Questions in legal monologues: Fictive interaction as argumentative strategy in a murder trial*

ESTHER PASCUAL

Abstract

In the adversarial legal system, talk-in-interaction is extremely fixed and regulated. Such rigidity motivates the emergence of what may be termed 'fictive interaction' (Pascual 2002). This constitutes a conceptual channel of communication underlying the observable interaction between participants. Regardless of its overt interactional structure (monologue, dialogue), I assume that Western courtroom communication typically involves an implicit trialogue between (i) the prosecution, (ii) the defense, and (iii) the judge/jury. The focus is on questions in legal monologues, which have barely been studied. Four complex instances of 'fictive' questions (and question–answer pairs) from a prosecutor's closing argument and rebuttal are discussed: (i) a set of expository questions and answers; (ii) a subsequently answered rhetorical question; (iii) a clausal question used as a definition; and (iv) a word-level question characterizing the prosecutor's own argument. These questions are argued to set up an interactional structure that maps the fictive trialogue underlying the discourse and overall situation of communication they occur in. They also show that fictive interaction can serve as an effective argumentative strategy manifested at the discourse as well as the sentential and intra-sentential levels. This paper is based on fieldwork on a high-profile murder trial I observed in a California court in 2000.

Keywords: *questions; monologues; fictive interaction; fictive trialogue; courtroom communication; argumentation.*

1. Introduction

Language-in-interaction plays a crucial role in the courtroom. In the adversarial Anglo-American system, the importance of verbal interaction is

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translated into a set of pre-established and highly regulated communicative structures (cf. Atkinson and Drew 1979; Adelswärd et al. 1987; Cotterill 2003). At trial, conversational roles are strictly allocated and turns are extremely constrained. The prosecution and defense cannot address each other during the trial, nor can the judge or jury make their feelings about the case explicit, pose questions directly to attorneys or witnesses, or interrupt the discourse of the legal professionals. The court's fixed interactional pattern motivates the emergence of what I have previously characterized as 'fictive interaction' (Pascual 2002). This constitutes an invisible—although equally present and critical—channel of communication underlying the observable interaction between participants. Such interaction is not imaginary or fictitious, since it is not conceptualized as occurring in a fantasy world or even in a hypothetical or counterfactual scenario. Instead, it is *fictive* as opposed to *factive*, in the sense of Talmy (2000 [1996]), as it is entirely conceptual in nature, even though it may emerge from the actual interaction in the here-and-now. For instance, many communicative exchanges in court do not occur for their own sake, but as 'display talk' for a third party (Goffman 1981: 137). A clear example of this is the witness testimony phase. This appears to be a dyadic interaction, but is in effect a 'multi-party' one (Cotterill 2003: ch. 4). Specifically, since the jury is the ultimate trial adjudicator, they constitute the primary intended recipients at whom the whole interaction between attorney and witness is aimed, even though (in American law) they are not verbally involved in the questioning process (cf. Goffman 1981: 140; Clark and Carlson 1982: 340–341; Levinson 1988: 197; Cotterill 2003: ch. 4). In my terms, the examination of witnesses involves an overt *factive* type of interaction between the attorney asking questions and the witness answering them. Simultaneously, however, it also involves an unvoiced *fictive* communicative channel between the attorney and witness exchanging turns, and the silent jury 'overhearing' the exchange.

In this article, I study instances of fictive interaction underlying what, objectively speaking, are monologues from one trial participant to others. The focus is on questions in the discourse of attorneys to the jury. This type of questions has barely been discussed in the literature. Instead, attention has mainly focused on dyadic questions and answers in the presentation of evidence through witness testimony (cf. Danet et al. 1980; Woodbury 1984; Drew 1992; Luchjenbroers 1997). Interestingly, the question–answer pattern is overwhelmingly present in attorneys' 'monologues'. This is especially the case for closing argument, which constitutes the most important communicative event in court produced by one sole utterer with no interruptions by or verbal involvement of other trial participants. My basic assumption is that questions in monologues play a

central role in legal reasoning and argumentation, and are often used as powerful rhetorical devices (Toulmin 1958; Perelman and Olbrechts-Tyteca 1971; Walter 1988).

Four particularly complex questions and question–answer pairs will be studied in detail. These come from a prosecutor's closing argument and rebuttal in a murder trial. When I asked this prosecutor, D. G., about his frequent use of the question–answer pattern, he replied (Int.2-DA: 13):

> I'm answering questions that I think the jury will be asking in, in the jury room, [. . .] I'm just anticipating! I'm asking what a logical person might ask. Now, 'what about this, mister G.?' 'What about this?' I wanna answer *all* the questions!

In the following pages I hope to show that through the use of 'fictive' questions and question–answer pairs in his monologues, this prosecutor was doing much more than speaking for the jury and satisfying questions they might have.

