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Esther Pascual

Triadic questions in court: A case study[1]

Language-in-interaction plays a crucial role in the courtroom, since in a trial almost "everything […] occurs through the spoken word" (Walter 1988: 1). Indeed, the legal institution relies on verbal interaction for both the presentation and the evaluation of evidence (cf. Walter 1988; Sarat & Kearns 1994; Gibbons 2003) and treats speech itself as legal evidence (cf. Philips 1992; Shuy 1993; Levi 1994; Komter 2002). Importantly, courtroom communication and language use can have a major effect on the dynamics of legal processes. They can influence legal outcomes (cf. Loftus 1975, 1980; Danet 1980; O'Barr 1982; Wodak-Engel 1984; Blanck & Rosenthal 1985; Diamond & Levi 1996) and carry therefore the potential of leading to injustices (cf. Berk-Selignon 1990; Hertog 2001, 2003).

In the adversarial Anglo-American criminal-judicial system, the importance of verbal interaction is translated in a set of pre-established and highly regulated communicative structures (cf. Atkinson & Drew 1979; Danet et al. 1980; Adelswärd et al. 1987; Drew 1992; Luchjenbroers 1997). At trial, conversational roles are strictly allocated and turns are extremely constrained. The prosecution and defense cannot address each other during the trial and the jury cannot pose questions directly to litigators or witnesses, nor can they make their feelings about the case explicit. Given the strict rules of the Anglo-Saxon court procedure, an important part of the communicative interaction between trial participants occurs indirectly. The court's fixed interactional patterns motivate the emergence of what I call 'fictive interaction' (Pascual 2002). This is a conceptual channel of communication underlying the observable interaction between participants. Such interaction is not imaginary or fictitious, but *fictive* (in the sense of Talmy [1996] 2000). It is entirely cognitive in nature, while emerging from the factual interaction in the situation of communication as well as from overall socio-cultural models.

In this paper I deal with fragments of face-to-face interaction between trial participants (prosecution ☐ jury) through the eyes of what I treat as equally present and critical – albeit certainly less tangible – fictive interaction (prosecution

☐ jury ☐ defense). The main assumption is that the underlying interactional structure of communication modules the production and interpretation of observable communication. The focus is on the fictive interaction underlying questions and question-answer pairs in an American criminal trial. The study of these communicative structures in legal settings is of special interest, since the discourse rules governing the trial impose the condition that nearly all interactions between participants occur within the question-answer interactional pattern. As it is, in the Anglo-Saxon system the presentation of evidence from defendants and witnesses does not occur through the witnesses' narration of events "in their own words" (Luchjenbroers 1997), but rather through a set of fixed question-answer sequences between legal professionals and witnesses. Not surprisingly then, most questions by legal professionals are designed to influence subsequent answers (cf. Loftus 1975; Atkinson & Drew 1979; Danet 1980; Danet et al. 1980; O'Barr 1982; Harris 1984; Woodbury 1984; Linell 1987; Drew 1992; Pozner & Dodd 1993; Gumperz 1995; Luchjenbroers 1997), and they may even affect the memory of the facts asked about (Loftus & Palmer 1974; Loftus 1980). I will attempt to show that questions and question-answer pairs are not only crucial in the presentation of legal evidence, but also seem to play a major role in legal reasoning and argumentation. Thus, I will focus on the role of questions and question-answer pairs in legal monologues, rather than in the dialogic exchange of witness testimony.

The paper presents an ethnographically based case study of a prosecutor's closing argument in a high-profile murder trial that took place in a California country courthouse in the fall of 2000.[2] Ethnography in this case combined different sources of data, primarily: i) direct observation; ii) official transcripts; iii) written and visual media coverage; iv) the case file; v) a thirty-minute video-recording of the prosecutor's closing argument rebuttal; vi) informal conversations with professionals related to the case (judge, detectives, counsel's secretary, court reporter, journalists); and vii) in-depth interviews with the main trial participants (prosecutor, defense attorneys, paralegal, alternate juror) and attendees (relative of victim and accused, local press reporter, novelist writing a non-fiction book on the case). Written informed consent was obtained from all informants. In order to protect the confidentiality of the informants and the persons referred to in the trial, all names have been changed. All italics and underlynings in the examples are mine.

Text for context, trial for trialogue

A fundamental assumption of my work is that the production and interpretation of language is significantly modeled by the participants' conceptualization of its

context of occurrence. Just as is the case of linguistic performance, the tangible context of verbal communication is not in itself free of interpretation. It merely represents the observable tip of the iceberg that makes participants live in the convenient illusion of transparent communication (cf. Cicourel 1973, 2002; Bateson et al. 1981; Hutchins 1990; Duranti and Goodwin 1992; Hanks 1996). Thus, in order to understand a particular courtroom verbal exchange fully, one needs to get insight into the participants' conceptualization of the institutional context within which this exchange is produced and interpreted.

Much has been written on what the law and the legal proceeding may actually be. It is generally accepted that American evidential law is "conceptualized as organized around facilitating the presentation and contestation of what happened, of 'facts' and 'the truth'" (Philips 1992: 250). Also, legal professionals commonly define the trial as "a search for the truth" (Pozner and Dodd 1993: 1; in my interviews: Int.1-DCii: 2; Int.2-DA: 5; Int.3-DCii: 12). This is certainly how the prosecutor in this case study defined what a trial is in my interview with him (Int.2-DA: 5) and these were also his words to the jury in the murder trial at hand (1353: 12) and in a no body case filmed and broadcasted by the NBC television channel (July 8th, 2002) (Pascual 2002: 115).

