

“TELL US IN YOUR WORDS...”

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ABSTRACT

Current literature on the language of barristers and their questioning strategies makes clear that questioning procedures manipulate witness testimonies. Also known is that the examination phase encompasses more wh- questions that invite more contentful answers than cross-examination; while cross-examination is more challenging in nature. However, this is a somewhat simplistic analysis of the factors at work in barrister questioning strategies.

This paper reports on a study of barrister questioning strategies in conjunction with witness answer forms, in order to gain some measure of the extent to which witnesses are allowed to ‘tell their own stories in their own words’. Additional factors taken into account include presumed sympathies of respective witnesses - i.e., do questioning strategies differ according to assumed sympathy for the defense or prosecution. The resulting statistics reveal that witnesses provide very little of the crime narrative conveyed to the jury; and barrister questioning strategies is a function of the assumed sympathies of respective witnesses.

The data are the court transcriptions of a Supreme Court murder trial, held over 6 days in Victoria (Australia) during 1986. The data encompass 33 witness testimonies.

1. Introduction

In the course of a courtroom trial, the ‘facts’ of a case are constructed through a series of question-answer sequences between lawyers and witnesses, and therefore do not pre-exist. The discourse in this formal setting is unilateral, in that barristers enjoy a one-sided topic control of discourse. Discourse in this setting appears to flow smoothly from one witness to another. On-lookers may be unaware of the choices made by barristers in determining the order in which each witness appears as well as the order of topics to be dealt with within each testimony. In fact, the procedure of ‘first you, then me’ is evident in a number of ways. For instance, the examination phase is followed by cross-examination, which is as fundamental to this scenario as the question and answer sequences within them. Both legal phases and questioning procedures highly resemble the procedural ordering of accusation, then defense.

In principle, the accused is innocent until proven guilty,² and the defense does not need to replace the prosecution’s story with another version. Instead, they only need to discredit that account or create doubt in its truth. However, recent researchers (e.g., Carlen 1976; McBarnet 1981) have criticized what they call the absurd disparity between ‘what happens in court’ and ‘what is supposed to happen in court’. In particular, defendants have no voice and their identity is manipulated by legal professionals whose informal rules negotiate and determine trial outcomes (Carlen 1976). McBarnet (1981) claims that laws covering police

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² This right is outlined in the 1966 International Covenant on Civil & Political Rights - see Byrne (1989: 426-428).

procedures, suspect apprehension and the system of prosecution and trial, serve to secure conviction. This perspective is expressed most succinctly by Hutton (1987:113) who argues that “the criminal justice system is precisely designed to ensure a high rate of conviction”.³

Bartley & Brahe (1986:161-162) describe among the fundamental rules of the initial phase of witness testimony (i.e., the examination-in-chief⁴) the principle that witnesses should be allowed to “tell their own story in their own way”; the “fewer interruptions the better”. In principle, witnesses should only be guided through their respective testimonies by barrister questioning, enabling the details to be presented in as chronological a format as possible - i.e., an uncluttered format that would facilitate comprehension by the jury. However, it can scarcely be said that the latter aim of guiding witnesses is compatible with the notion that witnesses present their testimonies in their own words.

The goal of the study presented in this paper was to extract the nature of barrister questions and witness answers, as well as the extent to which barrister questions build onto (and interact with) witness responses. In other words, this study answers the question: ‘how much of the witness’s testimony is presented by witnesses, and how much by (respective) barristers?’

2.0 The Data

The data for this study are the official court transcripts of a six day murder trial held in the Victorian Supreme Court, Melbourne Australia. The trial was held in February 1986 which was two-and-a-half years after the date of the crime. In total, the trial consisted of 33 witnesses: 27 Crown witnesses (i.e., witnesses called by the Crown for the prosecution); followed by 5 Character witnesses and the accused’s ‘statement from the dock’ called by the defense. The fact that this trial was heard in a Supreme court entails that it had already been heard in lower courts: a Coroner’s Court and a Magistrate’s Court.

2.1 Trial Synopsis

The accused is on trial for murder. The deceased had a rental lease on one of seven units owned by the accused’s family (of which they also occupied five units). After several arguments, the deceased and his defacto girlfriend agreed with the landlord to break lease and move elsewhere. On the day of their departure a violent dispute erupted with regard to the deceased’s failure to close the gates to the property and the deceased was shot by the accused - several times - in the courtyard of the units. The accused pleaded ‘not guilty’ of murder on the grounds of self-defense and provocation.

