesses is to enable the court to establish facts which are the basis of a legal dispute, that is, facts in issue (Bates, 1985: 1):

> Much of the time of lawyers, whether they be …. counsel or judges, is occupied, not by matters of law, but by matters of fact. …The law of evidence is…concerned both with the kind of facts which may be proved and the manner of their proof.

The carriage of justice according to formalist conceptions is that "a just outcome is arrived at only by a conscientious application of legal rules" or, "as long as the court has observed the rules then the decision is just"´(Bottomley, Gunningham and Parker, 1991: 23). The rules of evidence are central to this conception of justice which is identified with legal process.

According to Bates (1985: 1-2), the law of evidence is concerned with four main areas: the kind of evidence which will be accepted; the amount of evidence which will be required by the court; the manner in which evidence will be presented; and the persons who may or must give it. Evidence can be classified as direct: "evidence of the facts in issue themselves"; or, circumstantial: "evidence of facts which are not in issue, from which a fact in issue may be referred" (Ibid.).

Evidence can also be classified as original: "evidence given by a witness of events which the witness has personally observed or of matters of which the witness has personal knowledge"; or hearsay: "evidence of what someone else has said about an event"(Ibid. : 10). This distinction is critical as a principle basis for the exclusion of testimony since hearsay evidence will "in general … not be acceptable to a court as a means of proof". Another basis for disputing the admissibility of evidence is that of

relevance. The legal sense of relevance differs from the colloquial sense in that "the courts will sometimes exclude evidence which, through it may afford proof, is of too slight value to make it worth considering the evidence" (Ibid. : 14).

The taking of oral evidence (as opposed to written statements and exhibits) occurs during the process of asking questions to a witness during examination – in – chief, cross-examination and, if it occurs, re-examination. Glissan (1991: 39) distinguishes them as follows:

> The aim of examination – in – chief is to adduce before judge and jury the whole of the material that the witness can give about the case which is relevant and material; the aim of cross-examination is to test or attack that evidence, to correct error and supply omission; and the object of re-examination is to explain, rectify, and put in order.

There is an important distinction between examination – in – chief and re-examination on the one hand, and cross-examination on the other hand, with respect to the ways in which questions can be put. Examination – in – chief (and re-examination) is constituted by the questioning of a witness by the party who calls that witness, and leading questions ("questions which are either phrased in a manner which suggests the answer … or which assume the existence of facts in dispute") are generally not permitted (Bates, 1985: 109). On the other hand, leading questions are permitted in cross- examination for which the strategic purposes "are, first, to cast doubt on the evidence which has been given during examination –in – chief and, second, to establish facts which are favourable to the party cross-examining" (Ibid. : 122).

The means by which counsel achieves these purposes can be bewildering and intimidating to witnesses because they contravene many of our social norms of cooperative communication and politeness. For example, the lawyer may seek to confound and confuse the witness in order to establish that the witness is unreliable or incredible. Glissan's (1991: 73-4) work on the techniques of advocacy provides the rationale behind this procedure:

> In theoretical or philosophical terms cross-examination is intended to provide an opportunity to test the truth of evidence of each witness and the accuracy and completeness of his story, and to be an aid to the just resolution of legal proceedings. … For those engaged in the daily cut and thrust of the courts, cross – examination is more concerned with practical objectives …

> …there are two aims only, get any benefit that your can and destroy everything else.

Glissan (Ibid. : 73) quotes other writers on the same matter:

> Morris in the Technique of Litigation … Your objectives … should be … to show that the witness himself is not worthy of credence … ;
>
> Harris in Hints on Advocacy said … the objects of cross-examination are to … obtain evidence favourable to the client … to weaken evidence that has been given against your client, and finally, if nothing of value which is favourable can be obtained, to weaken or destroy the value of evidence by attacking the credibility of the witness.

In order to obtain damaging admissions counsel may resort to the tactic of jumping without warning from topic to topic – that is, without the provision of appropriate contextualization cues – in the deliberate disorientation of the witness (Summit, 1978: 126 quoted in Walker, 1987: 62):

> People will not knowingly and willinginly make damaging admissions. The witness must become disoriented, losing all sense of the context of the questions.