By contrast, trial litigation has been defined by legal scholars as an "open head-on conflict between [two] identifiable 'parties' whose mutually debated views are then voted upon by an evaluating audience" (Philips 1992: 248), and in which "participants have as their ultimate goal the wish to win" (Woodbury 1984: 198). Indeed, when among themselves, litigators – district attorneys as well as defense counsels – generally define the manner in which the 'truth' is reached in the legal proceeding through war metaphors. They speak of the "confrontation of a […] foe in trial," requiring the use of "devastating means" (Cavero 1998: 8-10, my translation) and of the need to "do some damage," using "an arsenal of weapons" (Pozner 2000: 29a, 37b, 38b). Along these lines, in an interview to the local press, the district attorney in this case explained his profession as an aggression: "I get paid to *beat up* on the bully [defendant]" (*San Diego Reader* Dec., 2003). Also, in a professional lecture addressed at other prosecutors, he defined the trial as "a *battle* for sympathy" (Geisberg 2001), that is, a competition between the prosecutor and the defense to win the jury's sympathy for the victim or the accused, respectively (Pascual 2002: 116). Basic (Western) courtroom dynamics may thus be defined in terms of the triangular relation between prosecution, defense, and judge/jury.[3]

Critically, the competition between prosecution and defense to win the jury's sympathy occurs through talk-in-interaction. The trial's is a "war of words" (Tannen 1998), a verbal confrontation for the narration of a story with opposite

interpretations of the relevant facts (Woodbury 1984; Tannen 1998; Pascual 2002: §3.2.2). The trial participants arguing for their version of the 'truth' are: i) the prosecution team; ii) the defense team; and iii) the judge/jury. Given the strict rules of courtroom procedure, this argument takes place primarily in an implicit manner. There is no overt discussion between the opposite parties during the trial, nor can the (Anglo-American) jury enter the debate by making comments or asking questions to the litigators or witnesses. The argument occurs at the level of the unsaid. Thus, we seem to be dealing with what could be called a *fictive* argument in the form of a *trialogue*, in other words, an invisible and inaudible three-participant interaction underlying observable verbal communication. Regardless of whether they are addressing a witness or the jury, whatever the litigators say is ultimately aimed at the silent jury members, constituting a reaction to doubts or criticisms they might have (and which they would probably make explicit were that allowed). At the same time, even though prosecution and defense do not address each other directly, the words of one team invariably constitute an attack or counterattack to a prior or anticipated future argument of the adversary. It is in this sense that I do not view the basic internal interactional structure of legal monologues as a mere "two-way communication" between the speaking lawyer and the listening jury (Walter 1988: 110-111).

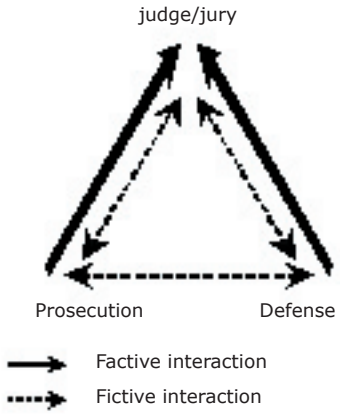

Fig. 1. The Trials fictive trialogue

Fig. 2. Courtroom interactional dynamics

Rather, as Figure 1 shows, I regard the structure of Western courtroom interaction as a triadic one, involving: i) the communicator who wants to convince (i.e. prosecutor/defense); ii) the addressee to be convinced (i.e. judge/jury); and the adversary to be refuted (i.e. defense/prosecutor). At the

same time, the victim and the defendant on the one hand, and their peers in the community and/or the law on the other hand may by extension be made participants in this fictive trialogue, since the prosecutor speaks for the victim, the defense speaks for the defendant, and the jury and judge speak for the people and the law, respectively.

It should be noted that due to the presumption of innocence, the legal – and thus also communicative – goals of prosecution and defense are significantly different, but not perfectly opposite to each other. As Figure 2 shows, since the defendant is understood as "innocent until proven guilty," the prosecution will have to prove guilt, whereas the defense need not prove innocence but just reasonable doubt. As a way of illustration, consider a comment that the district attorney in this case made to his colleagues from the district attorney's office in a videotaped discussion on a first-degree murder case he was litigating, broadcasted by national television (July 8th, 2002):
I just don't want him [defendant] to appear too sympathetic, I don't want him [defendant/defense attorney] to build a sympathy barrier between me and a guilty verdict.

This comment illustrates both the underlying triangle and interactional dynamics of Western litigation, in which the jury's putative sympathy towards the defendant may constitute the most serious obstacle for the prosecutor in proving guilt. Consider also the following fragment of interview to a lay spectator in the trial that constitutes this paper's case study, in which the difference in legal roles and interactional dynamics are compared with those in a football game (Int.5-Rel: 17):

> The prosecutor is out there trying to *hit the point and get it into a small box,* so there is no question; whereas the defense's job really is to *hit the ball away*, so it never gets into the goal and *it doesn't matter whether the defense actually scores*, or scores the ball on the other side it's just that they keep the ball so far out of that box, so that no, no decision [can] be made.

That is, entirely in question-answer terms, the district attorney has to provide the answers to all the possible questions, while the defense will try to question those answers and open up new questions.

I believe that the basic underlying interactional structure outlined above holds for witness testimony (objectively a question-answer dialogue) as well as for opening statement and closing argument (objectively a monologue).

However, in order to be able to show the underlying interactional structure of questions (and question-answer pairs) more clearly, the fragments to be discussed in this paper will all be from the closing argument phase, rather than from witness testimony.

Analysis: Triadic questions in legal monologues

As pointed out in the introduction, dialogues organized in question-answer turns are by far the most frequently used interactional structure in the courtroom. The question-answer pattern is also overwhelmingly present in litigators' monologues to the jury, especially in closing argument, which constitutes the most important communicative act in court that is produced by one sole utterer with no interruptions by or verbal involvement of other trial participants. Not only are previous question-answer turns from the witness testimony phase and the prior investigation often quoted, new questions are also frequently asked – and often answered – by litigators during their closing arguments. In my view, litigators' non-quoted questions or question-answer pairs in their speeches serve a double persuasive function, which emerges from the basic underlying trialogic structure of the legal proceeding outlined above. This function is: i) turning silent addressees into co-constructors of discourse (cf. Walter 1988: 104ff), and ii) challenging the version of the facts proposed by the opposite side (or alternatively counter-attacking a prior or anticipated future attack on one's own version of the facts). By posing questions the jury may be asking themselves at trial or each other later in the deliberation room, and subsequently answering them, litigators are fictively engaged in a question-answer exchange with them. Also, by asking questions throughout their discourse, litigators engage jurors in active reasoning, by motivating them to seek out the answers to those questions for themselves. At the same time, by presenting earlier or anticipated (argumentative) questions by the opposite team, which they then procede to answer, or alternatively posing open questions that they leave unanswered, litigators are fictively *responding* to the other team or challenging them to *answer* questions they believe are unanswerable. As hinted at above, although the factual utterer of the questions and question-answer pairs may be a sole individual, a more complex distribution of interactional roles seems to occur at the level of cognition, where the utterer adopts different voices. There, the questioner and answerer roles need to be understood as distributed across: i) the addresser (the speaking litigator), who factually utters the questions and may subsequently also overtly provide an answer to them; ii) the addressee (i.e. the listening jury), whose inner reasoning and discourse the addresser tries to anticipate, formulate and satisfy; and iii) the adversary (the