2.2 Australian Court system

The Australian court system follows the Adversarial (or Accusatorial) system that is also used in Anglo-America and Britain (Certoma 1982). This system involves a contest between rival parties who present their respective sides and are entitled to question each other. In a criminal trial such as this, the duelling parties are the Crown or State (the prosecution) and the accused or defendant (the defense). The judge’s function is to adjudicate rather than act as an additional inquisitor. Although judges can ask questions, this is not their role. In the trial data used in this study the judge was largely silent - asking very few questions, and those that were asked were for clarification and procedure. Evidence presented during the trial is exclusively in the hands of the lawyers and not at all with the judge.

³ McBamet (1981:2) cites criminal statistics (or 1978 conviction rates: 90% in Scottish court cases and 84% in English Crown courts & 95% in Magistrate’s courts (indictable cases). She also cites research results of others (Bottoms & McClean 1976): 72.5% magistrates’ cases and 71% in higher courts that resulted in convictions on some or all counts

⁴ The Examination-in-Chief is also referred to as ‘direct Examination’, or just ‘Examination’.

2.3 Rules of Witness Questioning

The courtroom procedure begins with the prosecution calling the first witness. Witnesses called by the defense are only called after the prosecution has exhausted the list of witnesses it wishes to call to testify. In some cases (although not in this case), the prosecution may wish to call a last minute witness after the defense has begun calling its witnesses; however, this can only happen at the discretion of the judge.

The party who calls a witness conducts what is called the examination-in-chief. The object is to elicit facts from the witness that will support the case of the examination-in-chief's client. The examination phase must cover all desired topics before cross-examination by the opposing counsel may begin. After cross-examination, the examining counsel may 'redirect' (i.e., conduct a reexamination of that witness) to clarify issues raised in cross-examination. If a material question had been omitted in examination, then it cannot be asked (as a matter of right) during re-examination, and therefore the examining counsel be familiar with the facts of the case, the nature and character of each witness, and the particular facts each witness is likely to reveal. The examiner should elicit clearly and in proper chronological order all the relevant facts of the case that will support his or her client's case (Bartley & Brahe 1986:161).

The object of cross-examination is to derive admissions favourable to the cause of that lawyer's client, and/or discredit the cause of the adversary's client as well as to extract what the witness omitted to say (Glissan 1985: 85). This involves impeaching the accuracy, credibility and general value of the evidence given during examination. This is achieved by sifting the facts already stated by that witness to detect and expose discrepancies, and to elicit facts that will support the case of that lawyer's client. The style of questioning is therefore far more challenging than is permitted during examination and witnesses may be asked leading questions and be contradicted by later evidence (Bartley & Brahe 1986:101). In contrast, leading questions are not permitted during the examination-in-chief, which could result in incomplete testimonies during that phase. An uncooperative witness may be declared *hostile* if unwilling to give complete, clear and unambiguous answers. If a witness has been declared *hostile*, the examining counsel may use a cross-examination questioning style to get a broader testimony (Bates 1985:119-120).

Re-examination is conducted to clarify or explain any part of the witness's answers given in cross-examination that may have been contradictory or unfavourable to their case. It is governed by the same rules as the examination-in-chief and thus the witness cannot be asked leading questions or be cross-examined by his or her counsel (Bartley & Brahe 1986:356). In addition, reexamination is confined to matters arising from cross-examination and new issues are only permitted after permission has been granted by the court.

2.4 Courtroom Dynamics

Power is defined as the Capacity of one or more persons to produce intended or foreseen effects on others due to authority, manipulation, persuasion or force (Kramarae et al. 1984:11). The dress and discourse of legal professionals, as well as characteristics of courtroom furniture and layout, all contribute to the power that is attributed to barristers and away from witnesses (cf. Luchjenbroers 1991 a,b). These sources of power imbalance presumably intimidate witnesses, adversely affecting their performance as discourse participants.

Power imbalances also result from the fact that legal professionals frame the questions and make the demands, but witnesses do not share this right. In effect, the situation gives principle rights to the barrister, not only in terms of topic selection but also in determining whether a response counts as an answer (Briggs 1986:56). Furthermore, courtroom

interaction which is accurately called a form of interrogation ignores the extent to which witnesses are otherwise accustomed to communicating their thoughts and feelings (Cicourel 1988:904). Danet (1980) describes questions as ‘weapons’ that serve to test or challenge claims made by witnesses, and ‘vehicles’ for accusation.