There are those witnesses, such as experienced police officers, who are resistant to this pressure and take the stand as skilled interviewees. Police also have the benefit expert advice through texts such as *How to Testify in Court: The Police Officer's Testimony* (Bellemare, 1985). This book includes countering strategies for each of eighteen categories of frequent cross-examination techniques expected of opposing lawyers. These cross-examination techniques that he cites include:

- Dwelling on insignificant details (to divert the witness's attention);
- Several assertions in the same question (answering one answers all);
- Alleging contradictions made by other witnesses;
- Flattery (the kiss-kick technique);
- Threatening the witness;
- Misleading the witness;
- Trick questions (Is it possible that … ?);
- Rapid-fire questioning.

Bellemare (Ibid. : 12) provides comprehensive advice, down to the smallest details, to prepare a police officer to be a witness. The following

example provides an indication of how seriously the craft of testifying is taken:

> If a police officer is bringing a file with him as he walks towards the witness box, the file should appear neat and ordered, and the police officer should hold it in his left hand … [so that he doesn't have to] put it down or shift it to the other hand when he is called upon to take the oath or affirmation.

The primary means by which barristers achieve their aims are summarized by Walker's work with the suggestive title "Linguistic Manipulation, Power, and the Legal Setting" (1987). The lawyer's linguistic manipulation of a witness is predicated on the court's legal power to "compel answers to questions properly put". Nor is a mere answer sufficient-it must be "responsive to the question". Their questions in effect serve as commands. Additionally, the balance is all the lawyer's way with the witness "not allowed to assume the role of initiator" him/her-self. This control over questioning also allows freedom (subject to the rules of evidence) to control the agenda. It is the manipulation of question from, Walker (Ibid. : 64) points out, which is "the most powerful weapon an attorney has in the war of words he wages with the witness".

During their (cross) examination of witnesses lawyers must develop their arguments through the responses of witnesses to their questions. This is achieved by, amongst other things, careful attention to question form. They are framed to manipulate the testimony of the witness or, in other words, to get the witness to tell the lawyer's story. Danet *et al*. (1980: 223) put it this way:

> Except for opening and closing statements to the jury, attorneys for opposing sides in a case may communicate their views only indirectly, through testimony they elicit; officially they may not assert, claim, or attempt to persuade during questioning – they may only ask.
>
> Consequently, during both direct [i.e. examination-in-chief] and cross-examination of witnesses, control of responses is essential.

4. Questioning in a Cultural Context :

A precise definition of question is difficult to formulate even when restricting the context to English. One problem is that grammatical form does not necessarily determine pragmatic function, as is often the case with interrogatives. For example, *Would you sit over there please* ? can function as a command with a verbal reply neither required nor even expected. Conversely, a declarative form such as *I would like to know your opinion on this matter* can clearly function as a question in the sense that a verbal

response which provides the relevant information is clearly expected. Implicit is the notion of a question as an utterance which functions to obtain a verbal reply (unless the question is rhetorical) and which directs that reply towards addressing the issue framed by that utterance. Goody (1978 : 23) formalizes this notion by posing the question-answer exchange as a "prime example of an adjacency pair" where "a basic rule of adjacency pairing is that when the first member of a pair is spoken, another person must complete the pair by speaking the second member of the pair as soon as possible". In this sense a question "compels, requires, may even demand, a response" (Ibid.). Goody also emphasizes the immediacy of response as a hallmark of the question, claiming that "the effect of adjacency pairing is to exclude any other contributions to the conversation until the question has been answered" (Ibid.).

The Q/A interview style entails more than a series of Q/A adjacency pairs. For example, the practice of asking a question and then interrupting or challenging the response with another question is typical in cross-examination. The problems posed by the Q/A interview style for Aboriginal witnesses for whom the style is unfamiliar and culturally inappropriate, have been reviewed by Queensland's Criminal Justice Commission. It recommends legislative changes to enable witnesses to give evidence – in – chief in narrative form (CJC, 1996: 105), a provision that is already available in respect of federal Judicial proceedings through the Commonwealth Evidence Act 1995. This recommendation followed submissions and suggestions from a number of people concerned that the evidence of Aboriginal witnesses is often compromised by the Q/A method of elicitation and by witness replies being ethnocentrically evaluated. For example, the legal Aid Office (Queensland) had submitted that (CJC, 1996: 49):

> The credit of a witness can also be damaged by the tendency to talk around a subject rather than directly answering questions or going straight to the heart of the matter. Whilst with a non-Aboriginal witness the failure to answer direct questions may draw comment that a witness is trying to avoid answering, the Aboriginal witness may simply be unaccustomed to or uncomfortable with approaching the story in that way. The use of questioning which invites a narrative answer may therefore produce a better quality of evidence.