overhearing opposite team), whose prior and anticipated future discourse the speaking lawyer challenges –that is, *questions* – and/or responds to. As will be illustrated in the following pages, these conceptual illocutionary roles may overlap with each other. Hence, the different voices the utterer may take should be understood in a slightly more complex sense as in Bakhtin ([1981] 1998).
The district attorney in the murder trial at hand made a great use of interrogatives in his closing argument and closing argument rebuttal.[4] When I asked this attorney about the frequent use of the question-answer pattern in his discourse, he replied (Int.1.DA: p. 13):

I'm answering questions that I think the jury will be asking in, in the jury room, before we get to it […] I'm just anticipating! I'm asking what a logical person might ask. Now, what about this mister Geisberg? What about this? I wanna answer **all** the questions![5]

In the following pages I intent to show that through the use of questions and question-answer pairs in his monologues this prosecutor is not only speaking for the jury and satisfying questions they may have. He is simultaneously either *responding* to a prior or anticipated future attack on his theory of the case or *questioning* the defense's version of the facts. It is in this sense that they are said to have an underlying triadic structure, reproducing the assumed basic fictive trialogue of litigation, outlined in the previous section.

Data

Empirically, this paper is based on an ethnographic case study of a high-profile murder trial I observed in a California county court in the fall of 2000. The defendant in this case was an insurance agent accused of brutally killing his wife in the couple's bedroom so he could receive her three life-insurance policies, of which he was the only beneficiary. The transparent incriminatory nature of the evidence – admitted by his own attorneys in my interviews with them – contrasted with the defendant's insistence on his innocence. He alleged that he was at work at the time of facts and at first described his wife's death as a medical accident. The trial lasted two weeks, after which the jury found the defendant guilty of attempted murder (for an attempt to kill the victim two weeks before the murder) and first-degree murder for financial gain with lying in wait, but without the special circumstance of torture. After the jury's verdict, the judge sentenced the defendant to life in prison without parole plus seven years.

The pieces of discourse to be analyzed in more detailed are from the district

attorney's closing argument and closing argument rebuttal in this case, which together lasted about 3 hours and 20 minutes and took a total of 89 pages of the official transcript. This prosecutor, whom I will call Donald Geisberg (DG), was a successful and popular litigator, Prosecutor of the Year in 1997 and Crime Commission's Blue Knight in his county, who earned multiple victim-service awards and was recently nominated Superior Court Judge. As a district attorney, he prosecuted over a dozen high-profile domestic violence and child abuse homicide cases and was the first prosecutor in his state to win a death penalty case. In order to gain a better understanding of that prosecutor's litigation style and views on law and litigation beyond his performance at the trial and what he told me in my interview with him (Int.2-DA), I studied an interview he gave to the local press (*The San Diego Reader,* Dec., 2004) and the audio-tape of a lecture on "prosecuting fatal child abuse" addressed at prosecutors and medical examiners that he gave at a conference on child protection (Geisberg 2001). I also obtained video recordings from the NBC reality television program "Crime & Punishment" on the work of the district attorney's office to which this prosecutor belongs. The first episode features the attorney in this case prosecuting a no body case and others show him giving legal advice to fellow district attorneys. The choice of focusing on the prosecutor's speech was motivated by the availabity of these data, the prosecutor's outstanding communicative skills, and the great amount of (non-quoted) questions and question-answer pairs that he used throughout his entire discourse in the trial at hand. Also, the prosecutor's questions were especially creative and complex, and provided clear illustrations of my main theoretical points. Since the defense counsel did not use any instance of fictive embedded questions in his closing argument, a phenomenon I was interested in studying here, comparison of the similarities and difference in their use in the two opposed discourses was not possible. Quotes from the litigators's speeches come from the official court transcripts, enriched with minimal paralinguistic information (prosody and kinetics) presented in square brackets (e.g., [laughs]) and bold letter style for prosodic emphasis (e.g., "But, why?') from my ethnographic notes and from the videotape (in the case of the prosecutor's rebuttal). All italics and underlyings in the examples are mine.

In particular, the questions to be discussed are: i) a set of expository questions (section 3.2); ii) a re-presented rhetorical question (section 3.3); iii) a clausal question used as a legal definition (section 3.4); and iv) an embedded question used to characterize the utterer's argument (section 3.5).

Triadic expository questions

The prosecutor in the murder trial at hand made a great use of interrogatives in his closing argument and closing argument rebuttal. When posing questions at times he addressed the jury directly through vocatives (e.g., "*did the defendant get into the tub, ladies and gentlemen?*, 1404: 9-1405: 27), explicitly invited them to ask questions to themselves (e.g., "ask yourself this: *Does what the defendant […] has to say […] make any sense?* [!], 1353: 12-17), or directly put questions into their mouths (e.g., "Then you ask: Well, then, *why didn't* he *kill her? Why didn't he finish her off?*," 1374: 8-1374: 9). In his speech, the district attorney used a total of 163 (non-quoted) interrogative utterances, 105 out of which were used as expository questions (see appendix in Pascual 2002: 235–269).

