

**THE PROSECUTOR'S FINAL REPORT  
WITH AND WITHOUT THE SPANISH JURY:  
INTERROGATIVES AND THE DIALOGICS  
OF ORALITY**

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## 1. INTRODUCTION<sup>1</sup>

The present paper is based on the assumption, expressed in Casanovas (1998a, 1998d, 1999), Casanovas and Poblet (1997), and Poblet (1999), that the contemporary Spanish legal profession is in a transitional state towards a more flexible law. This is argued to be reflected in a great number of sociological changes, which occur at great speed (Casanovas 1998b: 127). At the micro level of situated contexts, this ongoing change in the overall institution is argued to lead to new patterns of interaction.

Specifically, this work deals with the change that the introduction of the the jury system has caused in the *mis en oeuvre* of the legal ritual by the Ministry of the Public Prosecutor. Since it is mainly through his discourse that the professional objective of the prosecutor is achieved, that will be the object of analysis. It is assumed here (together with eg. Casanovas and Poblet) that the micro-discursive pragmatic devices observed in the professionals' speech are not idiolectal features, but rather a part of the internal structure of the legal system. That is, the discourse features of the legal jargon are treated as the reflections -in discourse- of their professional culture. The claim is that their discursive structure is licensed by what the actors have in mind when producing speech, which in its turn is constrained by general and profession-specific commonsense and cultural patterns. In other words, it is argued that everyday trues and the habits of the institution itself regulate the implicit and explicit order of the discourse. Thus, everyday professional practice in law sculpts a jargon with a particular pragmatics, which is different from that of other professions, and crucially, which is modelled though time along with its professional culture<sup>2/3</sup>.

In particular, one linguistic feature will be analysed, namely the interrogative sentence type, which will be compared in a prosecutor's discourse in an ordinary and in a jury trial. Interrogatives will however not be studied as purely linguistic features and analysed through linguistic means. Quite differently, they -and the text for that matter- will be taken in Brown and Yule's (1983) general sense as "the verbal register of a communicative act". Their purely linguistic form will be treated as being closely related to the participants' argumentation and conceptualisation of the overall communicative situation. Also, communication will be understood here in a general sense as behaviour. From our perspective, all kind of behaviour -verbal and non-verbal- is communication. At the same time, any instance of communication has an effect on behaviour (Watzlawick et al. 1967).

Under this view, the introduction of the tribunal of the jury in Spain involves a change in the courtroom communicative situation, namely an opening up of the legal ritual and decision-making to a new participant<sup>4</sup>. This phenomenon is set responsible for the motivation of an alteration in the communicative needs of the speakers (i.e. prosecution and defense), not only in argumentation (see Casanovas 1998a: 31), but also in the language strategies and discourse structure used in court<sup>5</sup>. The theoretical hypothesis entertained here is that the frequency of occurrence of interrogative sentence tokens and the question uses observed illustrate the ongoing change in spoken legal discourse from a mainly monologic explicit structure to a more dialogic and implicit one.

## **2. DATA**

The empirical basis for this study is audiovisual data collected by the interdisciplinary "UAB Sociological Studies Group" (GRES), the former "Legal Anthropology and Sociology Group". In particular, the legal data selected for comparative analysis are two prosecutor final reports in two murder cases, the one being an ordinary trial (henceforth discourse A) and the other a jury trial (henceforth discourse B). The former deals with a murder motivated by swindle. In particular, two procurers agree to defraud an insurance company by the murder of a prostitute to whom they had previously obliged to sign up a life insurance. The prosecutor had no proofs of their authorship. The argumentation of his writ of accusation is thus sustained solely by clues. The latter is a crime of passion. A man who had been married to and had a daughter with a prostitute feels rejected when she leaves him and decides to kill her and commit suicide afterwards. The prosecutor's main objective is to dignify the victim and present the accused as a mentally normal -though highly dangerous- individual, whose declaration was not done under oath.

Apart from the audiovisual data of the trials, this study has benefit from the use of ethnographic notes, court records, drafts by both prosecutors, an interview to the prosecutor in the ordinary case and an article on the jury case wrote by the prosecutor himself.

## **3. METHODOLOGY**

An extended field research was carried out in both trials. Participant observation went beyond the mere assistance at the trials, as we had direct ethnographic access to the prosecutors' decision-making and strategy planning. The discourses last 75 minutes and 38 minutes and 15 seconds respectively. After the transcription, the discourses were divided into units of basic content (similar to the grammatical unit of the sentence) and so-called discourse spaces (similar to the discourse unit of paragraphs) for their subsequent pragmatic analysis.

Firstly, the two discourses were analysed from a legal point of view, identifying the discourse nodes, that is the sentence suggested by the Ministry of the Public Prosecutor and in the jury case, the main legal assumptions which led the prosecutor to that evaluation. This analysis was carried out taking into consideration the available ethnographic data from the preparation, actual production and post-evaluation of the case by the legal tacticians themselves.

Secondly, all the interrogative sentence tokens of the two discourses were identified (using syntactic, prosodic and discursive information) and codified for pragmatic behaviour<sup>6</sup>. Then, the legal claims and assumptions inferred from the discourse were put in relation with the interrogatives. That was aimed at (i) establishing relations between the appearance of interrogatives in a monologic legal discourse and the significance of their argumentative function; and (ii) identifying similarities and differences between the

amount of interrogatives and kind of question uses in the prosecutor's final report in an ordinary versus a jury trial. Significant differences between the two kinds of discourses would reveal a different micro situation of communication, reflecting differences at the more macro level of the overall organisation of the institution of justice.

#### 4. THE SPOKEN DISCOURSE BEFORE THE JURY

As it has been pointed out by researchers on the sociology of law, the trial is perceived by its participants as a game or battle where the final objective is to win (Woodbury 1984). Professionals of the law view it as a competition for the narration of a story with opposed interpretations of the relevant facts (Woodbury 1984). The battle is especially cruel in jury trials<sup>7</sup>. That should come as no surprise if one bears in mind that contrary to the British medieval jury, which was allowed to investigate on the facts, the modern Spanish jury has no access to the summary proceedings and cannot visit the scene of the incident. Thus, the jury's reconstruction of the facts and their subsequent evaluation will be based mainly on information drawn from the legal process itself. Each part needs to convince the jury that their version of the facts is the right or more plausible one, but this cannot be done directly. The jury's verdict is based on the testimonies of the defendant, the witnesses and the experts, and crucially, also on the professionals' final reports.

Thus, the introduction of the jury sets up a communicative situation in which everything that is said, and what may be inferred from this, is for the benefit of the jury. The prosecutor's writ of indictment is thus no longer to be interpreted and evaluated by the judge, who has overall legal knowledge and broad information on the relevant case, but by the nine members that constitute the jury. Critically, although they may have similarities with the audience, both in their social characteristics and action (or lack of it) in court, they are certainly not mere spectators of a dramatic dramatization (Casanovas 1998b: 130). Quite differently, as Casanovas points out, they establish a communication with the speaker, providing feedback in the form of looks, signs of attention, surprise, displeasure, etc. It may be indeed somewhat hazardous to say that the speech to the jury is a dialogue in its ordinary sense. However, it would be equally daring to say that the professionals' final report is an instance of prototypical monologue. The jury may not utter a word during the whole discourse, but in a final report the professional is certainly not speaking to himself. As Harré (1985) puts it:

*[...] even when an audience sits quietly listening to an oration, be it judge and jury, political constituents, playgoers, and so on, it can hardly be psychologically true that the event is a mere monologue. Considered from the point of view of public speech alone, it seems to be a monologue, but we can be fairly sure that the orator's remarks are being counterpointed by a private discourse of each of the hearers (Harré 1985: 128, quoted in Ilie 1994: 64).*

Legal tacticians use different communicative strategies when facing the jury, i.e. (i) consider its members as a global audience; (ii) consider each member separately; and (iii) select those who would putatively be the subsequent leaders in the deliberation and address the discourse to them (Casanovas 1998b: 130). No matter what tactic the prosecutor uses, one thing is certain: the legal tactician must make sure that his discourse receives due attention from the jury. Not only that, it must also see to it that it motivates a

private discourse which does not cancel but reinforce the arguments put forward in the final report. How to do so effectively is the real question.

#### 4.1. Implicit vs. explicit coherence in legal spoken language

The overall common legal knowledge acquired through years of professional practice, constructs a rich legal common sense which allows -in ordinary trials- for this vast knowledge to appear implicit in the argumentation (Casanovas 1994, 1998b, Casanovas et al. 1998, Poblet 1998, 1999). The legal principles on which the legal claims are supported need not be expressed and are actually never expressed. Discourse A provides a clear illustration of this. No reference whatsoever is made of the prosecutor's legal assumptions. On the contrary, this becomes a must in trials before the jury. There, legal professionals do devote some time of their final reports to explanations of the different legal roles. As it can be observed in the table B1 in the annexe, discourse B makes explicit reference to (i) the legal role of the prosecutor (B.0001-0003), (ii) the function of the jury (B.0004), and the fact that, contrary to the American accused in films, the defendant is not obliged to tell the truth in Spain (B.0026). In jury trials, the professionals legal knowledge that lies behind their argumentation is made explicit in their discourse. This notwithstanding, at the purely linguistic level of how this discourse is put in words, the implicit-explicit relation is, interestingly enough reverse. Whereas ordinary trials display a highly explicit discourse (with a massive use of overt linguistic markers), the trial before the jury is produced through much less explicit means in favour of implicit, covert mechanisms that guide the discourse at the underlying level of cognition.