Even without formal provision the effect of a narrative is sometimes achieved through what the CJC has termed "guided narrative", explained in this way (Ibid.):

> Skilful counsel are able to elicit narrative from their witness in a natural and compelling way, but at the same time steer

the witness away from inadmissible matters (such as hearsay or prejudicial material). This controlled form of questioning is referred to as "guided narrative".

It may also be the case that many witnesses of Anglo/European background would welcome an opportunity to give narrative evidence. Conley and O'Barr (1990 : 13) have reported that North American "lay witnesses come to court with a repertoire of narrative conventions that are often frustrated, directly and indirectly, by the operation of the law of evidence" (e.g. restrictions upon preamble, speculation, digression, supposition, opinion and other discursive behaviours that may normally be part of the reporting of events). If witnesses of the mainstream culture suffer this frustration with the constraints of rules of evidence upon them as they testify within the Q/A discursive paradigm, then the severe effects that are evident in the case of Aboriginal witnesses should not be unexpected.

5. The Courtroom Question :

The term *courtroom question* will be used to apply to any utterance from a lawyer or from the bench which is directed at a witness for the purpose of eliciting a verbal reply which is responsive to that utterance. On the one hand, courtroom questions are indeed questions in a functional sense in that they elicit informative responses, and they often (though not always) conform in a structural sense to typical question types. But, on the other hand, they must be seen in their context. They also serve to constrain, control and coerce the witness and they serve to present information, opinion or argument in the guise of questions, to the court.

In seeking a functional (pragmatic/ discourse/ conversational) sense Lane (1988) settled on Labov and Fanshel's (1977) term *request for information*. He extended the use of this term to embrace requests for confirmation and considered information to include: factual information, the expression of opinion, and accounts of personal experience (Lane, 1988: 31). Lane (Ibid.) identified functions of courtroom questions apart from those of seeking information or confirmation, in terms of strategic behaviour on the part of the speaker. He identified and described four functional categories as being relevant to the study of cross-cultural courtroom discourse: facilitative, clarifying, controlling, and challenging functions. These functions become important in a consideration of the pragmatics of intercultural evidentiary discourse since the pragmatic force of courtroom questions is often not recognized when counsel and witness do not share a common pragmalinguistic and sociopragmatic background.

In the courtroom context facilitative questions often aim at encouraging the shy or reluctant witness to participate in evidentiary discourse. Alternatively they can function in promoting the witness to start talking about a particular topic. Clarifying questions represent an

attempt to clarify information already presented. The controlling function of courtroom questions has already been discussed. Witnesses are sometimes aware of this function and the frustration that is commonly expressed about not being able to tell one's story in one's own way reflects this awareness (Conley and O'Barr, 1990 : 25). The case of a question functioning to cut short an extended reply to a previous question is an example of a controlling function quite distinct from the content or form of the new question.

6. Towards a Typology of Courtroom Questions:

Having considered the sense of courtroom questions it is appropriate to examine their forms given that: form and function are not unrelated; certain question types feature more in cross-examination than in examination-in-chief. Question forms can be categorized on the basis of syntactic features with prototypical categories including:

- wh-questions marked syntactically by: an initial wh-word, the presence of a finite verb, and subject-auxiliary inversion;
- polar questions with the auxiliary placed initially and subject-auxiliary inversion (e.g. Did you say that ?);
- alternative or disjunctive questions, containing *or* (e.g. Did you go home or to work?)
- tag questions comprising a declarative clause followed by an elliptical interrogative clause or other verbless tags. The tag may have an opposite polarity to the main clause, and necessarily so if the main clause is framed negatively, when the tag cannot also be negative. Tag questions are a highly significant category of question in the courtroom since they often function as leading questions.