In this section I will discuss a set of expository questions uttered by the prosecutor in this case at a particular point in his closing argument. In the context where they were produced, no overt answer to the questions seemed to be required or expected from the addressee, since the attorneys' closing arguments cannot be interrupted. Nor do any of the questions and question-answer pairs to be discussed constitute (re)presentations of some recalled, supposed or counterfactual communicative exchange. The fragment to be discussed is:

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

In (1), the speaking prosecutor is summari-zing his argument against the defendant's plead of non-guilty. The defendant had testified that he was not at the crime scene at the time of his wife's violent death, but rather at work and in the neighbourhood of two fast-food restaurants. In this piece of discourse, the district attorney first introduces the topic of his summing up by means of two expository questions (i.e. *[I]s there any proof of the defendant's story? Is there anything to corroborate what he has to say, or must we rely on the direct evidence of the defendant?*). Counter to what one may expect, these questions

are neither answered with a simple 'yes' or 'no', nor with a declarative (e.g. "There is (no) proof of the defendant's story", "There is something/nothing to corroborate what he has to say"). Rather, they are answered with a long sequence of expository questions followed by their corresponding answers, all of which are produced in the same tone and pitch. Each question-answer pair presents a piece of argument supporting the prosecutor's interpretation of the facts. The use of the question-answer pattern is not accidental. The defendant's claim that he was in his office and at these restaurants alone and late at night while allegedly his wife was seriously ill at home raises suspicions – *questions* – as to his reasons for being there and the availability of evidence to prove that. The district attorney presents these suspicious in the form of seven expository yes/no questions, all of which are subsequently answered in the negative. These yes/no questions help to build up two alternative scenarios: i) the affirmative one (i.e. the defendant worked in the office and at home, went to Burger King and Jack in the Box, etc.), 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 (i.e. the defendant did not work in the office nor at home, was not at Burger King or Jack in the Box, etc.), 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 by default point to his guilt. These two alternative scenarios are gradually presented with each yes/no question, the latter emerging as the one applying to the case in the negative answers to the questions. This use of the question-answer pattern helps build up the prosecutor's argument and enhance its persuasive power. It guides the jury's reasoning process by inviting them to consider the relevant issues (what would support the defendant's story) and try to seek for the answers to the questions raised at trial and their implications for the case. By so doing, the prosecutor is highlighting the absence of exculpatory evidence and thus challenging the defense's theory of the case. Therefore, these expository questions are not merely dialogic, by involving utterer and addressee (prosecutor and jury), but rather *trialogic*, by involving: (i) utterer (the speaking prosecutor), (ii) addressee (the listening jury) and (iii) overhearer (the defendant, and by extension the defense team).

Critically, the overall discourse structure in (1) also seems to fulfil an *intertextual* function (see overview in Slembrouck 2002). That piece of discourse consists of a long and fast question-answer sequence, with the structure of to-the-point yes/no questions, dealing with one issue at a time, followed by straight one-word answers. This is the pattern that characterizes Anglo-American witness testimony in general and cross-examination in particular.

In fact, in (1) the form, tone and content of the attorney's previous cross-examination of the defendant is partly reproduced. The use of the structure of cross-examination should be regarded as a satisfactory argumentative strategy providing credibility to the attorney's argument. As it is, counter to closing argument, testimony does constitute evidence. Hence, by using a structure that is reminiscent of witness testimony, the prosecutor is simultaneously delivering his argument and helping the jury make mental contact with legal evidence that supports it. Significantly, in this particular trial the (two-day long) cross-examination of the defendant served the prosecutor's argument particularly well, since it highlighted a set of transparent contradictions that on various occasions caused the jury (Int.7-Jur: p. 9) and "even the family" of the victim and the accused to laugh (Int.5-Rel: p. 5). In fact, 25 out of the 29 instances of explicit evaluation of speech occurrences during the trial that this prosecutor used in his closing argument referred to different parts of the defendant's testimony, classifying it as 'inconsistent', 'ridiculous', 'ludicrous', 'bizarre', 'untrue', and 'a lie.' Also, as many as 49 out of the 70 literal quotations the prosecutor used in his closing argument were from the defendant's testimony at trial, all of them being used to illustrate the defendant's "blatant dishonesty" and present him as a "pathological liar" (1359: 18). By contrast, in his closing argument the defense counsel did not use a single quotation from the cross-examination of the defendant, the only instance of a literal quotation from the defendant being from the defense's direct examination of him. Thus, even though no direct quotation from the cross-examination of the defendant is included in (1), by reproducing its form, tone and content, the prosecutor helps to activate the jury's memory of the defendant's testimony and consider his argument in the light of it.[6] Finally, it is also important to point out that, as hinted at in the extract of the prosecutor's interview cited at the beginning of this section, and following the definition of legal and communicative roles outlined in section 2, the prosecutor also intended to leave no single question unanswered.

In sum, it seems that the expository questions in (1) do not merely serve to organize the prosecutor's discourse, just as introductory expressions such as "regarding," "with respect to" or "as for" would do. Rather, by reproducing the triadic structure of courtroom cognition and embodying the crucial role of questions in court, they become particularly effective discourse devices. They set up a fictive trialogue between the speaking litigator, the listening addressee and the overhearing opposite team.

Re-presented question, asked and answered

In his closing argument and closing argument rebuttal the prosecutor in this case

not only used fictive questions, as discussed in the previous section, but also entirely constructed ones. This section discusses a question presented by the prosecutor in his final speech. This question was meant to summarize a piece of discourse previously delivered by the defense counsel in his closing argument, which the district attorney wished to discredit in rebuttal. I will attempt to show here that the utterance type chosen to re-present his opponent's discourse could best serve the litigator's argumentative purposes.

It should be mentioned that the prosecutor in this case made great use of speech representation in his closing argument and closing argument rebuttal. In particular, he represented speech occurring previously in the trial in 70 occasions, the great majority of which represented the previous speech of the defendant's or of the ones speaking for him, that is, his defense counsels. In fact, since a litigator cannot react to a damaging argument by the opposite side as it is formulated, reference to and re-presentation of earlier or anticipated future communicative events is frequent in the courtroom. Moreover, if one views the trial metaphorically as a verbal confrontation between prosecutor and defense for the sake of the jury, then the occurrence of quotations, summaries and paraphrases of arguments by the opposite party that are subsequently refuted by the speaking litigator, should come as no surprise. That does indeed seem to be the case (cf. Philips 1985, 1992; Matoesian 2001; Komter 2002).