2. Data

This paper is based on fieldwork data from a high-profile murder trial I observed in a county court in California in the fall of 2000 (Pascual 2002). The defendant in this case was a financial manager accused of brutally killing his wife in the couple's home so he could collect her pension and three life-insurance policies, of which he was the only beneficiary. The victim's sudden death occurred fifteen days after she suffered from a serious head injury, for which two separate physicians had no medical explanation. No clear evidence or alibi was provided to prove the defendant not guilty and he was also the only witness for the defense. The transparent incriminatory nature of the evidence—admitted by the chief deputy defense attorney in my interview with him—contrasted with the defendant's insistence on his innocence. He alleged that he was at work at the time of the crime and at first described his wife's death as a medical accident. The proceedings lasted two full weeks, after which the jury found the defendant guilty of attempted murder and first-degree murder for financial gain with lying in wait. The defendant was later sentenced to life in prison without parole plus seven years.

This study relies on different sources of data, primarily (i) the official transcripts; (ii) the entire case file; (iii) field notes from the direct observation of the hearings; (iv) a thirty-minute video-recording of the prosecutor's closing argument rebuttal; (v) written and visual media coverage; (vi) informal conversations with six professionals related to the case; and

(vii) in-depth interviews with five trial participants and three attendees. Written informed consent was obtained from all interviewees. For privacy reasons, only initials are used. The fragments of discourse to be analyzed in more detail are from the prosecutor's closing argument and closing argument rebuttal, which together lasted about 3 hours and 20 minutes and took a total of 89 pages of the official transcript. This was a highly skillful and popular attorney, once nominated Prosecutor of the Year, who earned multiple victim-service awards and was recently appointed Superior Court Judge. At the time the trial studied here occurred, he had successfully prosecuted over a dozen high-profile domestic violence and homicide cases and was the first prosecutor in his state to win a death penalty case. In order to gain a better understanding of this prosecutor's views on law and litigation beyond what he told me in a one-hour feedback interview (Int.2-DA), I examined an interview he gave to the local press (*The San Diego Reader*, Dec. 2002, p. 44) and the audio tape of a lecture on 'prosecuting fatal child abuse' addressed at other prosecutors.[1] I could also obtain video recordings of the NBC reality television program *Crime & Punishment*, which features this attorney prosecuting a no-body murder case, which he won, and giving legal advice to colleagues. The choice of focusing on the speech of this prosecutor was motivated by the availability of these data, his obvious success and outstanding communicative skills, and the great amount of fictive questions and question–answer pairs that he used throughout his discourse at the trial observed.

3. Legal trialogues and triadic questions

In a public lecture, the prosecutor in this case defined a trial as 'a battle for sympathy'. That is, a competition between prosecution and defense to win the jury's sympathy for the victim or the accused, respectively. Owing to the strict rules of courtroom interaction, this three-party structure is translated into an indirect triadic communicative channel. As Figure 1 shows, I regard the fundamental underlying structure of Western courtroom interaction as a fictive trialogue between (i) the prosecution, (ii) the defense, and (iii) the judge/jury.[2]

In the default case, the words of an attorney at trial—whether addressed at a witness or the final evaluator(s)—are produced in order to convince the judge/jury of her version of the facts and simultaneously challenge or counter-argue the (anticipated or previously expressed) views of the opposite team. It is in this sense that I do not view the basic interactional structure underlying legal monologues as a mere 'two-way

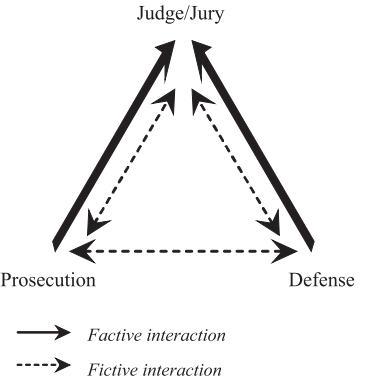

Figure 1. *Fictive trialogue*

communication' or 'dyadic conversation' between the attorney speaking and the judge/jury counterpointing the attorney's words with an inner discourse of their own (Harré 1985; Walter 1988: 110–112, 178, 206–207; Stygall 1994: 176). In my view, ordinary legal discourse is not dialogic but trialogic. The attorney is not only speaking for the judge/jury. S/he is simultaneously also taking the voice of the opposite team and/or indirectly addressing them in order to challenge or refute their argumentation and defend his/her own version of the facts. I sustain that this basic underlying interactional pattern is independent of the overt communicative structure. Thus, it holds for the witness testimony phase (objectively a dialogue) as well as for the opening statement and the closing argument (objectively monologues). In the interest of space and parsimony the fragments of data to be discussed in this article will all be from the closing argument phase.