Clearly, a close look at the oral discourse database from the GRES suggests that the courtroom is undergoing a change from an explicit to a more and more implicit discourse order<sup>8</sup>. It will be argued here that this is due to a change towards a more flexible law, reflected in the micro structure of legal discourse in situated contexts in a more and more frequent use of orality features. This implies a big gap between the structures of the contemporary legal written and spoken discourse.

This gap constitutes an important distinguishing feature between the traditional and contemporary legal discourses. As it has often been observed by researchers, the formal legal jargon used in the courtroom is mainly based on written language. According to O'Barr (1982: 25), this variety is "the closest spoken actualisation of written legal language" and in fact "(s)ometimes, written legal language is actually read aloud in court". One even considers that "legal language is intended to be read" (O'Barr 1982: 19). The professional jargon of the contemporary Spanish legal system very clearly reflects this. As Poblet (1999) points out, "although the Spanish Criminal Law [*Ley de Enjuiciamiento Criminal*] establishes an 'orality principle' which has to preside the criminal procedure, this is usually conceived (with the exception of cross-examination acts) as a 'reading principle'"<sup>9</sup>.

As a result of this written tradition, spoken legal monologues generally display an overt discourse coherence<sup>10</sup>. They follow a written discourse pattern, commonly characterised by an extensive use of so-called discourse markers<sup>11</sup>. That is, the global discourse structure is mainly achieved through specific discourse

elements that serve particular pragmatic functions. Indeed, the selected discourse before an ordinary court is basically organised through verbal traces like *por otro lado* [on the other hand] (A.0008); *en cuanto a* [as for] (A.0009, A.0011), *ya en relación a* [now in relation to] (A.0012), *otro dato más* [another thing is] (A.0024, A.0026, A.0035-A.0037, A.0046-A.0049, A.0052-A.0054). These provide the text with an internal explicit and unambiguous coherence. Although the selected prosecutor's final speech before the members of the jury also makes use of such discourse devices for its internal organisation (i.e. *y en cuanto a* [and as for] A.0007, *concluiré* [I'll conclude] (B.0038, 2 instances), *vuelvo a hacerlo al acabar* [I do so again at the end] [B.0039], *insisto* [I insist] (B.0039), and *concluyo con estas palabras* [I hereby conclude] (B.0041) this occurs in a significantly lower frequency than in the discourse before the ordinary court. As a way of illustration, the discourse before the ordinary court contains as much as 26 instances of discourse organisers, whereas as we have just seen, the overt discourse before the jury only contains 5.

This written tradition is further reflected in the few references to the immediate communicative situation through deictics, that is linguistic pronominals that serve to refer to the participants and contextual situation of interaction (eg. *I, you, here*)<sup>12</sup>. The participants and overall communicative context are not identified through their changing role in the communicative act, but through their static legal role (eg. *this prosecutor, Your Honor, the present legal act*). It should come as no surprise, then, that the speech itself took the form of a legal, rather than a regular communicative act. Besides, being based on written language, the ordinary spoken legal language does not take the form of a face-to-face conversation but that of a report of the accusation's evaluation of the facts. Furthermore, since the addressees of a written text generally have no access to the context of language production, legal reports minimise confusion and ambiguity. In other words, the processing of a traditional legal report is not subject to the constraints of the immediate communicative event. Again, this factor is much more frequent in ordinary than in jury trials.

As it is, the legal discourse before the jury does by far not make as much use of overt explicit linguistic means as the discourse before the ordinary court does. This does not imply, however, that this kind of discourse appears to the hearer as less coherent or less organised. Quite differently, it is argued here that the discourse before the jury *is* highly coherent and well-structured. Only, this is so through the introduction in the discourse of cognitive mechanisms governing the communicative flow, setting up contextual cues for a directly cognitive interpretation. Since oral production is consumed as soon as it is produced, the coherence aimed at here is a cognitive -rather than linguistic- one<sup>13</sup>.

In fact, there have been endless discussions on the need to make the language of the law accessible to the man in the street, and in fact, it is a reality that the instructions to the jury have been highly simplified in the American legal system for them to be perfectly understandable by that very important participant. See for instance the claim for a simplification of the legal language below:

*Most language used in law can be simplified so that it needs no official interpreters. Its meaning could be made clear to almost everyone. There is nothing heretical or anti-literary in this idea. Law is one device for social control. It should be written in plain, ordinary English so that the average layman understands it. Nor is this argument that legal language should be simplified a new one. As early as 1776, Jeremy Bentham demanded that laws be codified in*

*such clear language that the ordinary man could understand his legal rights* (Hager 1959: 85<sup>14</sup>, quoted in O'Barr 1982: 21).

Moreover, implicitness and indirectness is actually recommended to lawyers by experts of communication (see Casanovas 1998b: 131-132), as effective means to present legal arguments, describe the facts and cause emotional effects on the jury.

In particular, it is claimed here that the metapragmatics associated with interrogatives allow for a use of this sentence type as a highly effective *implicit communicative device* which operates at the backstage level of cognition. This is claimed to serve as: (i) a discourse-organiser; (ii) an attention-keeper; (iii) an evaluator; and (iv) a stager of real past or imaginary communicative events.

## 5. THE METAPRAGMATICS OF INTERROGATIVES

Our folk knowledge tells us that form communicates. That is, that *how* something is said is as important to interpretation as *what* is actually said. A particular choice of form, is thus believed to necessarily reflect a particular choice in the message. This commonsense communication knowledge has been known by linguists as the *Literal Force Hypothesis*. (Levinson 1983). This hypothesis is assumed here. In other words, it is accepted that grammatical form can be satisfactorily related to a particular function(s). It will be further assumed (together with Michaelis and Lambrecht 1994) that the form-function link also holds at the sentence type level<sup>15</sup>.

Specifically, the interrogative sentence type will be treated here as being conventionally associated with a metapragmatic or metacommunicative function. It will be argued that they do not signify in themselves but set up -at the cognitive level- a communication setting of the type: A asks B, who is expected to answer<sup>16</sup>. The classical distinction between interrogatives and questions (see Hudson 1975, Huddleston 1994) will be respected (it is evident that an interrogative such as *Can you pass me the salt, please?* is not a question but a request). However, it will be claimed that the interrogative sentence type motivates a mental contact with a questioner and an answerer role, which may be equivalent to the speaker and listener, or simply serve to identify two references activated by the discourse itself and existing as such only in that occurrence. All interrogative sentence types would thus involve a splitting of the locutor<sup>17</sup> into a questioner and an answerer, that is two communicators, playing a metapragmatic rather than a pragmatic or semantic role<sup>18</sup>. Therefore, a discourse which is monologic at the level of the outside communicative situation would thereby become dialogic, a dynamic and cooperative act. Our view understands interrogatives as being inherently dialogic, no matter whether they appear in a monologic or dialogic communicative situation. In other words, it is claimed that through the sole appearance of an interrogative sentence type, a monologic discourse takes the communicative structure of the basic communicative act, namely the conversation<sup>19</sup>.

In that sense, interrogatives are regarded as the sign of orality by excellence, as they reflect the basic structure of the conversation, which is characterised by a constant interchange of the speaker and hearer role.

They are a call to the addressee to provide the answer to the question (even at the cognitive level, we hasten to say). Thus, they implicitly motivate a strike at the addressee's memory triggered by the activation of a questioner-answerer communicative pattern. In our view, this turns interrogative highly effective communicative means, as they imply cognitive projections of a face-to-face dialogue. This is significant if one considers that:

*The primordial locus for the constitution of intelligibility and coherence through human discourse is face-to-face interaction* (Goodwin 1995<sup>20</sup>, quoted by Casanovas 1999).

In particular, the claim is that the interpretation of an interrogative sentence type involves a cognitive shift towards a participatory and dynamic situation, which constitutes an attention-keeper. This is very especially the case in monologues, the type of discourse dealt with here, where the introduction of an interrogative sentence type implies a change in the grammatical structure of the discourse (mainly declarative).

### 5. 1. Pragmatic functions of interrogatives in legal monologues

The previous section dealt with the metacommunicative characteristic of interrogatives, that is, with the metapragmatic feature that framed the interpretation of the conceived communicative act itself. However, it should not be ignored at this stage, that, as rhetoricians and linguists have observed since antiquity, the interrogative sentence type cannot be mapped with a single use. Rather, it serves different pragmatic functions depending on the overall context and the speaker's communicative intention. Interestingly enough, though, they still seem to share the common metapragmatic feature described above. The Table 1 shows the percentage of appearance of the different pragmatic uses related to interrogatives which can be observed in the prosecutor's discourse with and without the Spanish jury in the discourses selected for analysis.