In addition, the witness’s goals may be incompatible with those of the court. However, witnesses cannot negotiate the Court’s impression of them or leave the scene. Penman (1987) explains that courts operate on their own set of rules, and private or intrinsic rules are not tolerated (see also Carlen 1976). Any infringement of court rules will invariably elicit sanctions (e.g., contempt of court).⁵

The unilateral nature of this type of discourse is the result of the barrister’s need to remain in control. In order to extract the information in an optimal (e.g., chronological) order, s/he cannot allow witness divergences that may distract from the arguments s/he wishes to portray, or the crime narrative s/he wants the jury to construct. However, observers (e.g., Marshall 1969) have noted that although the careful step-by-step direct examination serves to build a more complete story, it is less effective in building an exact, accurate and interesting story than would a question that invites a free-flowing narrative response. Marshall (1969:95) further points out that allowing witnesses to narrate would probably also result in greater credibility.

Such procedural restrictions imposed on the nature of witness answers robs witnesses of any power, illustrating the extent of barrister control over the proceedings and an inverse lack of control on behalf of witnesses. Neither do witnesses have power over topic choice - i.e. they have no control in determining what will be said or **when** it will be said. Although Penman equates court rules with Grice’s (1975, 1978) maxims of cooperative behaviour (maxims of Quantity, Manner, and Relevance), these rules suggest an overriding principle: ‘speak only when spoken to’ which is reminiscent of adult-child type interactions.

3.0 Prior Linguistic Research

Danet (1980:515) describes the questioning mode of lawyers as including interrogatives (*wh-*, alternative and yes/no questions), imperatives and declaratives. The functions of these question types include elicitation for information, requests, suggestions and ironical assertions (cf. Goody 1978). As in ordinary discourse settings, questions are fundamentally defined as a summons to reply: the speaker compels, requires or demands that the addressee respond. In this way, barristers can exercise control or offer deference (Danet 1980). In ordinary discourse, questions are appropriately asked if a speaker does not possess the information requested and also believes that the addressee is in possession of such information (Lyons 1977). However, in courtroom discourse attorneys typically ask questions to which they already know the answers to persons who know that they know the answers (Lakoff 1985:173). In fact, Lakoff argues that lawyers are unlikely to ask a question to which the answer will come as a surprise. The force of their anticipation of the nature and content of answers is such that they are capable of framing their questions in order to encourage a witness to give a more desired response - for example, by using *some* where one might expect *any*, in order to encourage a positive answer (cf. Loftus 1975).

(1) *Did you have some alcohol?*

(2) *Did you have any alcohol?*

As a rule, lawyers are not allowed to lead the witness; however, Danet argues that lawyers are even encouraged to do so during the cross-examination of witnesses. Leading questions are

⁵ This is legalese for flouting the rules of the court and may result in a jail sentence.

generally presented in three ways: declaratives, accusatory yes/no forms, and interrogative forced-choice (alternative) questions (Danet 1980:521). Research reveals that such forms show a 47% occurrence during direct examination, but an 87% occurrence during cross-examinations (Danet 1980),⁶ although the percentage proportion of coercive questions (yes/no and declarative questions) is dependent on the seriousness of the trial. Coercive questions are more prevalent in more serious offences.⁷

Additionally, declaratives are inherently leading in form and substance. Danet (1980:520) claims that leading questions result in lawyers being able to assert their own versions of reality, which add to their control of witnesses. It is evident that lawyers know and demand a presumably expected answer. Danet further describes wh-questions as rare. However, wh-questions are generally thought to illustrate a more genuine attempt to reveal the facts than do yes/no questions.

Courtroom discourse also presents the strategy of posing double questions. These require an addressee to accept the content of the first part, by being forced to answer the second (Luchjenbroers 1990, 1991c; Williams 1985). For example, (3) implies that these two events occurred together and a *Yes* answer would be understood to confirm the truth of both components; while an expressed denial of one part retains the inferred truth of the other (Luchjenbroers 1993:144). In particular, a (3b) witness response would still be interpreted as accepting the first part, “*he returned*”, and similarly, a (3c) response would retain by inference “*the other occupants did go out for some food*”.

- (3) a. *Do you recall him returning and the other occupants going out for some food?*
- b. *They didn't go out for food.*
- c. *He didn't return.*

Tags also function differently in ordinary conversations than in courtroom discourse. Lakoff (1985:174) describes tags as disempowering devices, which in normal discourse situations invite the addressee to control the conversation both in terms of defining discourse content and holding the floor. However, in courtroom interaction barristers do not need to invite the witness to respond. Witnesses are compelled to do so by the laws of the discourse situation. In fact, failure to comply with the rules of the court would lead to reprimand and possibly a fine for contempt of court. Lakoff (1985:174-5) argues that a reluctant witness who is subjected to tag after tag is basically in a no-win situation: if s/he responds, s/he damages the case for his or her defense; if s/he doesn't respond, s/he not only risks being found in contempt of Court but also risks being labelled conversationally inept. Such a finding could be more damaging due to social biases.