As mentioned in the introduction, this study deals with questions and question–answer pairs. I suggest that in courtroom discourses these usually serve a double persuasive function, which mirrors the basic underlying triadic structure of the Western legal proceeding outlined above. This function is (i) turning silent addressees into co-constructors of discourse and (ii) challenging or disproving the version of the facts proposed by the opposite team—which may be shared by skeptical jury members—or alternatively counter-arguing a prior or anticipated future attack on one's own version of the facts. By posing questions the jury may have and subsequently answering them, attorneys fictively engage in a question–answer exchange with them (Walter 1988: 105; Stygall 1994: 176). Jurors are thus engaged in active reasoning, as they are being incited to seek out for themselves the corresponding answers to the questions being

produced. Critically, what to the best of my knowledge has been generally overlooked by scholars is that by asking open questions and leaving them unanswered, or alternatively, uttering questions that the opposite team may have—and may or may not have already verbalized—and subsequently answering them, attorneys are doing something more. They are either fictively challenging the other team to *answer* hard questions or *responding* to them, if often in an indirect manner. This is very much how the prosecutor under study explained this aspect of questions in legal monologues (Int.2-DA: 12):

I understand the defense will bring up those questions in their closing argument, so I bring them up myself, and I *defeat* them. So when the defense brings them up, they've already heard it! They, th-the jury knows what my *response* is the defense argues [for].

4. Analysis

Out of the 163 questions (excluding quoted ones) that the prosecutor produced in his closing argument and rebuttal, four types were selected for detailed analysis. These are (i) a set of expository questions followed by their corresponding answers; (ii) a subsequently answered rhetorical question; (iii) a clausal question used as a definition; and (iv) a word-level question characterizing the prosecutor's own argument. These four questions and question–answer pairs will be suggested to involve fictive interaction. Clearly, no overt answer to them seemed to be required or expected from addressees and overhearers, since an attorney's closing argument cannot be interrupted. Nor did any of the questions and question–answer pairs to be discussed constitute ordinary direct quotations of some previously produced questioning. At the same time, they all seemed to set up and reproduce the assumed triadic participant structure of the courtroom, in which an attorney's interpretation of the case is presented to the judge/jury for evaluation in opposition to the opponent's interpretation of the same facts. More generally, the questions chosen for analysis are particularly interesting, since they reflect the underlying trialogic structure in the situation of communication at the discoursal as well as the sentential and intra-sentential levels.

In the examples to be discussed, direct quotes from the prosecutor's speech come from the official court transcript, enriched with minimal paralinguistic information (e.g., [laughs]) and clarifications (e.g., [victim]) in square brackets and italics for prosodic emphasis (e.g., '*why?*') from my field notes and from the videotape (in the case of the closing argument rebuttal, where an audiovisual record was available).

4.1. *Triadic expository questions*

The prosecutor in this trial made extensive use of expository questions in his closing argument and rebuttal. As many as 105 out of the 163 'fictive' questions the prosecutor produced in his speech were used to organize his argument. In fact, it is not unusual for attorneys to begin their arguments by presenting a problem, often by asking a question to be subsequently answered (Toulmin 1958).

In this section, I will discuss a set of (subsequently answered) expository questions uttered by the prosecutor at a particular point in his closing argument. The fragment to be discussed is the following:

(1) (Vol. 6, 1423: 3–1423: 14)
1 Now, is there any proof of the defendant's story?
2 Is there anything to corroborate what he has to say,
3 or must we rely on the direct evidence of the defendant?
4 Did he log onto a computer that night at work? No.
5 Did he log onto a computer at home? No.
6 Did he make any phone calls from work? No.
7 Did he use the fax machine? No.
8 Did he call his sister when he allegedly
9 got the phone in his hand to go up—in that morning? No.
10 Did he call his sister as he was going up the stairs
11 with the cordless? No.
12 Did he get a receipt from Burger King or Jack-in-the-Box?
13 No.
14 Is there any proof,
15 *other than the defendant's word*,
16 that he wasn't there that night? No.

In (1), the prosecutor presents one of his main arguments against the defendant's plea of not guilty in summarized form. This argument appears as a hierarchy of expository questions. First, the issue to be dealt with is introduced by means of two interrogatives (see lines 1–3). These seem to be produced from the position of the devil's advocate, namely the defense team and skeptical jurors, by challenging the prosecutor to prove his case. Counter to common discourse practice, the prosecutor's own answer does not come with a simple 'yes' or 'no', nor with a declarative or a piece of narrative. Rather, it comes with a long sequence of expository yes/no questions followed by their corresponding answers. The presuppositions carried by each set up two alternative scenarios: (i) the affirmative one, which, if proved true, would justify and provide legal evidence of the defendant's absence from the crime scene at the time of the murder and

thereby point to his innocence; and (ii) the negative one, which, if proved true, would not justify or provide legal evidence of the defendant's whereabouts at the time of his wife's murder, and—in the light of the overwhelming evidence against him—point to his guilt. The latter scenario gradually emerges as the one applying to the case at hand in the negative answer to each question. This use of the question–answer pattern helps to build up the prosecutor's argument steadily to a crescendo, enhancing thereby its persuasive power. It also guides the jury's reasoning process by inviting them to consider the relevant issues (what would support the defendant's story, if proven) and try to seek the answers to the questions raised during the trial and their implications for the case. These questions are indirectly also posed to the defense, who was unable to provide exculpatory evidence of the defendant's location and activities at the time of the murder.