#### 5.1.1. Expository questions

Some of the interrogatives observed in the two discourses seem to serve an implicit organising function. A scene is introduced in the discourse, some aspect in that scene is asked about, which naturally brings it to the foreground, and that aspect is subsequently developed in the discourse. Take for instance the passage below from the selected discourse before the jury:

(1) *no era para él, le había rechazado, le había echado fuera de la casa. Y como no era para él no iba a ser para nadie. ¿Para nadie cómo? ¿Por qué medio lo iba a conseguir? Causándole la muerte, causándole la muerte.*

[She was not for him, she had dismissed him, she had thrown him from home. And since she was not for him she would be for nobody. For nobody how? By what means would he achieve that? Causing her death, causing her death.] [B.0016]

In this example, the prosecutor's narrative is not structured through explicit organising devices provided by the language (eg. *on the one hand, on the other hand, firstly, secondly*, etc.). No such expressions have been used, but still the interpreter gets the impression that the discourse does not contain loose unconnected linguistic elements.

The question-answer pattern splits the speaker into two communicators (in the sense outline above) playing a metapragmatic rather than a pragmatic or semantic role. These are conceived as questioner and answerer. The discourse which is monologic at the level of the outside communicative situation becomes thus dialogic, a dynamic and cooperative act. It thereby takes the communicative structure of the ordinary conversation. In this respect then, the discourse organisation occurs implicitly, not through especially ordering discourse devices, but through metapragmatic cues that guide cognition through a coherent path.

It should be expected from the above description of the overall discourse structure of discourses A and B in section 2, that this implicit cognitive mechanisms would appear less frequently in the final report before the ordinary court than before the Tribunal of the Jury. This is indeed the case. As Table 1 above shows, the frequency of occurrence of this implicit device is 4 to 10.

Furthermore, it is important to note that, as it can be seen in Figure 2 in the annexe, these occurrences appear in relation to the discourse nodes of the two discourses, that is they are clustered around the basic ideas the prosecutor wants to get through and add to them.

#### 5.1.2. *Attention gathering questions*

In written texts, especially relevant information usually appears highlighted, in bold, cursives or in a different letter type or size. These graphic devices can naturally not be used in the spoken discourse, whose channel is an oral rather than a visual one. Attention to a particular aspect of the discourse can be achieved explicitly through the use of specific linguistic expressions (eg. *note that*, *significantly enough*); through prosody (intonation, stress); or through non-verbal communication, i.e. proxemics (eg. stop walking, standing up) and kinetics (eg. raising one's eyebrows, pointing one's finger at the relevant referent). It is claimed here that this aim can equally be achieved by means of implicit micro-discursive mechanisms like those activated by the interrogative sentence type. It is argued that the communicative shifts motivated by the question-answer pattern, that is a change in the communicative situation (from monologic to dialogic), breaks monotony and thus keeps the interlocutor listening. In fact, it has often been observed (see Casanovas 1998a, Cavero 1998, Pascual and Poblet forthcoming) that the interruption of the judge in a final report can serve as an attention-attractor as it involves a change of communicative situation in which a new interactant is involved. In addition, the very question-answer pattern turns the interlocutors into a participant in the conversation, as the answerer role is projected onto them (even though they may not come to answer in the end). The discourse responsibility is thus shared. The following fragment from the selected discourse before the jury is taken as an illustration of the implicit attention-keeper function of interrogatives in monologues:

(2) *y contestó, ¿qué contestó? Lo recuerdan, ¿verdad? (...) Naturalmente si se acepta esta tesis dentro de dos años, dos años por decir algo ¿verdad? Porque él tiene más salud por supuesto que mi defendida es decir que... Además yo le deseo que se haga de... centenario, no, no hay problema ¿eh?*

[And he answered, what did he answer? You remember it, don't you? (..) Naturally if one accepts this thesis in two years, two years to say something rights Because he of course is healthier than my defend one so... And I wish him that he become... centenarian, there's no, there's no problem, right?] (B.0036)

Significantly enough, barely no ATTENTION transcriptors (in the sense outlined above, see footnote 6) are observed in the prosecutor's discourse before the ordinary court, but the few that occur are mostly interrogatives (5 instances), used both as ordering and as attention keeping devices. On the contrary, the discourse before the jury makes a big use of this pragmatic function, 42 instances of which are attentions implicit in the pragmatic structure of interrogatives.

### 5.1.3. *Rhetorical questions*<sup>21</sup>

The rhetorical question is treated here as an argumentative device which involves an implicature. Such interpretation is taken as the implication of the question's own answer, to follow Ilie (1994)<sup>22</sup>. The rhetorical question is regarded as an actual question which the speaker poses in such a way that the addressee will find the answer in the questioner's mind. It thus requires a mental response, rather than an explicit answer. In other words, the puzzleness of the ordinary questioner is, in rhetorical questions, the puzzleness of the addressee in looking for the required answer. The difficulty of finding the required concept is looked upon as something the addressee, rather than the speaker, faces. Hence, the interpretation of a rhetorical question implies a metapragmatic shift, the setting up of a particular internal conversational structure in the monologue, an internal dialogue in the monologic speech. And one of the participants in this implicit cognitive dialogue (the answerer) is given voice by the actual interlocutor of the rhetorical question (although it speaks for the actual producer of it). It shakes the addressee's memory and overall mental capacities in finding the answer implied by the question itself. Thus, it implies the interlocutor's projection in the conversational structure activated.

The argumentative strength of rhetorical questions is thus not due to what they *assert*, but what they *imply*. They invariably carry a conversational implicature to be captured by the addressee. In short, a rhetorical question is a question at the cognitive level, as it triggers a cognitive mechanism establishing a question-answer pattern, the inferred answer of which expresses the question's very point<sup>23</sup>. Critically, the access to the point of view expressed through the rhetorical question is then indirect rather than direct. That is, as many scholars have shown, there is no overt linguistic form coded for rhetorical use. There are no explicit necessary and sufficient indications as for the rhetorical interpretation of an interrogative. What this implies is that the interpretation of a rhetorical question as such cannot to be decoded from the words that constitute it<sup>24</sup>. Rather, it needs to be understood as such by the interlocutor, taking into consideration extra-linguistic factors. Therefore, the argumentative information is not overtly given by the interrogative form.

Bearing in mind the pragmatic features of rhetorical questions outlined above, it should be expected that no such argumentative device occurred in a traditional prosecutor's writ. This is indeed the case for the prosecutor's discourse in the ordinary trial. No instance of rhetorical questions is observed in the discourse selected<sup>25</sup>. In that discourse, the evaluation on a particular bit of the discourse is done explicitly through overt linguistic means (eg. *no nos queda ningún género de duda* [we have no doubt whatsoever] (A.0001), *es evidente* [it's obvious] (A.0001), *realmente estimamos* [we really believe] (A.0008), (*realmente*) *entendemos* [we (really) understand] (A.0009, A.00011, A.0014), *no podemos entender* [we cannot understand] (A.0009). The discourse before the jury, however, contains only very few linguistic marker of that sort (eg. "*a mi*

*parecer*" [in my view], *a mi me parece* [I think] B.0037). Instead, the facts are directly presented from the prosecutor's viewpoint, and as much as four rhetorical questions occur in that discourse, which serve the evaluative pragmatic function of the different linguistic forms above.

Again, one may be tempted to think that overt evaluation is more effective than the covert one operating through cognitive mechanisms like rhetorical questions. This is, however, counter to the opinions of many legal tacticians. Consider for instance the argument below (my translation):

*The facts are described in the final report, one could say that it constitutes an inference of the facts. The inferences seem inexorable. Naturally, they are not. They are often opinions based on experience. There can often be drawn different inferences on the same fact. But a competent lawyer will elaborate an opinion which seems an irrefutable conclusion. Instead, an incompetent lawyer will say "My opinion, members of the jury is that..." We are not interested in his opinion* (Dershowitz, quoted in Casanovas 1998b: 131).

Clearly, the use of rhetorical questions allows one to express one's opinion of the facts without having to say "My opinion, members of the jury is that...". The rhetorical question expresses an argument in an implicit rather than explicit manner. Its implicitness is not its only positive factor as far as argumentation is concerned. The rhetorical question seems to display a stronger assertion than the regular declarative sentence<sup>26</sup>. In fact, the use of rhetorical questions is even explicitly recommended by some legal tacticians (eg. Casanovas 1998b: 132), as it helps to create a powerful speech style (in the sense of O'Barr 1982)<sup>27</sup>.

#### 5.1.4. *Ordinary questions*

An ordinary question is that which is asked by a questioner to a selected answerer. Implicitly then, it requires the metapragmatic figures of questioner and answerer. A communicative situation is thereby activated, which takes the form of a dialogue started by the questioner, who prototypically requests the addressee's participation by providing the answer to the question. Apparently then, an ordinary question could only occur within a communicative setting which permits a dynamic turn-taking. That is, it could be postulated that only if the hearer is given the chance to answer the question could an ordinary question be satisfactorily produced. Indeed, no real questions intended to be answered have been observed in any of the two discourses<sup>28</sup>. However, contrary to the commonsense belief outline above, ordinary questions (which do not expect an answer) do occur even in very ritualised settings -like legal monologues in a court of justice-, which ascribe a speaker-hearer, rather than an interlocutor-interlocutor conversational structure. In such cases, though, a real information-seeking question occurs very rarely.