The example to be discussed in this section is:

(2) Now, Mr. Loeber [defense counsel] questions, *"Well, how could the blood get on the end of the poker, because the poker is not hitting her in the head?"* […] The reason why blood gets on the end of the poker […] is centrifugal force. (1455: 3-9)

Here, the district attorney appears to present and subsequently answer a supposed question previously raised by his adversary, defense counsel Loeber. However, if one looks at the piece of discourse referred to and re-presented, it turns out that 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 he had said in the discourse referred to and paraphrased was:

(3) And we know from dr. Stone's [blood spatter expert] testimony and from our own common sense, when we look at these unfortunate, sad photographs of Rachel [victim] from the coroner, that *there were no wounds there that correspond to the end of a fire poker*. They're linear wounds. That's why we have linear, linear, linear. But to get that castoff spatter *we have to have blood*

on the end of the poker, and that would get there most likely – we've had no other explanation – by the end of the poker hitting Rachel's head. (1431: 27-1432: 7)

In this piece of discourse, the counsel is pointing out an apparent paradox arising from two supposed states of affairs, suggested by forensic evidence: a) there must have been blood from the victim's head at the end of the fire poker, and b) the victim's wounds do not correspond to 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 that was never found. Thus, the defense wishes to cast doubt upon the prosecutor's claim, by arguing that if there was blood at the end of the supposed murder weapon, namely the couple's fire poker, then its end should have hit the victim's head, which evidence shows it did not. Note that the prosecutor could not interrupt this argument by the defense at the time it was produced and give his explanation for the apparent paradox immediately after the defense presented it ("The reason why blood gets on the end of the poker…").

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 ascribed to the defense that he then proceeds to answer. When interviewed after the trial and asked to comment on this piece of discourse, the prosecutor explained that his adversary "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: p. 10). Note that in the interview the prosecutor presented his opponent's argument again as a question and defined his counterattack in rebuttal as a response to it.

It should be noticed at this point that as an instance of speech representation, (2) involves a process of *re-contextualisation* (Linell 1998; Sarangi 1998; Baynham & Slembrouck 1999; Hall, et al 1999; Slembrouck 1999). The previous argument by the defense is presented in a different communicative context with a significantly different – indeed opposite – argumentative goal. 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 purpose of the prosecutor's closing argument rebuttal is to address the reasons for doubt raised by the defense, that is, to *respond* or provide an *answer* to it. This justifies the use of the verb "to question" rather than "to ask" to introduce the speech represented in (2), indicating the use of a rhetorical question (or leading with negative orientation at best), rather than an answer-seeking one. This verb choice frames the defense

counsel's argument within a confrontation rather than an inquiry frame, which is consistent with both the triadic confrontational structure of legal discourse in general, and the tone and content of the counsel's original argument in particular.

The re-contextualisation of the defense's discourse is also responsible for the representation of the argument in (3) as a question subsequently answered by the prosecutor. As it is, speech representation is invariably transformed by the situation of reporting (Voloshinov 1930; Bakhtin [1981] 1998; Tannen 1995) and it always goes hand in hand with context-related uses and strategies (Herrnstein Smith 1978; Besnier 1992; Baynham & Slembrouck 1999). In particular, the choice of utterance type, a question, albeit used as a rhetorical one, rather than a negative assertion ("the murder weapon could not, may not or might not have been a poker"), allows the prosecutor to respond to it, projecting the ordinary question-answer pattern of interrogation. The presentation of his opponent's argument as a question also serves to engage the jury in active reasoning, by challenging them to search for an answer to it, which the prosecutor then provides himself ("The reason why blood gets on the end of the poker […] is centrifugal force"). Finally, following the basic rules and conventions of American law, in which the defense need not prove innocence but reasonable doubt, throughout the trial the defense counsel merely wished to cast doubt upon the prosecution's interpretation of the facts, that is, to put it to *question*, rather than provide a satisfactory alternative explanation for the apparent contradiction in forensic evidence. By contast, since the prosecutor does need to prove guilt, he is obliged to address all the points arisen at trial and during the investigation, that is, he needs to "answer all the questions" (Int.1.DA: p. 13), as he himself put it in the piece of interview quoted in the introduction to this section. In fact, producing a rhetorical or highly leading open question that one ascribes to one's adversary and subsequently responding to it constitutes a powerful means of persuasion. It presents the controversial issue and the legal theory, while at the same time highlighting the very adversarial structure of confrontational communication.[7]

In sum, the prosecutor's re-presented question in (2) seems to show an underlying trialogic structure. In the presentation of the question, the litigator takes the voice of the defense challenging his interpretation of the facts, at the same time that he invites the jury to seek for a satisfactory answer. The use of a triadic question to represent a prior attack by the opposite team succeeds in both reenacting the argument of the defense in the jury's mind and preparing the discursive ground for a counterattack, in such a way that engages the jury in the reasoning process. Finally, by providing a (sophisticated) answer

to a rhetorical question, grounded in direct legal evidence on the case, the prosecutor manages to cancel his opponent's critique, and thereby achieve his goal as prosecutor.

A triadic 'how-to' definition

This section focuses on the definition of a legal term which the district attorney in this case presented through the use of an interrogative at the level of the clause. Funny though it may seem, the use of an embedded interrogative as a definition occurs with significant frequency in the speech of legal professionals. Exploring the reasons behind this peculiar choice of sentence type is non-trivial since, given the importance of meaning in the law (Peirce 1931-1935; Kevelson 1980), definitions are of great importance in law and litigation (Charron 1980). Critically, in the courtroom definitions are generally far from neutral, as they usually reflect the litigator's argumentative goals.

In particular, the prosecutor in this case used direct or indirect questions in either 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 closing argument rebuttal (see appendix in Pascual 2002). More generally, the use of (non-quotative) direct speech at the clausal level is more common than one may at first be inclined to believe, and that both in litigation (Pascual 2002: §5.4, 2003) and in ordinary discourse (cf. Tannen 1983, etc.; Myers 1999; Pascual 2002: §5.4, 2004a). In his closing argument and closing argument rebuttal, the prosecutor used eleven instances of clausal non-quotative direct speech (e.g., "the appearance […] that '*look, everybody, look at what a great husband I am [!]*'," 1379: 10-12; "he decided, '*Well, now I'm not going to get something to eat, so I'm going to go home*,'" 1400: 17-19). Critically, eight out of these were questions (e.g., "some of you looked at me like 'Gosh, *why are you asking me such a simple question […]?*,'" 1352: 5-7; "the fact that -- *why does somebody carry a soap dispenser anyway?*," 1407: 17-18).