An additional concern with question types involves ambiguity of witness answers. Notably, Lane (1985) investigated the use of *yes* and *no* in New Zealand Adversary courts, and points out that the rules of their use in English are complicated and often lead to misunderstandings among native speakers. However, this is exacerbated in the interrogation of Polynesian speakers who use *yes* and *no* in the opposite way to native English speakers. Added to this problem is the frequent occurrence of negative questions toward witnesses. More specifically, *Yes* and *No* have culture-specific meanings that stand in relation to the question being asked,

⁶ On the basis of her data from six trials.

⁷ Non-coercive forms include wh-questions and what Danet refers to as ‘requestions’ - i.e., those that are typified by an apparent concern for the witness - e.g., *Can you tell us what happened?*

and negative questions are ambiguous for the same reasons. For example, an answer *Yes* to (4) can mean either (4b) or (4c) for different language/culture groups.⁸

- (4) a. Qn: *So you didn't come to the party?*
b. Ans *Yes* (= I agree with what you said)
c. Ans: *Yes* (= I did come to the party)

Dew (1985:138) also deals with the content of witnesses' answers, which he describes as dealing with more than just the issues raised earlier in a trial, but also to what a question may be leading to. In effect, witness responses are formed in the knowledge of previous testimony and also that which s/he expects to be at the defense (cf. 5-7, taken from Drew 1985).⁹

- (5) Lawyer: *and you went to a... ah you went to a bar in Boston, is that correct?*
Witness: *It's a club.* (Drew 1985:138)
- (6) Lawyer: *And during that evening ah.. didn't Mr X come over and sit with you?*
Witness: *(He) sat at our table.* (Drew 1985:138)
- (7) Lawyer: *Well you knew at that time that the defendant was interested in you, didn't you?*
Witness: *He asked me how I'd been...* (Drew 1985:140)

The types of questions that occur during examination differ fundamentally from those that occur during cross-examination due to the differing goals of these procedures. Danet (1980:523) explains that a lawyer's ability to control witnesses is measured by the length of witness responses. Therefore, cross-examination will contain more coercive questions which elicit shorter answers.

Adelsward, Aronsson & Linell (1988) studied the discourse strategies of legal professionals in Sweden in a study restricted to 40 petty crime trials. In this study the authors found that barristers basically use two types of yes/no questions: interrogatives and declaratives, and they describe declarative questions as :Dearing less coercive and more conversation like than interrogative yes/no questions (1988:267). McGaughey & Stiles (1984:80) argue that during examination witnesses should be asked open-ended questions (e.g., *What did ... do then?*). These would allow witnesses to present the facts as opposed to merely confirming them. In contrast, the use of closed questions that restrict the possible answers to just a *Yes* or *No* not only enhances the lawyer's control of both the witness and the information presented, but also makes the witness appear recalcitrant or inarticulate. Consequently, lawyers can manipulate and create impressions of witnesses that have positive or negative effects on jury assessments of their credibility.

3.1 Issues to be addressed in this research

Various aspects of courtroom discourse and procedure have been outlined that show that this discourse type is like a highly constrained play for the benefit of a jury. In particular, the various sources of power imbalance - e.g., physical characteristics of the courtroom, barristers' choice of register, questioning and referential strategies - all serve to reduce the witness to the function of a puppet with barristers being the puppeteers. Hutton (1987:115)

⁸ Intonation may play a role here; however I have noticed confusion within my own language/culture group with regard to situations like this.

⁹ Drew cites these case excerpts (from an American rape case) with linguistic detail; however, as I am only concerned with content, I have translated these examples into conventional orthography.

makes a valid point in his claim that social action is inextricably linked to its context, and it is easy to produce absurdity by comparing courtroom procedures with a different context (i.e., 'normal' interactions). Similarly, the studies cited seek to explicate the nature of courtroom interaction within that context, and **it** is measured only in terms of those principles that courts are meant to uphold - i.e., 'innocent till proven guilty', and 'allow witnesses to tell their own story, in their own words'. The analysis outlined in this paper provides statistical evidence for the position that is strongly suggested in the literature, but had not yet fully illustrated - i.e., barristers are the REAL story-tellers in this setting.