Critically, the overall discourse structure in (1) also seems to fulfill a nontrivial intertextual function. It consists of a long question–answer sequence with clear and concise yes/no questions produced at high tempo, dealing with one issue at a time, followed by straight one-word answers. This pattern coincides with the one that characterizes Anglo-American cross-examination. More specifically, in (1), the form, tone, and content of the attorney's previous cross-examination of the defendant are emphatically reproduced (e.g., Q. And you didn't use the fax machine, correct? A. No, I did not. Q. And you didn't log in on your computer there, did you? A. No, I did not; Vol. 5, 1163: 16–19). Furthermore, the prosecutor's fragment of discourse in (1) comes only a few moments after he inserted direct and indirect quotes from the defendant's prior testimony as a means to support his argumentation (Vol. 6, 1399: 23–1400: 21). Thus, in (1), the prosecutor's mimicking of his previous cross-examination of the defendant—even when not explicitly quoting from it—prompts mental activation of that cross-examination, especially of the question–answer exchanges relevant to the ongoing line of argumentation. This should be regarded as an effective argumentative strategy. By indirectly evoking the (under-oath) cross-examination of the defendant, the prosecutor provides credibility to his argument, since testimony constitutes direct legal evidence, whereas closing argument does not. This is also the reason why attorneys often quote from earlier testimony in their closing arguments (Philips 1985, 1992; Holt 1996; Matoesian 2001). Significantly, in this particular trial, the (two-day long) cross-examination of the defendant served the prosecutor's case particularly well, since it revealed a set of such incongruous allegations and transparent contradictions to cause the jury (Int.7-Juror: 9) and 'even the family' of the victim and the accused (Int.5-Relative: 5) to laugh. In lines 14–16, the prosecutor is using the

question–answer pair again to present the conclusion of his argument. This structure serves to indirectly attack the defendant, and by extension the defense team, who represent him.

In a nutshell, it seems that the expository questions and answers in (1) do much more than organize the prosecutor's argument. By producing these question–answer pairs, the prosecutor is engaging the jury in active reasoning, by posing and subsequently answering questions they may have. He is also indirectly speaking for the defense as the main *questioner* of his own argument, only to subsequently *question* their version of the facts, exclusively based on the defendant's plea of not guilty, and provide clear and satisfactory responses to them. To conclude, these questions set up a fictive interactional structure between (i) the attorney speaking (i.e., the prosecutor), (ii) the evaluator listening (i.e., the jury), and (ii) the opposite party overhearing the argument (i.e., the defendant and defense team). Thus, the invisible interaction set up by these questions reproduces the assumed triadic structure of courtroom communication.

4.2. *Constructed rhetorical question, asked and answered*

This subsection deals with the constructed rhetorical question used by this prosecutor to summarize an argument presented previously by the defense counsel. In his closing argument and rebuttal, the prosecutor represented prior speech on seventy occasions. In fact, since an attorney cannot interrupt the opposite team and react to a damaging argument as it is being formulated, reference to and (re)presentation of earlier or anticipated future discourse is frequent in Western courts (cf. Philips 1985, 1992; Matoesian 2001). Consider the example:

(2) (Vol. 6, 1455: 3–9)
1 Now, Mr. L. [defense counsel] questions,
2 'Well, *how could the blood get on the end of the poker,*
3 *because the poker is not hitting her in the head?*'
4 [. . .] The reason why blood gets on the end of the poker
5 [. . .] is centrifugal force.

Here, the prosecutor appears to present and subsequently answer a question previously raised by his adversary. However, the defense counsel actually never produced such a question. In fact, he used no interrogatives in his attempt to cast doubt upon the accuracy of the prosecutor's argument. Instead, what the defense attorney had said is as follows:

(3) (Vol. 6, 1431: 27–1432: 7)
1 And we know from dr. S.'s [forensic expert] testimony
2 and from our own common sense,

3 when we look at these unfortunate, sad photographs
4 of R. [victim] from the coroner,
5 that there were *no wounds* there
6 that correspond to the end of a fire poker.
7 They're linear wounds.
8 That's why we have linear, linear, linear.
9 But to get that castoff spatter
10 *we have to have blood on the end of the poker*,
11 and that would get there most likely
12 —we've had *no other explanation*—
13 by the end of the poker hitting R.'s head.

In this extract, the counsel is pointing out an apparent paradox arising from two supposed states of affairs: (i) the victim's wounds do not correspond to the end of a fire poker, and (ii) there must have been blood from the victim's head at the end of a fire poker. By presenting these two contradictory scenarios, the defense counsel challenges the prosecution's interpretation of the facts. According to the prosecution, the fireplace poker that is missing from the couple's home corresponds to the murder weapon, which was never found.