As many scholars have pointed out, (see Woodbury 1984, Harris 1984, Adelsward et al. 1988, Luchjenbroers 1997, Pascual and Poblet 1998, Pascual and Poblet forthcoming), the question-answer pattern imposed by the legal ritual constitutes the principal locus where the jury construct their version of the facts. One should thus expect the retraining of the interrogation phase to occur frequently in the professionals closing speech. The data analysed shows that this is in fact the case -both for ordinary and for jury trials. Interestingly enough, however, there are also instances of ordinary question uses which do not serve the function of bringing mental contact to an already familiar scenario of a question-answer sequence. We can observe in these discourses, examples where mental communicative situations are triggered by the discourse itself. The

rigidness of the ritual permits two especial uses of ordinary questions: (i) the question quotation use and (ii) the open unanswered question use.

#### 5.1.4.1. *Question quotation use*

This constitutes the enactment of a past real or imaginary question communicative event. The speaker takes the voice of the questioner in the relevant scene. The question in the monologue serves then as a context-attractor, as the linguistic construction represents its own referent, it does not describe a communicative event but acts it out. It implies then a communicative shift from *reporting* to actually *doing*. In the prosecutors' discourses analysed, this use appears for:

- (a) contextualising purposes (eg. *cuarenta detenidos examinó la doctora T ayer. Cuarenta ¿Quién da más?* [Forty defendants examined Doctor T. yesterday. Forty, who gives more?] (B.0032), where the question sets up the scene of an auction, a metaphor to challenge the interlocutors to find another doctor who treats more patients a day, suggesting that such a doctor cannot exist; "*¿jura ust-" la biblia "jura usted decir la verdad, toda la verdad, y nada más que la verdad?"* ["Do you swe-" Bible "do you swear to tell the truth, the whole truth and nothing but the truth?"] (B.0026), where the question activates the common image of trials in American films;
- (b) direct activation of the interlocutor's memory on a specific question event shared by the speaker, like pressing a rewind button and viewing an old scene again (eg. *Le pregunté "¿eso puede volver a ocurrir dentro de dos años?"* [I asked him "can this happen again in two years time?"] (A.0036), where a part of the interrogation phase is revived.

The introduction of this kind of question use, no matter for what particular function, involves then a dynamising change in the discourse flow, as well as a presentation of the information in a directly cognitive way. It involves no metaoperations, it is directly communicative. In particular, it activates different voices (in the sense of Bakhtin 1981, see footnote 17). This peculiarity turns the question quotation use as the only one in which the locutor may not be the speaker, that is, in which the speaker is not necessarily set responsible for the discourse. Following the brief description of the communicative situation of an ordinary trial and the language produced there, it should be expected that this pragmatic device rarely occurred. Indeed, we have found no uses of ordinary questions functioning as attractors of metaphorical contexts and very few enactments of past interrogations in discourse A<sup>29</sup>.

#### 5.1.4.2. *Open unanswered question use*

This especial use of questions involves posing a question, whose answer is presented by the questioner as having been (suspiciously) unanswered. Although this type of questions have been often classified as rhetorical questions, it is claimed here that they do not imply, but rather suggest an answer. As questions, they are thus regarded as involving a change in the activated conceived communicative situation in the discourse structure from reporting to challenging the audience to provide the answer to a difficult question. An example would be:

- (3) *¿por qué si se hizo una denuncia de desaparición con la descripción tan buena que se hizo de la desaparecida no se dijo inmediatamente a los denunciantes ...?*  
[why if in the declaration such a good description was given of the disappeared one weren't the deponents immediately told...?] (A.0047).

As many as eleven instances of ordinary questions in the unanswered question use have been observed in the prosecutor's discourse before the regular court. Significantly enough, these are all open questions suggesting serious doubts as to the credibility of crucial facts for the evaluation of the crime (see Figure 2A in the annexe). It is argued here that the occurrence of a dynamic, cooperative and dialogic device in a somehow rigid monologic discourse must be explained by the particular nature of the case. The prosecutor had no definite evidence to sustain his legal claims and had to base his discourse on clues. The prosecutor could thus not assert what he had no evidence to prove, but at the same time he needed to have the judge think about the improbability of occurrence of the events claimed, by the implicit suggestion that one's common sense cannot give credibility to them<sup>30</sup>.

The prosecutor's discourse before the jury, however, makes use of all the different functions outlined above: it makes use of questions for the activation of metaphorical contexts (as the jury will evaluate the facts basically in terms of common sense and everyday folk knowledge; relevant past questions in the memory of all those present (eg. interrogatory to the accused); and finally, open questions for the jury to infer the specific answer expected, whose content is to be interpreted as a possible fact.

## 6. CONCLUSION

The data analysed seems to talk of an ongoing process of transition from a rigid and highly ritualised to a more participative, cooperative and flexible professional culture. This is reflected on the legal discourse in the appearance of orality features both at the formal level, i.e. the great amount of interrogatives in the prosecutor's discourse before the jury (62 instances vs. 19 instances in the discourse in the ordinary trial), and at the communicative level (the functions of PROGRAMME ATTENTION, RHETORICAL QUESTION, ORDINARY QUESTION<sub>metaphor/quote/open</sub> activated through interrogatives).

At the same time, the data shows that the differences in the amount and question uses between the two discourses is not a difference of kind but of degree. It seems that if the final report is a genre in itself as it has been suggested in the literature (Walter 1998), then we are not before a change of genre, but certainly before a change *in* the genre. Poblet's (1997) claim that there probably is no such thing as a legal discourse which can be set in complete opposition to non-legal discourse is taken here to state that probably the prosecutor's closing speech *can* undergo a change adapting itself to the new communicative situation, precisely because its argumentation and form does not totally differ from that of everyday talk<sup>31</sup>.

Finally, the data selected is interpreted as showing that the interrogative sentence type can serve a metapragmatic or metacommunicative as opposed to a merely referential, semantic or pragmatic function. It is argued that the high correlation of key utterances in the discourses (those referring either to the sentence or to the different paths leading to it) shown in annexe 2 indicates that interrogatives are used as cognitive attractors to highlight a few set of points the prosecutor wants to get through.

The claim here is that the introduction of the jury has implied a change of communicative situation in the institutional setting, which has triggered a change in communicative behaviour. The new institutional reality has set up an opening up of the legal culture to the ordinary layman. A change in the macro organisational level of the institution of justice has affected the micro level of everyday professional interaction. That is, when the organisation incorporates a new participant, this being the man in the street, the *mis en oeuvre* of the legal ritual undergoes a radical change. In our view, this is materialised in an ongoing change from a written to a more oral legal culture... and discourse.

**Table 1**

The pragmatics of interrogatives in the prosecutor's final report before the ordinary court and before the Tribunal of the Jury.

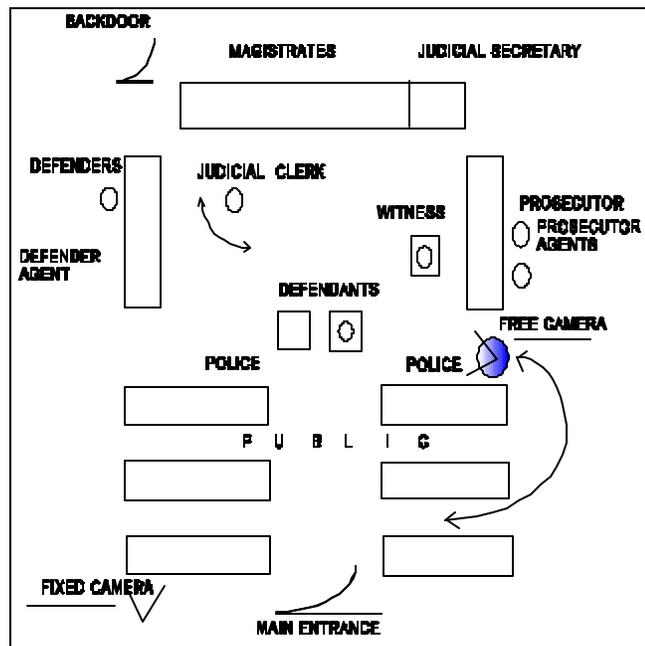
<i>Pragmatic functions</i>	PROGRAMME	ATTENTION	RHETORICAL QUESTION	ORDINARY QUESTION	Total
<b>A</b>	4	4*	0	15	19
<b>B</b>	10	42	5	5	62

\* No interrogatives have been found in this discourse which serve either the programming or the attention function, they are all used for the two communicative functions.