3.2 Hypotheses & Working Assumptions

The first assumption was that, compatible with existing claims in the literature, the court procedures of examination and cross-examination would differ significantly due to the differing roles of these procedures. In particular, **it** was assumed that the examination process would invite significantly more contentful responses than cross-examination (because of a higher use of open-ended questions) and cross-examination would contain more coercive questions that elicit shorter answers. **It** was also generally assumed that witnesses would be given some (although little) freedom to 'tell their story in their own words' in either testimony phase. An immediate impression from legal data is that few barrister questions interact with (i.e., add onto) the content of witness answers. This leads to a narration that appears somewhat disjointed. This impression was similarly tested in this study.

4.0 Discourse Analysis

The data have been coded in a number of ways to examine the nature of barrister contributions in terms of question (syntactic) types, witness responses, and the extent to which barrister contributions interact with (i.e., built onto) witness answers. This was done as a further measure of barrister control of the proceedings.

The first major contrast drawn was between the processes of examination (and Re-examination) as opposed to cross-examination.¹⁰ This was not only due to these processes being performed by different barristers, but also in recognition of the fundamentally opposing nature of these courtroom procedures - i.e., examination to establish the 'facts' of the trial and cross-examination to discredit those 'facts'.

The second major subdivision drawn was done on the basis of the assumed sympathies of respective witnesses with regard to the accused - i.e., some witnesses would predictably be more sympathetic to the prosecution and others to the defense of the accused. The following subcategories were drawn among the witnesses of this trial:

- a) Civilian witnesses (called by the Crown) thought to be sympathetic to the prosecution - i.e., girlfriend/defacto of the deceased, her relations and the mother of the deceased (4 witnesses) (Code = PROS, short for *prosecution*).
- b) Civilian witnesses (called by the Crown) thought to be sympathetic to the defense - i.e., brothers of the defendant (4 witnesses). (Code = DEFEN).

¹⁰ The processes of examination and re-examination were counted together as not all witnesses were taken through re-examination and therefore the number of contributions for that phase type were considered too low to consider independently. Additionally, examination and re-examination are performed by the same barrister and must adhere to the same rules of questioning. Therefore, combining these two potentially distinct categories was deemed justified.

- c) Civilian witnesses (called by the Crown) who could not be (reliably) categorized in either groups (1) or (2) - i.e., witness 5 (Real estate agent) and witness 10 (another tenant, living in a neighbouring flat). (Code = AMBIV, short for *ambivalent*).
- d) Police witnesses (called by the Crown - 16 witnesses). These witnesses may have more experience with this domain of talk than civilian witnesses and are permitted to provide more information - i.e., police records of the crime and their movements with the defendant - as well as narrate their testimony. (Code = POLICE).
- e) Character witnesses (called by the defense - 5 witnesses). These persons are, by definition, sympathetic to the defense and are civilians; however, as they were examined and cross-examined by opposing barristers to DEFEN witnesses called by the Crown (group b), these witnesses were treated differently for analysis. (Code = CHAR, short for *character*).

The distributions and correlations conducted on these data were measured using the statistical package SPSSx.

4.1 Coding Categories

The following four variables were coded into a number of values, in order to measure barrister control of the proceedings:

- (i) barrister' contribution types - 3 values.
- (ii) barrister' question types - 9 values.
- (iii) witness' answer types - 11 values. This distribution includes those barrister contributions that do not attract or require a witness response.
- (iv) the interactiveness of barrister contributions to preceding witness responses - 4 values.

The chosen variables and their coded values were selected to illustrate the interactional dynamics of this setting. In particular, the first category provides a general picture and defines the amount of non-interrogation contributions during these proceedings. The second category defines the scope of barrister questions to which witnesses must answer, while the third category defines the amount of information actually provided by witnesses. The final category, interactiveness, is an important measure of the barrister's topic control over the proceedings.

The unit of analysis is referred to as 'contribution', which is measured in terms of main clauses; however, some contributions would not be considered main clauses in the strictest sense, as they are not finite - e.g., (8) #133, (9) #140 and (10) #29, below. In these cases, non-finite units are extracted in order to separate an instruction (INST) from the question or statement; or an expression of Barrister Opinion (B-OP) from the facts of the trial. After extraction of such elements the remaining structure is still considered part of the (earlier) finite structure, to retain grammaticality of the string (e.g., (10) #29).¹¹

- (8) #133 *and again, without telling us exactly what was said,* INST
- #134 *you discussed certain matters briefly with them*
- #135 *did they come into the flat at that time or did they go away?* [W2E:133-135]¹²

¹¹ In this example, the clause *as I understand it* has a function outside the contribution *It is a photograph of a kitchen taken from the door area of the kitchen*. Therefore, after extraction of this clause (#30), contribution #29 is resumed.