What is most striking about (2) is naturally the re-presentation of the counsel's entire argument in (3), which consists of a set of assertions, in a single sentence, namely a question that he then proceeds to answer. Significantly, when I asked him to comment on this extract, the prosecutor used the question–answer pattern again and characterized his counter-argument as a response: '[the defense counsel] was saying that, you know, if it was a poker, why aren't there poker marks in her head? [. . .] so, I was just *responding*' (Int.2-DA: 10).

I believe that the choice of utterance type in (2) needs to be viewed in the light of the adversarial nature of the American legal system and the different roles assigned to defense and prosecution. Indeed, the defense's closing argument is meant to cast doubt upon the prosecutor's version of the facts, that is, to *question* it. By contrast, the prosecutor's rebuttal is expected to address the reasons for doubt raised by the defense, that is, to *respond* or provide a satisfactory *answer* to them. This is very much how the paralegal of the defense team defined the difference between the argument of the prosecution and the defense in this case: 'I think [the prosecutor]'s argument was more ''this is what he did; this is why he did it . . .''. Ours maybe presented *open-ended questions* for the jury to think about' (Int.4-Plegal: 11). This structure fits with the rules of American criminal law, in which the defense need not prove innocence but just create reasonable doubt, whereas the prosecution does need to prove guilt.

This may also explain the use of the confrontational verb 'to question' rather than the information-seeking 'to ask' to introduce the speech represented in (2), indicating the use of a rhetorical question (albeit subsequently reframed as a leading question), rather than an informational one.

Critically, presenting a reported or constructed rhetorical question ascribed to one's adversary and subsequently responding to it—having therefore reframed it as a leading one—is not strange to the courtroom. This should not be surprising, considering that prosecutors as well as defense counsels frequently produce rhetorical questions in their discourses to the jury 'to force the opposing lawyer to address an issue in his or her following closing speech' (Walter 1988: 150). This strategy should be regarded as a powerful means of persuasion, as it successfully manages to (i) introduce the topic to be discussed in such a way that it engages the jury in the reasoning process; (ii) re-enact the argument of the adversary; and (iii) prepare the cognitive and discursive ground for a counter-attack. Therefore, the prosecutor's question–answer pair in (2) seems to set up a conceptual trialogic structure. By using an interrogative structure, the prosecutor is implicitly inviting his addressees, i.e., jury members, to hear the question as a leading or information-seeking one that they may ask themselves or each other later in the jury room. At the same time, in the presentation of a constructed rhetorical question ascribed to the defense, the prosecutor takes the voice of his opponent, fictively confronting him verbally, thereby probably also voicing the doubts of some jurors. As the fictive recipient of the counsel's argumentative challenge, the prosecutor simultaneously uses his own voice and viewpoint in the tone in which both the constructed question and its corresponding answer are produced. Finally, in that answer, the prosecutor is fictively responding to the most relevant overhearer, namely the defense counsel, standing for the defense team and representing the defendant, who appears as a fictive addressee in the non-factive discussion. Thus, the fictive interaction in the rhetorical question that is subsequently answered maps the trialogic structure assumed to underlie courtroom communication.

4.3. *A triadic 'how-to' definition*

This section discusses the definition of a legal term that the prosecutor in this case presented as an interrogative at the level of the clause. Interestingly, the use of an interrogative as a definition occurs with significant frequency in the discourse of attorneys at trial. Exploring the reasons behind this peculiar choice of sentence type is nontrivial, because, given the importance of meaning in the law (Peirce 1931–1935; Kevelson 1980; Solan

1993), definitions are critical in law and litigation (Charron 1980). Not surprisingly then, in the courtroom definitions are generally far from neutral, usually reflecting the attorneys' argumentative goals.

In particular, this prosecutor used direct or indirect questions either in the definition itself or in its application to the case at hand in seven out of the nineteen definitions of legal terms he included in his closing argument and rebuttal. Here, I will deal with the predicative use of a question in the definition of a legal charge. The example is as follows:

(4) (Vol. 6, 1362: 18–19)
1 Express malice means, simply,
2 *was it an intentional killing[?]*, okay?

The structure of this utterance is basically: NP + 'means' + yes/no interrogative, the semantics of which can hardly be seen as informative. In contrast, the judge's definition of the term 'express malice' in his instructions to the jury in this same case and in the written glossary that the jury took to the deliberation room was simply: 'the unlawful intention to kill a human being'. The fundamental difference between the definitions by the judge and the prosecutor is that the former is descriptive, presenting its referent objectively, whereas the latter is demonstrative, enacting rather than pointing to its referent. Significantly, in the main data corpus the prosecutor also used various interrogatives when defining charges the jury would subsequently have to accept as proven or not. Specifically, the discourse immediately surrounding (4) was as follows:

(5) (Vol. 6, 1359: 27–1365)
1 Express malice means, simply,
2 *was it an intentional killing[?]*, okay? [. . .]
3 Did the person who killed think about it?
4 Did they have a choice? [. . .]
5 But what premeditation and deliberation really mean is,
6 was there weighing?
7 Did the person doing the killing consider
8 what it would do to the victim, what it would do for him?
9 [. . .] Well, let's apply this. If you apply it to this case,
10 was there planning? Of course there was planning.