A typology of courtroom questions must encompass other forms of elicitation which the lawyer uses to evoke witness response:

- Imperative sentences function to elicit witness response and can therefore be categorized within evidentiary discourse as questions.
- 'Requestions' (Danet *et al.*, 1980) are speech acts in which a request (or command in the courtroom context) to supply information is embedded within a polar question. Thus when counsel asks *Can you tell me what you were doing there ?* s/he is obviously wanting more than a yes/no response – there is an implicit directive to supply information;
- Declarative sentences which are marked prosodically with a rising intonation can become questions;

- A declarative sentence without this intonational feature can also function as a question when it is followed by silence: in the courtroom witnesses become conditioned to respond to the 'gap' once they learn the 'rule' that the lawyer's utterances to them function as commands to respond.

A more broadly based typology of courtroom questions is thus required if one is to account for these other dynamics. Danet *et al*. (1980) considered the five most common question forms in the two trials they examined and classified them by form and function, before ranking them in decreasing order of coerciveness (i. e. their force/ effect in directing or constraining an answer)[(1)]. They found that the three most coercive question types (1,2,3 below) were also the most common (in both direct and cross-examination) and furthermore, that the two most coercive types (1 and 2) occurred in greater proportion during cross-examination:

1. Declarative, with or without tag (the mark of a leading question);
2. Interrogative yes/no or choice forms;
3. Interrogative wh-;
4. Requestions;
5. Imperative forms.

In a study of the frequency of different question types in Magistrates' courts Harris (1984) observed that the wh- category also functions (at a rate of 6% of total questions) to elicit an explanation or even a narrative. Harris therefore distinguished two functions: restrictive wh- (e.g. Where did you go ?) and elaborative wh- (e.g. Why did you go?).

Walker (1987 : 69) developed a typology of courtroom questions whose categories are delineated not by the syntactic structure of the question alone, but "based on the answer attorneys expect, or desire, from their respondents in a legal setting". These categories include: *wh-* questions; *yes/no* questions; *disjunctive (or alternative)* questions; and "*yes/ no/ what's*" questions (i.e. embedded questions such as *Can you tell me his name ?*).

Walker's primary interest was understanding how question form is utilized in the exercise of power. She analyzed this in the following terms (Ibid. : 78):

(1) Of course there would be factors other than syntactic form which affect coerciveness, such as intonation, proximity to the witness, eye contact and body language.

1. Power is viewed by all parties as being role connected, and vested in the examiner, who has the right to compel responsive answers from the witness.
2. In what is essentially a linguistic event, having power means having control over testimony.
3. Control over testimony necessitates control of the witness who gives it.
4. Control of the witness is attempted by means which include restricting the right to question, employing sudden shifts of topic, and manipulation of question form.

In the categorization of courtroom question forms the type of expected response has been emphasized. Such discoursal approach has the advantage of providing a detailed but relatively straightforward framework within which the operation of a number of interacting dynamics applying to evidentiary discourse involving police interviews and court testimongy as well as witness statements can be assessed. These dynamics include: the constraining of witness answers; the exercise by counsel of illocutionary power (i.e. the power to command particular responses); the effect of an interpreter in mediating constraint and power (e. g. through the way questions are translated or by the effect of clarifying questions or other forms of convention); and, the elicitation of particular types of response.

Based on the data of the present study the following question types have been advanced. The six categories of the question types are arranged according to how far they restrict witnesses in their answer (i.e. how far their opinions are narrowed). They are given in order from the least restrictive (elaboration questions, which can extend to the point of inviting a narrative) to the most restrictive (yes/ no questions). The extreme case in this last category, a declarative yes / no with negative truth tag (e.g. Your home is in Darwin, isn't that right ?), which allows counsel to explicitly direct the response required.

1. Elaboration questions (explanation (+ / – narrative) or reason expected)

Imperative

With *about* → Tell me about the accident.

With *wh* – : why → Tell me why you lied.

With *wh* – : how → Tell me how it happened.

Grammatical wh–

With *why* → Why do you say that ?

With *how* → Right, now how do you spell your last name?

With *what* → What was the reason for your behaviour ?

Declarative → And you're married ?

With tag → You were upset, were you ?

Co-operative wh–

With *why* → Can you tell me why you said that ?

With *how* → Would you tell me how it happened ?

Moodless → And ?

2. Hypothetical questions (+ /– narrative) or reason expected)

With *would* → If I died and I was an Aboriginal person on Elcho Island, would you try to find out whose fault it was that made me die.

With *were* → Were you the only person there that his spirit was likely to attach to or could he have attached himself to a Balanda in pure maliciousness and spite ?

3. Yes – no / wh – questions (specified information expected; yes/no = fall back)

Grammatical yes / no → Do you know what happened ?