Here, I will deal with the predicative use of a question following the verb 'to mean' in this prosecutor's definition of a legal charge to the jury. The analysis will be in terms of a fictive question with an underlying triadic structure. The example to be discussed is:

(4) Express malice means, simply, *was it an intentional killing [?]*, okay? (1362: 18-19)

This utterance was produced early in the prosecutor's closing argument. What is most striking about (4) is of course the use of an interrogative sentence type as

a definition. The structure used is basically: NP + *means* + YES/NO INTERROGATIVE, whose semantics can hardly be looked upon as informative. In contrast, the judge's definition of the term "express malice" in his instructions to the jury in that same case and in the written glossary that the jury take to the deliberation room was simply: "the unlawful intention to kill a human being." In the larger piece of discourse to which the selected fragment belongs, the district attorney instructed the jury on the laws that govern jury deliberation and gave definitions of all the charges that they would subsequently have to accept as proven or not. The discourse immediately surrounding (4) was:

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

In (5), a set of yes/no questions is first presented in order to explain the meaning of "express malice" and its related terms "premeditation and deliberation." Then, the definitions are "applied" to the case at hand. Such an application is introduced by an expository question ("was there planning?"), which is immediately answered in the affirmative by the speaking litigator himself ("Of course there was planning"). I believe that by merely explaining the meaning of legal terms through questions, even before he gets to the final question-answer pair, the attorney is simultaneously teaching the jury on the law and guiding them through the kinds of decisions – the kinds of *questions* – with which they will be confronted in deliberation. In this manner, the definition of the terms gets merged with the practical application of this knowledge in the deliberation room. The yes/no questions also serve to re-present the two alternative versions of the case presented by the opposing legal teams. According to the prosecutor the answer to these questions is 'yes', according to the defense it is 'no'.

Two similar examples can be observed in the district attorney's closing argument rebuttal at a point in which he again explains the legal term "express malice" to the jury (6) and in which he defines the concept of 'reasonable doubt' (7):

(6) [in torture] the mentality, the intent, is focused on *is there an intent to cause cruel extreme physical pain [?]* […] And that's all that the statute requires, is that – *was there an intent to inflict cruel extreme physical pain*

for any sadistic purpose; extortion, revenge, whatever. (1452: 28-1453: 7)

(7) What beyond a reasonable doubt means is that when you look at the case in totality, *do you know, do you have any reasonable doubt as to whether or not the defendant inflicted these injuries on Rachel [?]* (1464: 14-18)

As (4) in and (5), in the cases above the definitions of a legal term, i.e. "express malice" (in torture) and "reasonable doubt," are again presented through the supposed reasoning process that the jury will have to go through in deliberation when deciding whether the term does or does not apply to the facts in the case at hand. In American law, the verdict form is sometimes explicity presented as a list of questions for the jury to answer (e.g. 'was there express malice?'). That 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' vs. 'not true'; 'guilty' vs. 'non-guilty').[8] The cognitive task assigned to the jury is thus guided through a piece of material structure, the written verdict form, with which they need to interact and use as anchor during deliberation. This piece of paper serves as a cognitive artifact to model the jury's reasoning process and the use they make of the definitions of the legal terms they have been given during the trial. As it is, this contains the specification of the precise decisions to be made, that is, the relevant questions to be answered. The alternatives to chose from correspond to the arguments of the prosecution and the defense respectively. That is where their recollection of the meaning of legal terms needs to be applied. Therefore, the litigator *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 proved, as the prosecution argues, or not, as the defense claims.

In sum, by using an embedded question in the definition of a legal charge, the litigator engages the jury in a fictive conversation, reproducing their future questions in the jury room. At the same time, it sets up the defense's alternative interpretation of the case, which he subsequently cancels in the answer to the question ("Of course there was planning"). It is in this sense that I would argue that the question in (4) has an underlying trialogic structure, in which the prosecutor takes the voices of the jury and the opposite team, as much as his.

Fictive question, obvious answer: The 'Who's buried in Grant's tomb' argument

As already pointed out, the district attorney in this murder trial used a highly

interactive internal structure in his discourse, with a frequent use of fictive questions. He not only used fictive expository questions, an imaginary represented question and an embedded non-quoted question at clause level. He also used an embedded interrogative as a modifier to characterize his own argument.

It should be noted that the use of direct speech within the clause or even the phrase is not entirely uncommon in litigation (Pascual 2002, 2003, 2004a), or in ordinary discourse for that matter (cf. Lieber 1988; Pascual 2002: §5.5, 2004, Pascual 2004a; Pascual and Janssen in press). In particular, in his closing argument and closing argument rebuttal, the prosecutor in this case used four creative instances of direct speech without a quotative function (or functioning as free indirect speech) below the level of the clause. These are: i) "a '*who's buried in Grant's tomb*' argument" (1373: 19); ii) "this discussion about, '*Well, we always took trips on her birthday*'" (1379: 3-4); iii) "worried about '*Well, maybe somebody's going to come in and see me*'" (1393: 10-11); and iv) "focused on *is there an intent to cause cruel extreme physical pain*" (1453: 6-7, see eg. 6).