¹² The coding convention for individual contributions include: the witness number (W2), followed by the legal procedure type CE • Examination): contribution number(s).

- (9) #140 *Now, if I can take you to Saturday, the (date)* INST
 #141 *Did you work on that day?* [W2E:140-141]
- (10) #29 *it is a photograph of a kitchen taken,*
 #30 *as I understand it, B-OP*
 (#29) *from the door area of the kitchen.* [W2RE:29-30]

Example, (11) below shows an extraction that results in two finite clauses (#3 and #4); although, [#4] is more specifically the object of [#3]. This type of extraction was an initial attempt to isolate different domains in discourse: reference to the here- and-now as opposed to crime time. Further argument for this extraction was based on the observation that it is debatable, from a discourse function perspective, whether [#4] is predicated to [#3] or vice versa. Although syntactically [#4] is the complement of [#3], the functions of these units in this discourse type is that the barrister is putting forward the proposition in [#4] and [#3] is a modification of that claim.

- (11) #2 *and did the agent tell you prior to you inspecting the flat,*
 #3 *I take it* B-OP
 #4 *you did inspect it?* [W2xE2-4]

This type of separation was meant solely to extract instances of barrister opinion and was not performed on any other structures of the same type - e.g., (12), where a claim is attributed to the witness.

- (12) *and you have told us that his complaint concerned the car being left in the courtyard* [W5XE:7]

Additionally, a number of other speech acts, such as clarifications (CLAR) - e.g., (13 [#941]) and false starts (RF.S.) - e.g., (14 [#961]) are counted separately. However, in the case of false starts, the breach must be a complete stop or alteration and not just an ungrammatical string - e.g., (15) where the subject is repeated (bolded).

- (13) #93 *Had you seen him at any time prior to his actual entry into the flat?*
 [W2E:93-94]
 #94 *into fiat x?* CLAR
- (14) #96 *and as he approached* F.S.
 #97 *I'm sorry,*
 #98 *did you see him approach your flat at all?* [W2E:96-98]
- (15) #67 *Now, did the people inside the courtyard, when you had a chance to take in what they were doing, did they appear to be very upset?* [W10XE:67]

4.2 Data set

The total number of contributions counted in this study is 3701. The distributions across legal procedures (examination and cross-examination) given in Table 1 show the two legal procedures to be of equivalent length: examination constitutes 55.4% and cross-examination 44.6% of the data.

TABLE 1: **Data distribution as a function of witness affiliation**

AFFILIATION	EXAMINATION			CROSS-EXAMINATION			TOTAL	
	No.	R%	C%	No.	R%	C%	No.	C%
PROS	316	38.1	15.4	514	61.9	31.1	830	22.4%
AMBIV	105	51.6	5.1	99	48.5	6.0	204	5.5%
DEFENCE	355	61.6	17.3	221	38.4	13.4	576	15.6%
POLICE	1229	61.4	59.9	772	38.6	46.8	2001	54.1%
CHAR	46	51.1	2.3	44	48.9	2.7	90	2.4%
TOTAL	2051	55.4	100	1650	44.6	100	3701	100%

Key: PROS = prosecution witnesses No. = real numbers
 AMBIV = ambivalent witnesses R% = Row percentage
 CHAR = character witnesses C% = Column percentage

The five categories of witnesses in terms of their assumed sympathies toward the prosecution or defense of the accused, however, are of variable sizes: POLICE witnesses constitute over 50% of the data; while CHAR (Character) witnesses constitute only 2.4%. This is mainly due to the number of witnesses that fall into each of the respective categories. That is, police witnesses include 15 of the total 33 witnesses, while PROS (Prosecution) and DEFEN categories include only four witnesses each; CHAR witnesses include five, and AMBIV (Ambivalent) witnesses include only two. Additionally, the amount of information covered by individual witnesses also contributes to the imbalance in category sizes. For example, the relatively small number of contributions among CHAR witnesses is due to the extreme brevity of those testimonies. This contrasts strongly with, for example, witness #2 whose testimony opens much of the information presented during the trial and constitutes 17.9% of the overall data. Therefore, percentage results calculated within categories as well as across categories are considered in this study.

5.0 First Variable: Contribution Types

5.1 Contribution values

The first variable of this study shows the distribution of barrister contributions in terms of form - i.e., interrogative or declarative, or a speech act function other than question and statement. Therefore, the three values are: Questions (QN); and Declaratives (DECL), and (alternative) Speech Act Functions (SAF). Each of these variables is described and illustrated in the examples below.