Auxiliary wh –

With *can* / *could* / *would* → Can / could you tell us where he lives ?

With able → Are you able to give any opinion about what function in your mind Mr. [W] was performing ?

Yes – no / any → Did you run back to the Toyota ?

Moodless → How many children ?

4. Wh – questions (specified information expected, and no other anwer).

Imperative → Give me your name !

Grammatical *wh* – → What is your name ?

Declarative *wh* –

by way of Trigger → That person said what ?

by way of Hint → I have forgotten your name

Cooperative *wh* – → Would / will you tell me your name, please ?

Moodless → And his relationship to you ?

5. Disjunctive questions (yes / no answer not appropriate)

Disjunctive *wh* – → Was it red or what ?

Disjunctive *LIST* → Was it red , black, blue, white ?

Disjunctive X or Y → Was it red, or black ?

6. Yes / no questions (expectation of affirmation or negation (e.g. That's correct.)

Grammatical yes / no → Do you live in Darwin ?

Declarative yes / no → Your home is in Darwin >

With tag:

Same polarity → So you definitely went out – you went outside particularly to have a look at the moon, did you ?

Truth tag positive → And you're a plumber, is that right ?

reversed polarity (+ / –) → you knew that he'd thrown a spear at [his brother], didn't you ?

reversed polarity (– / +) → They weren't , were they ?

truth tag negative → Your home is in Darwin, isn't that right ?

With Frame → You are sure you're not making this up now ?

Moodless yes / no → In Darwin ?

With tag → In Darwin, yes ?

7. Conclusion :

In this study an attempt has been made to explore questions in legal settings. The question types advanced have been based on data taken from various police and court interviews as well as witness statements. These interviews can be viewed as a speech event within the police inquiry or court case as the speech situation. Individual questions are discrete speech acts grouped into act sequences. The question / answer structure that typifies evidentiary discourse gives candidacy to question / answer exchanges as appropriate units of analysis.

The police and court interviews can be seen as a series of question and answer exchanges moving from topic to topic.

The questions examined involve six broad categories arranged according to how far they restrict witnesses in their answer. They are given in order from the least restrictive (elaboration questions, which can

extend to the point of inviting a narrative) to the most restrictive (yes / no questions). The extreme case in this last category, a declarative *yes/no* with negative *truth tag* (e.g. *Your home is in London, isn't that right*?) allows counsel to explicitly direct the response required.

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Appendix:
Interview (1):

D S: (Detective Sergeant) : All right [M] (uses M's Christian name) (cough), this interview is now being video-recorded. OK?

M : (nods head)

D S : On the video camera in there and those two squares down the bottom. That's where the two videotapes are. OK ? Now, I'm Detective Sergeant S…B… from Broome C. I. B., OK? , and this is Sergeant P… B… - he's from Halls Creek Police Station. OK?

M : Mm . (very faint)

D S : Now the time by my watch is about two forty ah there, in the afternoon of Sunday the 31st of July 1994. OK?

M : (nods head)

D S: Ah , now, can you tell me what your full name is ?

M : … … … (M gives her Christian name, Yolngu personal name, and Yolngu family name)

D S : Right , now how do you spell your last name?

M : …. (M spells the letters of her Yolngu personal name) (M did not understand the meaning of last name and instead spelt her Yolngu personal name).

D S : Right and, and, the …. (D S attempts to pronounce M's Yolngu family name) …. , ….

(attempts again) ….

M : …. (M says her Yolngu family name), my family name.

D S : Your family name, right, now how do you spell your family name ?

M : … (M spells the letters of her Yolngu family name)

D S : All right, and your date of bitth, [M]?

M : Four, four, (year of birth).

D S : All right, and now you'rre living – where in Halls Creek ?

M : Yes.

Interview (2) :

D S: When you say it's an encouragement, do you say that, on your reading and listening of what was said to Mr[G] by Mr[W], that there was any-either articulated or unarticulated consequences that would flow?

M C : For talking or not talking ?

D S : Yes ?

M C : No, no.

D C : Are you saying that the word 'Manymak' doesn't carry that connotation in that sense ?

M C : Not in that sense, no … - if you'll remember that the purpose of the prisoner's friend was to be of some support and to give some advice.The only question is, in my mind, is it clear that he's speaking as a prisoner's friend or as an interpreter ? And I can't – I can't swear to either of those.