In (5), a set of yes/no questions is first presented as definitions of 'express malice' and its related terms 'premeditation and deliberation'. Then, the definitions are 'applied' to the case at hand (lines 9 and 10). This application is introduced by an expository question ('was there planning?'), which is immediately answered in the affirmative by the prosecutor himself ('Of course there was planning'). By using questions for the definitions

of legal terms, the prosecutor seems to put forward the expected reasoning process that the jury will have to go through in deliberation when trying to decide whether or not these terms apply to the facts in the case at issue. In fact, in American law the verdict form is sometimes explicitly presented as a list of questions for the jury to answer, something that is the default case in the Belgian jury system, for instance. This was not the case for this trial, but in the verdict form the jury still needed to fill in the blanks with either one of the two possibilities specified for them (e.g., 'true' versus 'not true'; 'guilty' versus 'not guilty'). The part of the form that related to premeditation and deliberation in this case was as follows:

(6) We, the jury in the above entitled cause, find
the defendant, E. C. C. _____ of [...]
(GUILTY) (NOT GUILTY)
And we further find that the above offense _____
(was) (was not)
willful, deliberate and premeditated, within the meaning
of Penal Code section 189.

This form contains the specification of the precise decisions to be made, that is, the kinds of *questions* to be answered. The alternatives to choose from correspond to the arguments of the prosecution and the defense, respectively. According to the prosecutor, the answer to all these questions was 'yes'; according to the defense it was 'no' (or better 'not proven beyond reasonable doubt'). Indeed, the binary structure of the verdict form motivates the conceptualization and organization of the jury's task as aimed at providing answers to clear yes/no questions. It is in their attempt to answer these questions that the jury's recollection of the meaning of legal terms is applied.

Thus, by using a question in the definition of a legal charge, the prosecutor engages the jury in a fictive conversation. The question serves to reproduce questions jurors may ask themselves and each other in the jury room. At the same time, this question indirectly sets up the defense's alternative interpretation of the case (i.e., there was no planning), which the prosecutor delivering the argument proceeds to cancel in the subsequent answer ('Of course there was planning'). Therefore, the prosecutor's *how-to* definition conceptually integrates knowledge of the law and its application in the situated decision-making on whether commitment of the legal charge by the defendant has been proven, as the prosecution argues, or not, as the defense sustains. More generally, I believe that the use of a question for a legal definition simultaneously serves to (i) introduce the issue to talk about; (ii) provide a legal definition necessary for the judge or jury's decision-making in a way that engages them in the seeking for

an answer; and (iii) provide the cognitive and discursive ground for the application of this definition to the case.

It is in this sense that I would argue that the clause-level question in (4)—just as the sentence-level ones in (5), for that matter—shows an underlying trialogic structure, in which the prosecutor adopts the voices of the jury and the opposite team, as much as his own. Just as was the case of the fictive questions discussed in the previous subsections, the fictive triadic structure of the questions in (4) and (5) mirrors the invisible trialogue that I assume characterizes Western litigation.

4.4. *Fictive embedded question, obvious answer*

In this subsection, I discuss the prosecutor's use of an interrogative at the lexical level to characterize his own argument. It should be noted that due to the importance of talk-in-interaction in the courtroom, attorneys often include metacommentary in their speeches (Stygall 1994: 107–116). Specifically, the prosecutor in this case provided explicit evaluations of speech produced by himself or others during the hearing on at least 29 occasions. The example to be discussed here comes from a part of the prosecutor's closing argument in which he points out that the serious head injury the victim suffered two weeks prior to the actual murder was the result of the defendant's failed attempt to kill her. Consider the following extract:

(7) (Vol. 6, 1373: 18–20)
1 Now, was there an attempt to kill? This is kind of
2 a *'who's buried in Grant's tomb[?]'* argument,
3 but [sly smile] you have to think about this.

From a purely grammatical perspective, the constituent in quotation marks is an interrogative functioning as a compound specifier. It has the syntactic properties of an ordinary interrogative at the levels of the sentence or clause, while filling the slot and fulfilling the function of a word or phrase. Thus, its internal syntax suggests that we are dealing with a grammatically autonomous question, whereas its external syntax reveals a relational function with the head noun that follows.[3]

The question 'Who's buried in Grant's tomb?' serves to characterize the kind of argument the prosecutor is going to develop. The embedded question certainly does not represent a quote or paraphrase of an actual question that appeared previously in the trial or an anticipation of one the prosecutor would introduce later in his argument. Significantly, however, 'Who's buried in Grant's tomb?' is not a novel or creative

occurrence either. It comes from American children games, game show parodies, and jokes. The peculiarity of this question is that the answer is presupposed in the question itself: Grant is the person who is buried in Grant's tomb. The right answer to the question is so obvious that even the cleverest person may miss it, as it violates basic interactional competence on what a question does. By asking the question one is simultaneously requesting its corresponding answer and providing it to the addressee, which makes the very asking altogether unnecessary.