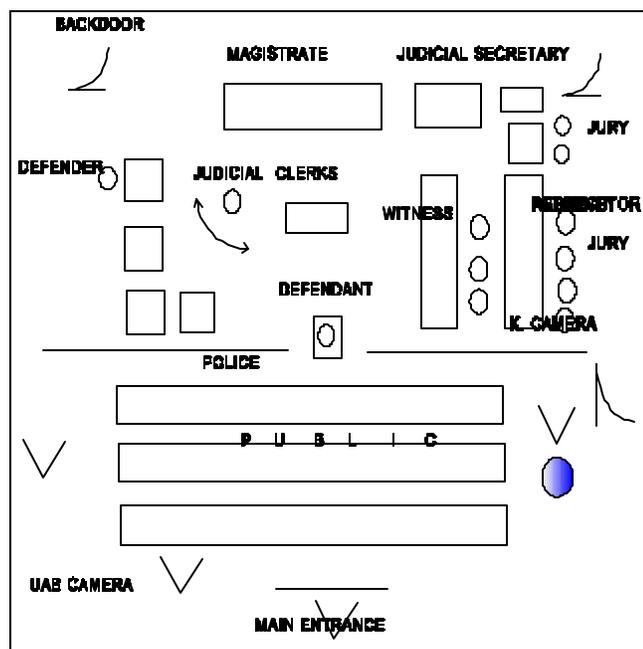
**ANNEXE**

**Figure 1**

Courtroom Composition and Cameras Disposition



1. Scheme of a courtroom as it was observed during a trial.



2. Scheme of a courtroom with jury as it was observed during a trial.

Audiencia Provincial de Barcelona, October, 1996. (Font: E. Ardèvol)

**Figure 2**

Correlation between main legal claims and assumptions and interrogatives

**Trial A: Closing speech**

**Prosecutor's main legal claims**

1. *Murder*

1. *cuando volvió J.C.M. por la mañana dijo "Ya está" Y "¿Ya está" qué? Pues que había acabado con la vida de M.J.A.M.*

[when J.C.M. came back on the morning, he said "That's it" And "That's it" what?] PRO/AT (A.0040)

2. *¿Por qué no se hizo?* [Why wasn't that done?] OQU<sub>open quote</sub> (A.0040)

3. *Lo que hay que decir es por qué no lo hizo la defensa si era un medio para des- para apoyar eh la la versión de su de su patrocinado* [what needs to be said is why didn't the defence do so, if it was a means to dis- to support eh the version of his client?]

OQU<sub>open quote</sub> (A.0040)

4. *¿A son de qué tiene que hacerle personarse la policía en una comisaría? Eso quizás salga en las películas cuando los fiscales de otros países tienen otras actuaciones.*

[why on earth did the police ask her to appear in person at the police office? That may be so in the movies, when the prosecutors from other countries have have different different behaviours.] OQU<sub>open</sub> (A.0043)

5. *Entendemos que fueron perfectamente válidas las declaraciones [...] Y ¿fue perfectamente válida por qué? Fue perfectamente válida porque en aquel [...]*

[We understand that her declarations were perfectly valid [...] And it was perfectly valid why? It was perfectly valid because in that [...]] PRO/AT (A.0042)

6. *Si [...] no lo entiende, pues decimos: "Está usted de acuerdo con lo que acaba de- de- declarar en comisaría?"*

[If [...] she doesn't understand it, well, we say: "Do you agree with what you just de- de- declared in the police office?"]

OQU<sub>quote</sub> (A.0044)

7. *"Lea usted. ¿Está de acuerdo?"*

[Please read this. Do you agree?] OQU<sub>quote</sub> (A.0044)

*"No le parece bien lo que ha declarado?"*

[Don't you feel good about what you declared?] OQU<sub>quote</sub> (A.0044)

9. *"Quiere modificar algo? Eso es lo que se dice. Después si se corta se ratifica [...]*

[Do you want to modify something? This is what one says. Then if she feels uneasy it gets confirmed] OQU<sub>quote</sub> (A.0044)

10. *si realmente M.F. esuviera de acuerdo con sus declaraciones en el sentido de la primera declaración, es decir de que no le podía imputar ningún hecho delictivo, no conocía nada de la relación de F.P. y J.C.M. con relación a la muerte de M.J.A., si realmente esto hubiera sido cierto, ¿por qué, por qué para la última declaración el la que se retracta del anterior –igual que ayer en el acto del juicio- por qué fue necesario citarla en varias ocasiones incluso oficiar, como consta en las actuaciones?*

[If M.F. really agreed with her declarations in the sense of her first declaration, that is that she could not charge any criminal fact, did not know the relation between F.P. and J.C.M. with respect to M.J.A.'s death, if that would have been true, why, why for the last declaration in which she withdrew the former –like yesterday in the act of the trial- why was it necessary to call her in various occasions, and even inform officially, as it is certified in the behaviour?] OQU<sub>open</sub> (A. 0046)

11. *Esta declaración última era a instancias de la defensa. Tardó más de un mes. ¿Por qué tardas más de un mes si estás, si con tu declaración puedes poner en libertad aquellas personas que que que en virtud de tus otras declaraciones las [...]*

[This last declaration was requested by the defence. It took over a month. Why do you take over a month if you are, if with your declaration you can set in freedom those persons who who who in virtue of your other declaration the [...]] OQU<sub>open</sub> (A. 0046)

12. *¿por qué si se hizo una denuncia de desaparición con la descripción tan buena que se hizo de la desaparecida no se dijo inmediatamente a los denunciantes?*

[why if a disappearance statement with so good a description of the disappeared one was made were the accusers not immediately told? ] OQU<sub>open</sub> (A.0047)

2. *Premeditation*

No interrogative sentence tokens occur in the presentation of this legal claim.

3. *Cruelness*

No interrogative sentence tokens occur in the presentation of this legal claim.

4. *Prostitution*

No interrogative sentence tokens occur in the presentation of this legal claim.

5. *Swindle*

1. *No era un seguro normal. Y ¿no era un seguro normal por qué? Por los beneficiarios.*

[It was not a normal insurance. And it was not a normal insurnace why? For the beneficiaries] PRO/AT (A.0024)

2. *Por los beneficiarios ¿cuáles serían los beneficiarios lógicos en este tipo de seguro? Los beneficiarios lógicos en este tipo de seguro, si son dos personas [...]*

[For the beneficiaries what would be the logic beneficiaries in this kind of insurance?] PRO/AT (A.0024)

3. ¿Para qué voy a estar en caso de mi muerte, voy a fijar como beneficiarios a los hijos, a los hijos propios, a los hijos de la persona que convive con él? Esto es absurdo de todo punto y es evidente [...]

[Why do I be in the event of my death would I determine the children as beneficiaries of my death, my own children, the children of the person who lives together with him?]

OQU<sub>open</sub> (A.0024)

4. ¿Por qué no contrató o suscribió un seguro igual, un seguro de jubilación igual que el que acababa de suscribir con con su mujer, S.R.T.?

[Why didn't he negotiate for or ratify a similar insurance, a retirement insurance like the one had just ratified with with his wife, S.R.T.?] OQU<sub>open</sub> (A.0027)

5. ¿Por qué no se empezó a gestionar el seguro hasta el diecisiete del doce del año noventa? Pues resulta que falleció en agosto, en el mes de agosto, y transcurrieron cuatro meses. OQU<sub>open</sub> (A.0053)

6. ¿por qué dejó transcurrir tanto tiempo?

[why did he take so long to do so?] OQU<sub>open</sub> (A.0053)

7. Por qué dejó transcurrir cuatro meses? Si además nos vamos a las declaraciones de J.N. que habían sido muy anteriores, resulta que nos dice que sí que había de esperar seis meses a cobrar el peguro para no infundir en sospechas. Coincide plenamente con lo que tenía ya planeado.

[Why did it take him four months?] OQU<sub>open</sub> (A.0053)

## Trial B: closing speech

### Prosecutor's main legal claims

#### 1. Known premeditation

**Interrogatives** (35 instances out of 62 interrogatives in the discourse)

1. Y como no era para él no iba a ser para nadie. ¿Para nadie cómo?

[And since she was not for him she would be for nobody. For nobody how?] PRO (B.0016)

2. ¿Por qué medios lo iba a conseguir? Causándole la muerte.

[By what means would he achieve that? Causing her death. PRO (B.0016)

3. Probablemente decidió también matarse él mismo. ¿Pero matarse cómo? Matarse de la misma manera que si hubiera planedado [...]

[He probably decided to kill himself first. But kill himself how?] PRO (B.0019)

4. ¿Saben el crimen perfecto, cuando el agresor o el delincuente no es hallado nunca porque es tan listo que consigue escapar y no hay juicio?

[Do you know the perfect crime, when the aggressor or the criminal is never found because he's so clever that he manages to escape and there is no trial?] AT (B.0019)

5. ¿Y él intentó escaparse cómo? Matándose, como se mata tanta gente.

[And he tried to escape how? Killing himself, like so many people do.] PRO (B.0019)

Y no lo previó en aquel momento, ¿eh?

[And he didn't plan it on that moment, right? AT (B.0021)

7. me refería a las cartas de suicidio y que por lo menos a mi parecer hasta la letra distinta tienen de una a otra. O sea, la del regalo es una letra completamente distinta de la otra. O sea que mm, vamos, puede ser que una sea de D.LL., ee pero las dos no. [...] Qué qué certeza tenemos de quién escribió estas cartas?