- 1 *Speech Act Functions (SAF)* other than question or statement, - e.g., instructions (INST), explanations (EXPL), responses (RESP), apologies (APOL).
 - (16) #1 *Can you speak across the court,* INST
 - #2 *and speak up clearly,* INST
 - #3 *so everyone can hear what you are saying* EXPL [w2E:1-3]
 - (17) #9 *It may be as you have just said but...* RESP [w27XE:9]
 - (18) #97 *I'm sorry,* APOL [w2E:97]
- 2 *Questions (QN)*. These have the syntactic form of interrogatives and include both positively and negatively biased questions (19); wh- questions (20) and alternative questions (21). Question types also discussed in section 6.
 - (19) #4 *Is (isn't) your full name Ms Z?* QN [w2E:4]
 - (20) - *Where did you go then?* QN
 - (21) - *Is that the truth or not?* QN

3 *Declaratives* (DECL) include both positive and negative forms that have the syntactic form of statements, although in this discourse they are frequently treated as yes/no questions (referred to here as ‘declarative’ questions) - e.g., (22).

(22) #18 *and you occupied 1 of the 2 flats that were then not occupied by members of that family?* DECL [w2E:18]
witness *Yes*

5.2 Results: Contribution types distribution

Table 2 shows the distributions of these three broad categories in the data-set for this study. Firstly, interrogative questions constitute almost half the data (**48.3%**), while declarative forms (statements or questions) constitute another third (34.9%), leaving a one sixth proportion that encompass speech acts other than interrogatives (QN) or statements (DECL) - e.g., instructions, responses and encouragements (16.8%). Given that question-answer sequences typify courtroom interaction, the general proportion of questions may be viewed as relatively low.

However, viewing these phenomena in terms of legal procedures (i.e., examination and cross-examination phases) shows a slightly different representation. These procedures are characterized by an inverse relation between questions and declaratives: questions constitute 61.3% of examination contributions but 38.7% of cross-examination, while declaratives constitute 38.5% of examination but 61.5% of cross-examination contributions. This finding is consistent with the fundamental natures of these two legal procedures: that is, examination serves to establish claims; and cross-examination serves to challenge them.

TABLE 2: **Distribution of Contribution types**

CONTRIBUTION	EXAMINATION			CROSS-EXAMINATION			TOTAL	
	No.	R%	C%	No.	R%	C%	No.	C%
SAF	460	73.8	22.45	163	26.2	9.9	623	16.8
Question	1094	61.3	53.35	692	38.7	41.9	1786	48.3
Declarative	497	38.5	24.2	795	61.5	48.2	1292	34.9
TOTAL	2051	55.4	100	1650	44.6	100	3701	100

Key: SAF = Speech Act Function (other than questions or statements);
R% = Row percent C% = Column percent

Distributions within each legal procedure show that during examination, declarative forms are distinctly disfavoured (24.2%), with roughly half examination contributions being questions (53.35%). In contrast, during cross-examination the percentage of questions and declaratives is not markedly different (41.9% and 48.2%, respectively). Additionally, when these results are considered as a function of legal procedure, the percentage of questions is not what sets the two procedures apart (i.e., 53.35% and 41.9%, examination and cross-examination respectively), but instead the percentages of declaratives (24.2% and 48.2% respectively) and SAFS (22.45% and 9.9%, respectively). Notably, 73.8% of all SAFS (alternative speech act types) are produced during examination, while only 26.2% are produced during cross-examination. This may be due to fewer instructions being deemed necessary during cross-examination as a result of the witness’s growing familiarity with the setting. However, this imbalance would also contribute to the examination phase being perceived as less hostile than cross-examination.

Cross-examination not only shows significantly fewer SAFS but also significantly more declarative forms - almost half of all cross-examination contributions are declarative forms.

This finding is not surprising given the general goal of cross-examination to challenge a witness's testimony. Together, the high proportion of declaratives together with the low proportion of SAFS during cross-examination would lead to the perception that phase is more hostile to witnesses.

Tables 3A through 3C show the distributions of the three contribution type values according to the assumed witness affiliations of witnesses within each legal phase. The first Table (3A) shows the distribution of SAFS (Speech act functions other than questions and statements).