Although an exact reproduction of the original words in the game, this utterance does not function as an ordinary quotation. Rather, it is used metonymically to introduce the communicative event of the game scenario it is associated with, and from there make mental contact with an inherent aspect of it that most clearly characterizes it. Once the link has been established between this question and its redundant nature—a link enabled by activation of overall cultural knowledge—the question can be used to refer to redundancy in general. Through this question the 'argument' modified by it is presented as being so obvious that the very introduction of the issue to be decided upon (i.e., 'was there an attempt to kill?')—against the background information from the prosecutor's prior argumentation and the overall trial—should almost automatically prompt an affirmative answer.

Critically, no matter how obvious, the argument still needs to be developed, since the prosecution carries the 'ultimate proof of guilt'. Thus, the prosecutor needs to address and argue for even the most obvious answer to the questions raised in the trial, so that there is not a shred of doubt on the relevant facts, strongly denied by the defendant in his testimony and previously doubted upon by the defense team. Indeed, in his closing argument following the prosecutor's, the defense counsel may very well express his doubt that the victim's serious head injury was the result of intentional deadly violence. This contention may confuse the jury, just as one may be confused when asked a question whose answer is presupposed in it. Hence, by defining his own piece of argumentation through that question, which characterizes it as trivial at best, the prosecutor is indirectly pointing at the absurdity of the opposite argument he needs to refute (the very fact that someone may even question whether there was an attempt to kill in such a transparent case). Also, by introducing his argument to the jury as a question carrying its own answer, but asking them to pay attention to the answer all the same, the prosecutor avoids confusing them or losing their interest. When providing the answer to the question that may be raised later in the summation of the opposite attorney's, the prosecutor is both responding to the jury's possible question and counter-arguing the anticipated challenge of the defense.

Therefore, the interactional structure set up by the fictive embedded question is again a triadic one, which mirrors what I assume to be the prototypical conceptual configuration of legal discourse. In the objective situation of communication, the prosecutor is the one uttering the expository question that introduces the issue he will discuss in this part of the argument (i.e., 'was there an attempt to kill?') as well as the question that serves to characterize his argument (i.e., 'who's buried in Grant's tomb[?]'). He is also the one who will provide the answer to the former question later on in his closing statement (i.e., 'What else could your intent be . . . ?', etc., Vol. 6, 1374: 3–7). By contrast, at the level of cognition, the illocutionary roles seem to be distributed across (i) the prosecutor speaking, (ii) the jury listening, and (iii) the overhearing defense team. By posing this question, the jury is temporarily placed in the position of fictive addressee and is thus expected to answer what may look like a disingenuous or misleading question. More importantly, through this question the prosecutor is indirectly adopting the voice of the defense, who earlier in the trial cast doubt upon—or *questioned*—his interpretation of the facts, obvious though they might seem, and who spoke for the defendant, who never admitted to the crime. Critically, this fictive question is addressed at himself, as the one who charged the defendant of intentionally attempting to kill the victim on two separate occasions. Not surprisingly then, the question is produced in a distancing tone, thereby letting his own voice speak. Thus, in his answer to the question he posed himself (with clear negative stance), the prosecutor is fictively *responding* to the defense's prior and anticipated future challenges as well as to the jury's possible doubts. Again, the triadic structure set up by this question reproduces the fictive trialogue that is assumed to underlie the most relevant communicative events in Western courts.

5. Summary and conclusion

This article dealt with the use of questions, some followed by their corresponding answers, in a prosecutor's 'monologue' to the jury in a high-profile murder trial. My main assumption was that questions play a non-trivial role in legal reasoning and argumentation, and hence that their relevance in court is not restricted to the presentation of legal evidence through witness testimony. In particular, four complex questions (and question–answer pairs) from the prosecutor's closing argument and closing argument rebuttal were discussed: (i) a set of expository questions and answers; (ii) a subsequently answered rhetorical question; (iii) a clausal question used as a definition; and (iv) a word-level question characterizing the prosecutor's own argument.

These questions and question–answer pairs were argued to set up a fictive triadic interactional structure. Specifically, their implicit questioner and answerer roles appeared distributed across (i) the addresser (i.e., the prosecutor speaking), who factually produced the questions and on occasions also overtly provided an answer to them; (ii) the addressee (i.e., the jury listening), whose inner reasoning and decision-making the prosecutor tried to anticipate, formulate, and satisfy; and (iii) the overhearer (i.e., the defense team, who had just spoken or was about to speak), whose prior and/or anticipated future argument the prosecutor meant to challenge—that is, *question*—and/or react—that is, provide an *answer*—to.

This triadic structure should not be regarded as exceptional to the examples analyzed, but rather as characteristic of questions in legal monologues (and questions in other types of confrontational discourse, for that matter). Against this backdrop, the dyadic exchange between an attorney delivering a closing argument and the judge/jury silently listening to it, which is created by the use of the question–answer pattern (Walter 1988: 5.3; Stygall 1994: 176), appears as only one part of the invisible trialogic interaction suggested to be introduced by questions in courtroom monologues.