[I referred to the letters of suicide, which at least as I feel it, even the handwriting is different in the one and the other. So, the one from the present is a completely different handwriting from the other one. So, mm, well, one could be D.L.L.'s, ee but not the tow of them. [...] What certainty do we have of who wrote these letters?] RHQU (0037)

## 2. Cruelness

1. *además de matarla, y tan contrariado estaba por el rechazo de ella, que habría de hacerlo de la manera más brutal posible, más dolorosa para ella [...] alguno de ustedes, si no todos, probablemente todas se habrán pinchado con un alfiler alguna vez al desenfundar una camisa por ejemplo. Y eso duele, ¿verdad?*

[apart from killing her, and he was so annoyed for her rejection, that he had to do so in the most brutal manner, the most painful one for her [...] some of you, if not all, probably all have wounded herself with a pin in a shirt for instance. And that hurts, doesn't it?] AT (B.0020)

2. *es posible que ella hubiera fallecido en ese momento. Pero no en medio minuto, ¿verdad? En medio minuto no fue posible [...] murió desangrada.*

[it's possible that she had died at that moment. But not in half a moment, did she? In half a moment that was not possible [...] Se died of bleeding.] AT (B.0020)

3. *Porque ¿qué ha dicho el médico forense? Murió desangrada. [Because what did the forensic doctor say? She died of bleeding.]*

AT (B.0020)

4. *Murió desangrada, murió desangrada. "Shock hipobolémico". ¿Qué quiere decir eso? Que la sangre ha de caerse, ha de salir del cuerpo.*

[She died of bleeding, she died of bleeding. "Hypobolemic shock" What does that mean? That the blood has to fall out, has to get outside the body.] PRO (B.0020)

5. *Hasta que ha abandonado toda la sangre del cuerpo ha de pasar mucho tiempo, ¿verdad? [It must be a long time until all the blood in the body is out, mustn't there?] AT (B.0020)*

6. *bastantes días antes buscó una pistola y después un cuchillo que está ahí! La doctora M. necesitó dos manos para levantarlo. Lo ha dicho esta maána, lo recuerdan, ¿verdad?*

[several days before that he looked for a gun and then a knife which is over there! Doctor M. needed both hand to lift it. She said that this morning, you remember that, don't you?]

AT (B.0021)

## 3. No evidence of transitory mental disorder

1. *se llame "psicosis" eh eh "psicosis depresiva" o, no sé qué, no no ehmd- me da igual Yo no sé nada de eso, ¿eh? [...] Se le llame como sea, un loco es un loco.*

[call it "psychosis" eh eh "depressive psychosis" or I don't know what, no no ehmd- I don't care- I don't know anything about it, ok?] Whatever it may be called, a madman is a madman.] AT (B.0029)

2. *porque los médicos, ¿eh? Los médicos que le vieron en el Hospital del Mar nada más salir, los médicos que en su día le llevaron en el año ochenta-y-nueve, después de recuperar la consciencia en la UVI y en el coma, [...] los médicos no han visto nada de eso, nunca, nunca.*

[because the doctors, right? The doctors who saw him in the Hospital del Mar when he was just out, the doctors who then took him in the year eighty nine, after he got back to consciousness at the ICU and from the coma, [...] the doctors have never seen anything like this, never, never.] AT (B.0031)

3. *las enfermedades si son de aquí, ¿qué es? Pues la locura. Enfermedades, un enfermo. Una persona sana, un médico. Los médicos no han visto nada de eso. Nunca. Nunca.]*

[Diseases, if they are from there, what is it? Madness. Diseases, an ill, a healthy person, a doctor. The doctoras have never seen anything of this. Never. Never.] PRO (B.0030)

4. *a petición de la defensa, a petición de esta, un especialista en psicología clínica [...] no posee número de colegiado médico, ¿eh? Realizó unas entrevistas con D.LL.M. [asked by the defence, as its request, a specialist in medical psychiatry [...] he doesn't have a medical qualification number, hear? Carried out some interviews to D.LL.M.] AT (B.0031)*

5. *realizó unas entrevistas con D.LL.M. [...] ¿Qué día es hoy? Veint-, treinta. Hoy es día treinta. Hace treinta días. [Carried out some interviews to D.LL.M. [...] What day's today? The twenty-, the thirtieth. It was fifteen days ago.] OQU (B.0031)*

6. *Nadie se entrevistó con la familia de mi defendida. Es es la madre de un hijo del acusado, ¿eh? [Nobody interviewed my defended one's family. She's the mother of a son of the accused, right? AT (B.0031)*

7. *Está reconocido ese niño, esa niña mejor dicho. Cumplió u año hace poco, ¿recuerdan?*

[This boy has been recognised, this girl rather. She recently became one year old, remember? AT (B.0032)

8. *Los forenses, los médicos foren-, médicos, he dicho, ¿recuerdan? Médico, que sabe de enfermedades. [The forensic, the forensic doct-, doctors, I said, remember? Doctor, who knows about diseases.] AT (B.0032)*

9. *ve casos todos los días, pero no sobre el papel, ¿eh?*

[She sees cases every day, but not on paper, eh?] AT (B.0032)

10. *todos los días, ¿eh? Todos los días del año. Asuntos y asuntos y asuntos. [every day, right? Every day of the year. Issues and issues and issues.] AT (B.0032)*

11. *Cuarenta detenidos examinó la doctora T., cuarenta. ¿Quién da más?*

[Forty defendants examined Doctor T. yesterday. Forty, who gives more?] RHQU<sub>MT</sub> (B.0032)

12. *hubo un intercambio de información a ver que como reaccionaba y tal, un control exhaustivo próximo al día tres, ¿eh? No diez meses después.*

[There was an exchange of information, to see how he reacted and so, an exhaustive control near to the third, right? Not ten months after.] AT (B.0033)

13. *Los que en mejor disposición están o estuvieron fueron las forenses, que fueron todos los días después allí a verle donde estaba en cuidados intensivos, y vieron sus reacciones y hablaron con los médicos que estaban allí. ¿Cuidados intensivos qué quiere decir? Que no se despegan de esos enfermos en todo el rato. "Intensivo", todo el rato. PRO (B.0033)*

[Those who are in a better position or who were are the forensic, who went every day from there to see him where he was in the intensive care, and saw his reactions and talked to the doctors there. Intensive care, what does it mean? That they don't get rid of those patients in the whole time. "Intensive", the whole time.]

14. *él vio con esos datos que que podría ser que en aquel momento estuviera loco. Muy bien, pero también fue preguntado por otra cosa. ¿Se acuerdan?*

[He saw with those data that that it could be that he was mad at that moment. Very well, but he was also asked for another thing. Do you remember?] AT (B.0035)

15. *¿Se acuerdan ustedes?*

[Do you remember?] AT (B.0035)

16. *"Oiga, D.LL. estuvo loco el tres de Enero, ¿verdad?*

["Listen, D.LL. was mad on the third of January, was he not?]

AT (B.0035)

17. *"Pues podría ser que sí, porque dde la depresión, a él... No sé, como esto de los nervios que" ... Yo no sé qué, de verdad, créanme, ¿eh?*

["Well, it could be, because of the depression, to him... I don't know, as this nerves thing that" I don't know anything, really, believe me, right?] AT (B.0035)

18. *No estoy haciendo ningún apoyo. Yo no sé nada de psiquiatría ni falta que me hace, pa' eso están los médicos, pa' explicarnos las cosas, ¿verdad?*

[I'm not supporting anything. I don't know anything about psychiatry and I don't need to, that's what doctors are for, to explain things to us, isn't it?] AT (B.0035)

19. *eh... ni tampoco sé como funciona este cuchillo, ¿eh? Pero ustedes seguramente más que yo tienen sentido común, es decir que algo de los nervios y la depresión y todas las contrariedades y la- le llevaron a que ese día estuvo loco, o puede ser que estuviera loco.*

[eh... I I don't know how a knife works either, ok? But you are probably more than myself have commonsense, I mean that something on nerves and the depression and all those misfortunes and the- took him to be mad on that day, or it could be that he was mad on that day. ] AT (B.0035)

20. *Si ustedes dicen que estaba loco ese día. Y no podrán decir que es que estuviera loco siempre porque es que nadie lo ha dicho, ¿eh?*

[If you say that he was mad that day. And you will not be able to say that he's always been mad because nobody has said so, have they?] AT (0039)

#### 4. Treachery

1. *los dos vecinos estuvieron con ellos en el piso. [...] Si hubiera estado vacío ese piso, en pleno pasillo, o lo que hubiese sido peor: si M.M. y su marido no hubieran tenido abierto ese piso es bien probable, ténganlo en cuenta, ¿eh? Es bien probable que la cosa hubiera acabado en el piso que ocupaba E.*

[The two neighbours were with them in the flat. [...] If this flat had been empty, in the very hall, or what would have been even worse: if M.M. and her husband had not have their flat open it is very probable, bear it in mind, ok? It's very probable that it all had occurred in the flat the E. occupied.] AT (0022)

2. *¿Y quién había en el piso que ocupaba E.? Los críos. A cargo del mayor de nueve años. Afortunadamente en esta historia desgraciada por lo menos hay un elemento del que nos podemos felicitar. Y es que vivan esos niños.*

[And who was in the flat that E. occupied? The kids. In the charge of the oldest of nine. Fortunately in this ill-fated story at least there is an element for which we can congratulate ourself. And it is that these kids are alive.] PRO (0022)

#### Prosecutor's main legal assumptions

#### Interrogatives (16 instances out of 62 interrogatives in the discourse)

##### 1. The jury's institutional role

1. *No crean, no crean que si llegan a la conclusión de que el acusado no es culpable porque aquel día estaba loco, que ustedes esto lo van a pensar, ¿eh?*

[Don't think that, don't think that if you come to the conclusion that the accused was not guilty because he was mad on that day, you will have to think about this, ok?] AT (0039)

2. *Ustedes ¿eh? son el tribunal. Ustedes, nadie más. Nadie más.*

[You, are the tribunal. You, nobody else. Nobody else.] AT (0039)

##### 2. The prosecutor's institutional role

No interrogative sentence tokens occur in the presentation of this legal assumption.