Here, I will deal with the example in "a '*who's buried in Grant's tomb*' argument," which appeared in the prosecutor's closing argument when dealing with an accusation of attempted murder claimed to have occurred two weeks before the actual murder. This example will be analyzed as involving a triadic question reproducing the assumed trialogic structure of litigation. The full example is:

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

From a purely grammatical point of view, the italicized bit in this piece of discourse is an interrogative functioning as a modifier. It has the syntactic properties of an ordinary interrogative at the sentential or clausal level, while filling the slot and fulfilling the function of a word or phrase. Thus, its internal syntax suggests that we are dealing with a question, whereas its external syntax reveals a relational function of a compound specifier. In this sense, the "'*who's buried in Grant's tomb*' argument" in (8) can be compared to examples from everyday language use such as "*how are you* letter" (Lieber 1988: 205-06), "*who's the boss* wink" (Lieber 1988: 206) and "*do we understand each other?* conversations" (Pascual 2002: 209), as well as to complex compounds involving other sentence types and combinations of them, such as "*I-knew-it-all-along* expression" (Adams

2001: 3), "*bring-your-own-booze parties*" (Hoeksema 1988: 128), and "*run-it-up-the-axiom-list-and-see-if-anyone-deduces-a-contradiction* method" (Van Zonneveld 1983: 117).[9]

I will attempt to show here that the creative compound in (8) reproduces the triadic structure and basic interactional dynamics of its context of occurrence, that is, a prosecutor's final discourse to the jury. In particular, the question "Who's buried in Grant's tomb?" serves to define the kind of argument the speaking litigator is going to develop. The embedded question does certainly not represent a quote or paraphrase of an actual question that appeared previously at trial or an anticipation of one the attorney would introduce later in his discourse. 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 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 unrelevant altogether. The addressee may hence get confused or try to seek for the answer to the question in the alternative interpretation of the genitive, meaning "Who is buried in the tomb *owned* by Grant?".

Thus, although a literal quote, this utterance does not function as an ordinary citation. Rather, it is used metonymically for the whole communicative event it is commonly embedded in or an inherent aspect of it. More specifically, the question '*who's buried in Grant's tomb*' is used to gain mental access to its redundancy, and thus to the absurdity of asking it altogether. At the same time, the question in (8) – or rather, its redundant nature – serves to define the utterer's statement. 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 trial and the previous arguments in the prosecutor's discourse – should almost automatically prompt an affirmative answer.[10] In this sense the prosecutor's argument appears like the unnecessary explanation for the answer to standard questions in (American) English, such as "Is the Pope catholic?" or "Does the bear shit in the woods?," whose answers are made obvious once we apply basic knowledge of the world.

Critically, however, no matter how obvious, the district attorney still has to develop the argument, since the prosecution carries the "ultimate proof of guilt" and thus needs to convince the jury of every single aspect related to the

charges. In other words, he needs to argue for even the most obvious answer to the questions raised at trial, so that there is not a shred of doubt on the relevant facts, which were denied by the defendant in his testimony and doubted upon by the defense team. The very fact that in their closing argument following the prosecutor's the defense team may cast doubt upon the transparent issue of whether the victim was intentionally killed may confuse the jury, just as one may be confused when asked a question whose answer is presupposed in the question itself. It is because the defendant has not pled guilty to intentional killing that the prosecutor needs to argue for it. Thus, 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).[11] Also, by introducing his argument to the jury as a question whose answer is presupposed in it, but asking them to pay attention to the answer all the same, the prosecutor avoids confusing the jury or losing their interest. At the same time, when providing the answer to the question that may be raised later in the argument of the defense, the prosecutor is counterattacking.[12]

Therefore, the interactional structure set up by the fictive embedded question is again a trialogic one, which reproduces the prototypical conceptual configuration of confrontational discourse in general and legal discourse in particular. In the objective situation of communication, the speaking prosecutor is the one uttering the question he will deal with in this part of his argument (i.e. "was there an attempt to kill?") as well as the question that serves to characterize this 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 the discourse (1373: 20-1374: 22). By contrast, at the level of cognition the illocutionary roles seem to be distributed across: the speaking litigator, the listening jury, and the overhearing defense/defendant. By posing this question, the prosecutor is adopting the voice of the defense team, who cast doubt upon – or *question* – his interpretation of the facts, obvious though it may seem to the prosecution, and who speak for the defendant (who first testified that his wife may have died from a ceasure). By so doing, the prosecutor is also verbalizing a doubt – or a *question* – that sceptic jury members may have and later raise in the deliberation room. This fictive question is addressed at himself, as the one who charged the defendant of attempting to kill the victim. Thus, in his answer to the question he uttered himself, the prosecutor is fictively *responding* to the defense's prior and anticipated future challenges and to the jury's possible present and future doubts.

Summary

This article dealt with the use of questions, followed by their corresponding answers, in a prosecutor's external monologue to the jury in a high-profile murder trial. The main hypothesis was that questions are not only crucial in the presentation of legal evidence, but also in legal reasoning and argumentation. In particular, four cases of non-quoted questions in the prosecutor's closing argument and closing argument rebuttal were discussed: i) a set of expository questions; ii) a re-presented rhetorical question; iii) a clausal question used as a legal definition; and iv) an embedded question used to characterize the utterer's argument.

These questions were claimed to emerge from the intersection of the participants' knowledge of the case and their conceptualization of the legal proceeding as a highly regulated institutional context with certain rules of interaction and participant roles. More specifically, the interpretation and production of such questions was said to be socio-culturally grounded and to reproduce the proposed basic triadic structure of courtroom dynamics. In the Anglo-American criminal-judicial system, the basic interactional channel and participant structure was said to constitute a fictive trialogue involving: a) the orator who has to convince (prosecution/defense), b) the interlocutor to be convinced (judge/jury), and c) the contrary party to be refuted (defense/prosecution). This trialogic structure, together with the interactional dynamics of litigation, was presented as underlying the silent communicative channels of the questions discussed. I hope to have shown that fictive questions with a trilogic structure can profitably be used by litigators as argumentative devices, since they map the external socio-cultural structure of courtroom communication.

In a more speculative vein, in the light of the present paper the Western trial seems to appear as not so much a search for the truth, as is generally suggested, as an institutionalized search for answers.

[Syntactic structure/choice is a function of the socio-cultural structure of the context of communication]

Notes

[1] The empirical data on which this article is based was gathered during a Fulbright grant (2000-2002) at the University of California San Diego. The article was written during a post-doctoral 'Talent' fellowship (2003-2004) from the Netherlands Organization for Scientific Research (NWO) at the University of Gent, Belgium and the University of California, San Diego. I am deeply grateful to Aaron V. Cicourel, Stef Slembrouck and Theo Janssen for much assistance. All errors are mine. I am especially thankful to the subject of this case study, district attorney DG, who generously agreed to be interviewed and allowed me to use and publish my data on his performance in court as well as his views on law and litigation.