D C : In your opinion, do you see those as two separate and discreet functions?

M C : Inevitably and absolutely.

D C : Why do you say that ?

M C : An interpreter, especially one who becomes accredited, takes-makes some promises, is governed by rules of ethics and one of those is to be completely impartial and if one isn't completely impartial then one should make it very clear to the – to both parties. For example, if the interpreter's a relative. The prisoner's friend is clearly there to support the prisoner … and to be partial in that respect. It's unfortunate that these two roles continue to become intermingled. This is a clear example of what arises.

D C : You saw the full video tape of the record of interview yesterday ?

M C : Yes .

D C : Are you able to give any opinion about what function in your mind Mr [W] was performing ?

M C : I think he was a – a reluctant interpreter and I think he was a reluctant prisoner's friend. When I say reluctant, I don't mean that he was completely avoided being both of those.

Interview (3) :

CTF (Counsel representing the Task Force members) : When Stacey was speared, did you run away ?

Wit (Witness) : Yes.

CTF : Did you run back to the Toyota ?

Wit : Yes.

CTF : Were those other Aboriginal men there with you ?

Wit : Yes .

CTF : Did they run away ?

Wit : Yes .

CTF : Were you frightened ?

Wit : Yes.

CTF : Frightened of the dead man ?

Wit : Yes.

Interview (4) :

CTF : You knew that he'd thrown a spear at [his brother], didn't you ?

A G (Counsel Gondarra) : It wasn't a real spear – it was blunt in the nose.

Cor (Coroner) : It was what ?

A G : It wasn't a real spear with a sharp edge on it.

CTF : When I asked you whether you know about these things … ?

A G : I've heard it , yes , I've heard about that.

CTF : Please tell me that you have ?

A G: Yes.

(Objection)

CTF : You'd heard about him throwing a spear at [his brother], hadn't you?

A G : Yes.

Interview (5) :

Cor : Is there any reason why, Mr. Tiffin, the witness needs an interpreter?

CAC (Counsel Assisting the Coroner): I must admit I am not sure of my knowledge. I am concerned in all cases that although there may be apparently responsive answers, that they are not in fact responsive answers.

… Might I suggest that we start without the interpreter and see how we appear to be going.

Cor : Yes. Let's get some background first of all.

CAC : Geoffrey, where do you live ?

GW (Geoffrey Walkundjawuy) : Here.

CAC : On Elcho Island ?

G W : Yes .

CAC : And how old are you ?

G W : 37 .

CAC : Do you know when you were born ?

G W : Can't remember.

CAC : Do you work here ?

G W : I work for council plumbing.

CAC : And you're a plumber, is that right ?

G W : Yes.

CAC : Were you born on Elcho Island ?

G W : Yes.

CAC : And you're married ?

G W : Yes.

CAC : How many wives have you got ?

G W : I got two wives .

CAC : How many children ?

G W : About 6.

CAC : Do you remember after that dead person was killed you talked to the police and the conversation was recorded on a tape recorder ? Do you remember that ?

G W: Yes.

CAC : Was that a true story you told the police that time ?

G W : Yes.

Cor : At this stage I am happy that we should proceed without an interpreter, but Geoffrey, if there's anything you don't understand, the man is ready to assist you. All right?

Interview (6) :

CCP (Counsel for the Commissioner of Police) : So that was Thursday night ?

Wit : Thursday night.

CCP: And you say it was a half moon that night ?

Wit : Half moon.

Cor : Perhaps my diary is wrong.

CCP : You are sure you're not making this up now?

Wit : No.

CCP : So you definitely went out, you went outside particulary to have a look at the moon, did you?

Wit : Yes , I did.

Interview (7) :

CTF : None of those men (i.e. members of Ganamu's family) were searching for him on the Thursday, were they?

Wit : Yes.

CTF : They weren't , were they?

Cor : He says none of them were.

CTF : And none of them were searching for him on the Friday either, were they?

Wit : Yes .

CTF : And none of them were searching for him on the Saturday, were they?

Wit : Yes.

Interview (8) :

…. If I died and I was an Aboriginal person on Elcho Island, would you try to find out whose fault it was that made me die.

….

….

….

…. Were you the only person there that his spirit was likely to attach to or could he have attached himself to a Balanda in pure maliciousness and spite ?