##### 3. The defendant is not obliged to tell the truth

1. *Las películas americanas, el acusado, eh, el acusado jura. "¿Jura usted-? [...] ¿jura ust-? la biblia ¿jura usted decir verdad, toda la verdad y nada más que la verdad? Lo han oído ustedes miles de veces. En América si miente, habrá oído hablar, "delito de perjurio" y se va a la cárcel. En América, aquí no.*

[American films, the accused, eh, the accused swears. "Do you swear-?" The bible "Do you swear to tell the truth, the whole truth and nothing but the truth?" You've heard it thousands of times. In America, if he lies, you'll surely have heard, "crime of perjury" and he goes to prison. In America, not here.] OQU<sub>m</sub> (B.0026)

2. *Es posible que D.LL.M. realmente no se acuerde de lo que ocurrió ese día. Es posible ¿eh? [...] Ahora bien, [...], no se acuerda, no miente, no se q-, es que no se acuerda. Todo lo que no ocurriera ese día tres de Enero ahí ya no estoy dispuesto a admitir como defensor que soy de E. que no se acuerda. Miente por tanto D.LL.M.*

[It is possible that D.L.L.M. does not really not remember what he did on that day. It's possible, right? [...] But, [...], he doesn't remember, he's not lying, I don't know, he just doesn't remember. Everything that happened on that third of January there I'm not going to admit, as E's defender that he doesn't remember. So, D.L.L.M. is lying.] AT (B.0027)

4. *The victim's profession is not a crime and must be respected*

1. *Durante toda la relación, y esto sin ningún género de dudas, D. conocía cual era el trabajo de E. ¿Y cuál era ese trabajo? E. se dedicaba a la prostitución, por decir algo desde siempre. Era su medio de trabajo, era profesional de eso. Circunstancias bastante desgraciadas ya entonces, [...], le llevaron a esa único, a ese único modo de ganarse la vida. Digna de compasión es mi defendida por llegar a una situación sin duda no libremente decidida por ella.*

[During the whole relationship, and without any doubt whatsoever, D. knew what was E.'s job. And what was that job? E. worked as a prostitute, since always let's say. It was her means, she was a professional in this. Rather miserable circumstances then, [...], led her to that only, to that only way to make a living. My defendee one deserves thus compassion for having got into a situation undoubtedly not freely decided by her.] PRO/AT (B.0019)

2. *Preguntas que hicieron los propios miembros del jurado a algunos testigos, les plantearon ustedes la duda de qué manera, de qué manera se inició esta persona en la prostitución. No lo sabemos, pero es bien fácil intuirlo. Como siempre, no hay otro medio de vida. Salvo que ustedes piensen que se trata de vicio, como algunas personas opinan. Pero aunque así fuese: ¿Era una mujer libre o no para dedicarse a eso?*

[Questions that asked the members of the jury proper to some witnesses, you put forward the doubt, in which way, in which way this person started prostituting herself. We don't know, but it's quite easy to guess. Like always, there's no other means. Except if you think that it's vice, as some people think. But even if it were like this: Was she a free woman to do this or not? RHQU (B.0010)

5. *If the accused is charged for transitory mental disorder he is set free*

1. *No se engañen ustedes, ¿eh? No se engañen, no se engañen ustedes.*

[Don't go deceiving yourselves, ok? Don't go deceiving yourselves.] AT (0039)

2. *Si ustedes dicen que estaba loco ese día. Que no les cuenten otra cosa, ¿eh?*

[If you say that he was mad that day. Don't let them tell you something else, right?] AT (0039)

3. *Que yo sé lo que me digo. D. no irá internado a un a un centro psiquiátrico, ¿eh?*

[Cause I know what I'm talking about. D. will not be put into a psychiatric center, ok?] AT (0039)

4. *La ley no prevé esto. A ustedes les da igual pero ténganlo en cuenta, ¿eh?*

[The law does not foresee this. You don't care but have it in mind, will you?] AT (0039)

5. *Si D. sale condenado por lo que nosotros los leguleyos y tal decimos "trastorno mental transitorio", ¿eh? Es decir que estaba loco solo y exclusivamente ese día, D. no va a a un internamiento psiquiátrico a seguirle un tratamiento y tal. No, no, no. D. va a la calle, señores del jurado, a la calle.*

[If D. get charged for what we pettifogging lawyers and all call "transitory mental disorder", right? That is, that he was mad only and exclusively on that day, D. does not go to to a psychiatric hospital to receive some treatment and so. No, no, no. D. goes out to the road, members of the jury, out to the road.] AT (0039)

6. *A lo más, a lo más, tendría una cita con un médico, a lo mejor incluso, fíjense, dos veces por semana, ¿eh?*

[At most, at most, he'd have an appointment with a doctor, maybe even, hear, twice a week.] AT (0039)

7. *Y ahora una entrevista de esas, "¿Cómo te encuentras, D.?"*

[And now one of these interviews, "How are you doing, D.?"]

OQU<sub>quote</sub> (0039)

8. "Pues parece eso" Y nada más, ¿eh?  
 ["Well, it seems this" And nothing more, ok?] AT (0039)
9. Ténganlo presente, ¿eh?  
 [Bear this in mind, ok?] AT (0039)
10. Porque apelo a su responsabilidad en ese sentido, ¿eh?  
 [Because I call on your responsibility in that respect, ok?] AT (0039)

## NOTES

1. I am especially thankful to my colleague and friend Joaquin Comín for his work on the application of the data analysed to the Spanish version of the statistics programme ALCESTE (Max Reinert, University of Toulouse) for an objective verification of the results presented here. Although the statistical results seem to support our claims they have not been included for space reasons.
2. "Culture" is understood here in Casanovas' (1999) sense as "knowledge, behavior and organization".
3. See especially Casanovas and Poblet (1997) for an analysis of the new communicative patterns in jury trials, which coexist with conventional legal formulas. One of the discourses they study is the writ of accusation before the jury used here.
4. See the diagram on the distribution of the participants in the courtroom in the ordinary and in the jury trial (source: Ardévol 1993, 1996) in Figure 1 of the annexe.
5. See Poblet (1999) for the study of a case in which the dissociation between argumentation and discourse form causes a paradox of communication. Specifically, a judge wants to leave the last decision about the case to the accused. When expressing his will to do so, however, the use of legal terminology and a far too complex discourse structure closes the defendant's access to the communication channel.
6. The methodological tools for the pragmatic codification have been the so-called *pragmatic transcribers* (see Casanovas 1994, 1998a, 1998c, 1998d, Casanovas et al. 1995; 1988; Poblet et al. 1998). They characterise the communicative flow through the identification of the metacommunicative elements which cognitively frame the construction of speech. This particular internal framing is constituted by a mobile set of dynamic micro-elements, which indicate the continuous change of the mental setting through which the different contexts of communication are set up. Critically, these are not only the projection of technical knowledge of the language, but also of the analyst's ethnographic experience acquired in the field.
7. That is made especially clear by the war metaphors that legal tacticians use when referring to the process before the jury:  
*"... será entonces cuando la fiscalía haya de enfrentarse a un enemigo mayor en juicios donde se esayarán los medios más arrolladores de que disponen los más poderosos. Contra este potente adversario, es de esperar que el Ministerio Fiscal cuente con un arma propia, cual es la experiencia compartida en la llevanza de los casos de sangre, bagaje que no poseerán los aludidos despachos."*  
 [... it will then be when the office of the public prosecutor will have to face a greater enemy in trials where one will try the most destructive means of the most powerful. Against this strong adversary, it is to be expected that the Ministry of the Public Prosecutor will count on its own weapon, in the common experience of blood cases, a knowledge that the said offices do not have] (Cavero 1998: 11-12).
8. See also Casanovas and Poblet (1997). See also Casanovas et al. (1998) for an analysis of the implicit order of the discourse, what they call a "language through language".
9. This reliance on and similarity with written language may explain the low number of studies on spoken language in the courtroom. Naturally, there are exceptions to this general tendency. Danet (1980) contains an extensive bibliography and review of studies on language in legal processes from a social scientific viewpoint.
10. See for instance O'Barr (1982:17ff.), quoting from David Mellinkoff's *The Language of the Law* (1963), on the extreme precision of legal language. The explicitness of legal language has been long shown by critics:

"When a man gives you an orange, he simply says: "Have an orange." But when the transaction is entrusted to a lawyer, he adopts the form: "I hereby give and convey to you, all and singular, my estate and interest, right, title, claim and advantages of and in said orange, together with its rind, skin, juice, pulp, and pips and all rights and advantages therein and full power to bite, suck, or otherwise eat the same away with or without the rind, skin, juice, pulp and pips, anything hereinbefore or hereinafter or in any other means of whatever nature or kind whatsoever to the contrary in anywise notwithstanding" (Hager 1959:74-75, in O'Barr 1982: 4).