[2] For a detailed overview of this data and an in-depth analysis of it within the cognitive linguistics theory of mental spaces (Fauconnier [1985] 1994) and conceptual blending (cf. Fauconnier & Turner 1994, 2002), enriched with with Hutchins' (1995) concept of *distributed cognition*, see Pascual (2002). This work includes an appendix with a detailed 35-page commented transcript of the prosecutor's closing argument and closing argument rebuttal.

[3] The triadic structure is not exclusive to the courtroom. In fact, it is characteristic of social coalition in general (de Waal 1982; Brown 1991) and confrontational discourse in particular (Latour 1987; Ladegaard 1995; Cialdini et al. 2002).

[4] Following the form-function correspondence hypothesis of cognitive linguistics (Lakoff 1987; Langacker 1987, 1991), I view all interrogatives as setting up a question, if at times only at the cognitive level (Pascual 1999, 2002). That is, I understand the interrogative sentence structure as setting up: i) a questioner and an answerer illocutionary role, which may or may not correspond to the addresser and addressee in the situation of communication; and ii) a question-answer interactional exchange, which may or may not be presented to be fulfilled in the situation of communication.

[5] Hyland (2002) finds a similar discourse strategy in the use of questions in academic texts. One of his informants explained their use in a very similar manner as the prosecutor quoted above: "I'm asking the questions they [readers] might ask, but they are my questions. Ones I can answer and that take them where I am going" (p. 548).

[6] A similar example to the one in (1), which comes from the same piece of discourse and in my view deserves the same kind of analysis, is:

Did he eat at Burger King? No. *Does he have a receipt?* No. *Did he get anything to drink?* No. […] "Were you hungry? Is that why you went to Jack-in-the-Box?" He said, "No, I wasn't hungry. I just needed something." […] So, *did he go back to Jack-in-the-Box and get something to eat?* No. Well if he was hungry *why didn't he go back to Jack-in-the-Box?* Well, because he says he really wasn't hungry […] *Does he have a receipt?* No. *Can he verify his – he was there?* No. *How do you know he was there?* You have his word. (1399: 23–1400: 21)

Interestingly, in this case the prosecutor did insert literal quotes from the defendant's testimony in the trial ("Were you hungry? Is that why you went to Jack-in-the-Box?" He said, "No, I wasn't hungry. I just needed something," 1400: 6-9).

[7] A similar example of a response to a rhetorical question raised by the opposite attorney in a prior closing argument comes from a criminal trial in a Spanish court (Pascual 2002: 189). The defense was arguing that since the defendant and the victim were suffering from deep financial problems, the defendant had aided the victim to commit suicide, subsequently failing to commit suicide himself. The prosecutor of the victim's family confronted this version of the facts by arguing that financial problems are common and do not constitute a strong enough reason to end one's life. He

expressed this argument with a rhetorical question: *"¿Quién no sufre por problemas económicos?"* [Who doesn't have financial problems?]. When his turn came, the defense counsel quoted this question – as rhetorical – and responded to it, in a way that was consistent with his explanation of the facts:

"¿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. No tiene que sufrir por problemas económicos"
['*Who doesn't have financial problems?'*, says the private prosecutor [prosecutor of the victim's family]. I will tell you whom. A seventeen-year old kid does not have financial problems. She shouldn't suffer from financial problems].

This structure is not restricted to legal discourse. In his study of questions in academic writing, Hyland (2002: 547) suggest that in rhetorical questions (my italics): "[t]he speaker is recruited into a *virtual debate* to support the author's evaluation through the question."

[8] The presentation of the verdict form as a list of yes/no questions to be answered by the jury is the standard procedure in Belgian criminal courts. There, when returning from deliberation the jury's spokesman or alternatively the court's clerk, does not announce 'guilty' or 'non-guilty', but rather '*ja*' or '*neen*' (yes vs. no). Althogh this is not always the case in American law, jurors seems to experience their decision-making as a question-answering process regardless (Pascual 2004b), something that is motivated by the instructions they receive from the court as well as the verdict form they have to fill in. In particular, the part of the verdict form related to premeditation that the jury in this case had to fill in looked as follows:

We, the jury in the above entitled cause, find the defendant, X _____ of […] And
(GUILTY)(NOT GUILTY)

we further find that the above offense _____ willful, deliberate and premeditated, within
(WAS)(WAS NOT)

the meaning of Penal Code section 189.

[9] See Pascual and Janssen (in press) for a bibliographic overview of this type of compounds in different Germanic languages and for an account of them in Dutch from a fictive interaction perspective.

[10] The prosecutor's presentation of the (affirmative) answer to the question whether there was attempt to kill in the case at hand as utterly obvious seems apparent in the piece of discourse following (8):

"Rachel was in bed when she was struck, okay? And the defendant was the only person in the home. And this had occurred after there was the discussion about beneficiaries, and it's also occurring during a time when their financial situation is going down the tubes fast. […] *What else could your intent be when somebody takes a fireplace poker and hits somebody across the head?* […] There is a reason why she's being hit in the head. […] I submit to you that there could not be any other intent when a man takes a fireplace poker and cra[a:]cks somebody in the head while she's in bed. It's not a love tap. It isn't to get your attention. She's in bed. It's at night. There is a reason why she's being hit in the head." (1373: 20–1374:7)

[11] Due to the importance of talk-in-interaction in the courtroom, communicative events are not only often referred to and re-presented in court (Philips 1985, 1992; Matoesian 2001; Komter 2002),

as discussed in section 3.3, but they are also regularly explicitly evaluated upon by litigators. This is naturally aimed at ensuring that the jury interpret the relevant speech in such a way that is consistent with their version of the facts. The prosecutor in this case, provided explicit evaluations of speech produced during the trial in at least 29 occasions (see appendix in Pascual 2002).

[12] A similar pragmatic function can be given to the classical questions "Is the Pope catholic?" or "Does the bear shit in the woods?". These questions are not expected to be answered and generally used as the answer to an obvious question. However, even apparently obvious questions may need to be examined and answered, they can still be answered, as they prosecutor does in (8). Examples of factive usages of the conventional utterances above used as argumentative counterattacks are the title of the book by Joanna Manning *Is the pope catholic?: A woman questions her church* (Toronto: Malcolm Lester Books 1999), and the following variation of the bear example: "Does the bear shit in the woods? *No, not if it's a polar bear!*".

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