It was further argued that the conceptual interactional structure set up by the questions reproduced the underlying interaction in the discourse and overall situation of communication they were embedded in. In particular, it was suggested that the basic underlying interactional structure of the Western criminal-judicial system is not only a dialogue between the attorney speaking and the silent judge/jury, as has often been suggested (Harré 1985; Walter 1988; Stygall 1994). Instead, the most fundamental type of invisible communication in Western courts could be seen to constitute a fictive trialogue involving (i) the prosecution, (ii) the defense, and (iii) the judge/jury. In particular, the basic underlying interactional structure of courtroom communication was claimed to be a fictive triadic exchange involving different voices often overlapping each other, in which an attorney's argument is constantly being silently responded to or questioned in the minds of both addressees and overhearers. It follows then that ordinary legal discourse—just as other forms of confrontational communication—does not only involve 'double-voicing' (Bakhtin 1973 [1929], 1981 [1975]), but also what could be called 'triple-voicing'.

I hope to have shown that the skillful prosecutor in this case strategically used fictive questions with a trialogic structure as effective rhetorical devices, which best served his communicative purposes. More generally, the questions analyzed showed that fictive interaction can be used as an argumentative strategy that may appear manifested at the discoursal as well as the sentential and intra-sentential levels.

Furthermore, the conceptual configuration set up by these questions was claimed to emerge from the intersection of the participants' knowledge of the case and of the professional roles and internal dynamics of legal proceedings in general. Thus, I believe that the data presented can be interpreted as additional evidence for the claim that the production and interpretation of language is significantly modeled by the participants' conceptualization and encyclopedic knowledge of the context of occurrence (cf. Bateson 1972; Cicourel 1974 [1973]; Goffman 1986 [1974]).

From a linguistic perspective, the functional versatility of the questions discussed shows that in context, a given grammatical structure may display more than one function simultaneously. More generally, I believe that the use of fictive questions—and overall fictive interaction embedded in discourse—raises questions regarding the interactional dimension of language (cf. Peirce 1931–1935; Vygotsky 1962; Bakhtin 1973 [1929], 1981 [1975], 1986). That is, the precise extent to which language structure and use is interpreted and internally structured by the common pattern of everyday face-to-face conversation.

Finally, it should be noted that the questions and answers in the prosecutor's monologue were not only conceptualized and used as ordinary adjacency pairs so that the former merely prepared the addressees and overhearers for the latter. They also seemed to constitute discursive and grammatical reflections of a conceptualization of the trial event itself as a sequence of overt as well as covert interactional turns, in which what has been said earlier or what is anticipated to come later are commonly explicitly or implicitly either questioned or answered by legal professionals for the sake of the judge/jury. Thus, the questions and question–answer pairs discussed in this article illustrate how attorneys understand sequentiality in courtroom interaction and how they model their argumentation and speech—at the discoursal, sentential, and intra-sentential levels—accordingly.

In a more speculative vein, in the light of the present article, the Western trial seems to appear—at least from the evaluators' perspective—not so much as a search for the truth, as is generally claimed by legal professionals, as an institutionalized search for answers.

Notes

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1. D. G., 'Prosecuting fatal child abuse' (lecture, 15th Annual San Diego Conference on Responding to Child Maltreatment, San Diego, CA, January 22–26, 2001).
2. The prosecution, the defense, and the judge/jury merely constitute the main parties involved in (c)overt courtroom interaction. They are certainly not the only ones to be fictively involved in communication. Cotterill (2003: ch. 4), for instance, identifies other silent court participants who are taken into account by legal professionals and who may therefore potentially affect the production of legal talk. These are the transcriber, press correspondents, the audience in the courtroom's gallery, and—in the case of the O. J. Simpson's trial—the TV audience. Yet another participant, who may not be present at trial and may actually never become a participant as such, but to whom attorneys equally seem to adjust their verbal behavior, is the division in a possible future appeal (Pascual 2002: 131–133). It should also be noted that even though in jury trials the judge is not the ultimate evaluator, there seems to transpire a (secondary) interactional channel between the judge and the attorneys, since all communication in court is closely supervised by the judge.
3. See Pascual and Janssen (2004) for a bibliographic overview of this type of syntactically complex compounds and for an account of them in Dutch from a fictive interaction perspective.

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Esther Pascual is a post-doctoral scholar at the Vrije Universiteit, Amsterdam. She is currently working on a four-year project on the conceptualization and strategic use of speech representation in Dutch and American criminal trials. She has carried out research on courtroom interaction and language use in Spain, the United States, Belgium, and the Netherlands. Address for correspondence: Dept. of Linguistics, Faculty of Arts, Vrije Universiteit, De Boelelaan 1105, 1081 HV-Amsterdam, The Netherlands ⟨e.pascual@let.vu.nl⟩.