11. Schiffrin 1987; Redeker 1990; Fraser 1990, 1996; Knott and Sanders 1998; Kroon 1998; Lenk 1998; Risselanda 1998, Romera 1998.
12. Significantly enough, traditional legal language (especially written legal language) also makes extremely limited use of anaphora (pronouns, demonstratives, etc.) in favour of repetition of full phrases and references (O'Barr 1982: 19). When deictics are used to refer to the speaker, this is generally done through the royal 'we'. In the two discourse under comparison, absolutely all deictics used to refer to the speaker are instances of the royal 'we' in discourse A., whereas in discourse B. they are all regular first person singular 'I' or the ordinary plural 'we' to refer to the prosecutor and the other professionals of the law, the prosecutor and the jury, etc. Also, the participants in the courtroom situation are always referred to as instantiations of legal roles (with one exception), whereas they are presented either as individuals or as legal participants in discourse B.
13. Memory's short life is clearly expressed in Givón (1993), who observes that memory can only store from two to five clauses, which amount to only 8 to 20 seconds of orality.
14. HAGER, J.: "Let's simplify legal language", *Rocky Mountain Law Review* 32/1959, p. 74-86.
15. This involves taking the claim of construction grammarians (eg. Fillmore, Goldberg, Zwicky, etc.) one step further. They suggest that analysed grammatical constructions such as the ditransitive construction are Saussurean signs, that is form-meaning pairings. Our claim is that sentence types are describable by a similar structure as form-communicative function pairings. Grammatical constructions would thus be associated with semantical information whereas sentence types would be associated with metapragmatic information.
16. See also Pascual (1997a, b and 1998) and Pascual and Poblet (1998).
17. Bakhtin (1981) distinguishes the *speaker* (the actual utterer of the utterance) from the *locutor* (the voices set responsible for what is said in the discourse). For instance, if the prosecutor says "And then the defendant will surely go 'I'm innocent'", the whole utterance is produced by the prosecutor as the utterer, it is also ascribed to the his own voice, but the bit "I'm innocent" would be ascribed to the defendant, as the prosecutor views him. Ducrot (1988) identifies a third element, the *enunciator* (an abstract point of view inner to the utterance). For instance, the negative construction is argued to involve an enunciator who states what is negated and another one who negates that statement.
18. The term *communicators* is used here in order to distinguish our implicit questioner and answerer from Bakhtin's pragmatic *locutors* (see previous footnote), and Ducrot's semantic *enunciators*.
19. Naturally, all sentence types involve a dialogue when they are *mis en oeuvre*, as speech is dialogic in nature. The communicative situation is however made more salient in the case of interrogatives -versus declaratives- because they prototypically induce the addressee to participate. It is interesting to note that the other prototypically 'conversational sentence types', namely imperatives (that call for an external -usually physical- response) and exclamatives (that express the speaker's feelings on what is introduced in the discourse) share a similar behaviour in legal speeches before the ordinary court and before the jury. As it should be expected, no instance of imperatives or exclamatives occurs in the ordinary trial, where that cannot be said of the jury trial (eg. *Ténganlo en cuenta* [Bear that in mind] B.0039, *¡Dolor! Treinta-y-una puñaladas una detrás de otra!* [Pain! Thirty-one stabs, one after the other!] B.0020).
20. GOODWIN, C.: "The negotiation of coherence within conversation", in GERNSBACHER, M.A. and GIVÓN, T. (ed.): *Coherence in spontaneous speech*. Amsterdam/Ph., John Benjamin, 1995, p. 117-135.
21. The multiplicity of functions related to the rhetorical question have been known since long. See for instance Aristotele's definition below:  
 "The object of this form [for the interrogation] is to enforce an argument; or to take the adversary by surprise and extract from him an unguarded admission; or to place him in an awkward dilemma... It [the rhetorical question] may be made in this way subservient to proof." (quoted Cope 1970: 362, in Ilie 1994: 10).

This notwithstanding, and in spite of the fact that there is no accepted definition of rhetorical questions (see Ilie 1994: 42), from the different definitions available in the literature, the one used here will be due to Ilie (1994), who defines them as sharing the following features:

- (i) the discrepancy between the interrogative form of the rhetorical question and its communicative function as a statement
- (ii) the polarity shift between the rhetorical question and its implied statement
- (iii) the implicitness and the exclusiveness of the answer to the rhetorical question
- (iv) the addresser's commitment to the implicit answer
- (v) the multifunctionality of the rhetorical question.

22. This definition is opposed to that of many traditional studies (cf. Laudsberg 1967, Leech 1973, Cuddon 1979, Longman Dictionary of the English Language 1988), which identify rhetorical questions by their expecting no answer. As it is argued in Pascual and Poblet (1998), this definition poses serious theoretical problems, as it is founded on the speaker's communicative intention. See also Ilie (1994) for an in depth and insightful development and criticism of this view.

23. The interpretation of the rhetorical question as an assertion is made explicit in the use of the conditional tense in the utterance below (from the discourse before the jury analysed here):

*Pero, ¿Cómo es admisible que alguien diga que ganaba siete mil pesetas diarias limpiando oficinas? ¿Dónde está esta oficina, que la limpiaría yo mismo?!*

[But how can it be accepted that someone says that she earned seven thousand pesetas a day cleaning offices? Where is that office 'cause I would clean it myself?!] (B.0028).

Clearly, as it is suggested in Pascual (1998: 5), the conditional use is licensed by the mental activation of the assertion "there is no office for which one can earn seven thousand pesetas a day". See also Ilie (1994: 17ff.) for an overview of translational approaches to rhetorical question and experiments on note-taking, which support this analysis.

24. Although no specific formal features linked with rhetorical questions have been observed in the English language, see Pascual 1998, for the theoretical implications of a broader definition of form (including prosodic, lexical and kinetic information). See also Ilie (1994: 21-22) for an overview on studies of language which do show particular linguistic markers to distinguish rhetorical from ordinary questions (i.e. Mandarin Chinese, Otomi, Korku, Vagla, Sunwar, Waama, and Ese Ejja).

25. It should be noted, however, that a similar pragmatic device does occur in this discourse, namely the open question which is left unanswered (commonly confused with the rhetorical question, see Ilie 1994). This other use of questions is dealt with in the next section.

26. As Ilie (1994: 42) outlines, rhetorical questions have traditionally been described not as being semantically statements, but "strong assertions" (Quirk et al. 1972. 1985; Pope 1976; Best 1982; Meibauer 1986; Collins English Grammar 1990; Pope 197), expressing "intense conviction of a certain view (Leech 1973), "expecting the audience to be totally convinced about the appropriate reply" (Gray 1984), as they assert something that "cannot be denied" (Wales 1989).

27. An even more powerful argument, however, is provided by the answer to a rhetorical question, as it is conceived as the cancellation of what is understood as a strong statement. See for instance the following discourse from a counsel for the defense, who argues in favour of the victim's suicide instead of murder.

*Nos lo dijo la tía, nos dijo que veía a G. angustiada y a J.M., a los dos por problemas económicos. "¿Quién no sufre por problemas económicos?" nos dice la acusación particular. Yo se lo diré: No sufre por problemas económicos una niña de diecisiete años.*

[Her aunt told us, she told us that G. and J.M. looked very anxious, both of them, for financial problems. "Who does not have financial problems?" Says to us the Private Prosecutor. I will tell you: A kid of seventeen does not have financial problems.] (0025-0026).

28. There is however one instance of a question use, which may be interpreted as contradicting this claim:  
*ahora me falla la memoria, pero desde luego, en la primera quincena de este mes... ¿Qué día es hoy? veint- treinta, hoy es día treinta. Hace quince días.*

[I cannot remember now, but in any case, in the first fortnight of this month... what day's today? it's the twent-, it's the thirtieth today. It was fifteen days ago] (B. 0031).

This does not constitute a real question asked at the jury for its member to answer. Rather, it seems to help the speaker in the organisation of his ideas. He is asking himself in order to help himself think. In that sense, then, this is

- a case of a psychopragmatic rather than sociopragmatic use of a question (Marcelo Dascal in personal communication).
29. Strictly speaking, one case can be observed of a context-creator question in: *pues le decimos, está usted de acuerdo con lo que acaba de declarar en la comisaría, lea usted, está de acuerdo? No le parece bien lo que ha declarado? Quiere modificarlo?* [so we ask him "do you agree with what you declared in the police station? Don't you feel good about what you declared? Do you want to modify it?"] (0043). The question serves as an illustration of the kind of interaction event suggested by the prosecutor.
  30. This particular question use occurs in great frequency in the counsel' final report (see for instance Pascual and Poblet 1998). This is due to the legal role to that part, namely, the opening up of new possible interpretations of the facts for which one has no definite proof but which favour the defendant.
  31. In fact, a change in legal language due to a non-linguistic phenomenon has already been observed by Bourcier (1996, summarised in Casanovas 1999), namely the change in legal writing as a result of the introduction of technology.

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