TABLE 3A: SAFs BY Witness affiliations

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
SAF	62	15	68	309	6	460	22.45
C% (of total)	19.6	14.3	19.1	25.2	13.0		
CROSS-EXAM.	-	?	+	?-	-	No.	C%
SAF	41	6	27	80	9	163	9.9
C% (of total)	8.0	6.1	12.2	10.4	20.4		

Key: PROS = Prosecution (Crown) witnesses AMBIV = Ambivalent (Crown) witnesses
 DEFEN = Defense (Crown) witnesses POLICE = Police (Crown) witnesses
 CHAR = Character (Defense) witnesses

The positive and negative symbols in these charts represent compatible and incompatible biases between barristers and witnesses; for example, biases of the 'girlfriend of the deceased' (a PROSECUTION witness) would be compatible with those of the prosecution (examination) barrister, but incompatible with those of the defense (cross-examination) council. Police witnesses are coded as '? +' as they are supposed to be unbiased (and may well be); however, their role is to gather evidence for the prosecution and therefore, if they were to have a bias, it would presumably be in the prosecution's favour (and conversely '?-' for the cross examining defense counsel).¹³

These results show that there is not a lot of variation among SAF contributions to Crown witnesses by the examining prosecution barrister according to witness affiliations - both PROS and DEFEN witnesses receive around 20% SAFs. The slightly higher percentage to POLICE witnesses (25.2%) is presumably due to the content of their testimonies - i.e., police testimonies include the introduction of police records and exhibits to the court. Notably also, AMBIVALENT witnesses (i.e., those whose biases are not self evident) receive fewer SAFs than other, possibly more important, witnesses.

In contrast, during cross-examination by the defense council, the average percentage of SAFs is not only much lower to Crown witnesses, but the percentage is notably higher for sympathetic DEFEN witnesses (12.2%) than for hostile' PROS witnesses (8%),¹⁴ with

¹³ In an attempt to reduce confusion, group (a) witnesses called by the Crown and thought to be sympathetic to the prosecution of the accused will be referred to as PROS or PROSECUTION in contrast with the prosecution counsel which will be referred to in all lower case; similarly, group (b) witnesses called by the Crown but thought sympathetic to the defense of the accused will be referred to as DEFEN in contrast with the defense counsel (also in all lower case).

¹⁴ The term 'hostile' has a particular sense in courtroom discourse (i.e., a witness who refuses to answer clearly and honestly or gives answers contradictory to earlier testimonies to serve the purposes of the opposing counsel). Hostile is used differently here to refer to witnesses whose affiliations are presumed antagonistic to those of the (cross.) examining barrister.

AMBivalent witnesses also receiving fewer SAFs than the other three Crown witness groups cross-examined by that barrister. The most notable feature of this Table is that CHARACTER witnesses, who are examined and cross-examined by opposing barristers to the other four groups, show what seems to be a low percentage of SAFs during examination by the defense and a high percentage during cross-examination by the Crown. However, if compared with the percentage ranges of the other groups questioned by each Darrister, then 13% during examination is comparable with the highest percentage during the cross-examination of Crown witnesses by that barrister defense counsel), while 20.4% during cross-examination is comparable to the range of SAFs directed to Crown witnesses during examination. Hence, the fact that SAFs are in general greater in percentage during examination than cross- examination may be less due to that legal phase, than a barrister’s individual style.

Table 3B shows the distribution of questions according to assumed witness affiliations. Again, the distribution among Crown witnesses examined by the prosecuting barrister show little variation (all between 60-68%), except for a much lower percentage of questions toward POLICE witnesses (47.4%) which may again be due to the nature of their testimonies.

TABLE 3B: Questions BY Witness affiliations

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
Questions	191	71	210	583	39	1094	53.35
C% (of total)	60.4	67.6	59.2	47.4	84.8		
CROSS-EXAM.	-	?	+	?-	-	No.	C%
Questions	189	41	137	313	12	692	41.9
C% (of total)	36.8	41.4	62.0	40.5	27.3		

During cross-examination by the defense counsel, however, there is a marked difference in the percentage of barrister questions to sympathetic DEFEN witnesses (62%) and the hostile PROSecution witnesses (36.8%). In fact, the percentage questions to PROSecution witnesses is about half the percentage to DEFEN witnesses; and those with unclear biases (AMBivalent and POLICE), the percentage is around 41%, which is still relatively low. It therefore seems that the number of questions barristers direct to witnesses is a function of the assumed sympathies of the witness. In particular, barristers direct a higher percentage of questions to sympathetic witnesses but a lower percentage to hostile ones. Similarly, the percentage questions directed to CHARACTER witnesses is high when sympathies are compatible with the examining barrister (84.4%), and low when hostile to the barrister4s biases (27.3%).

Table 3c shows the distribution of declaratives according to assumed witness affiliations. As was shown in the above tables, the distributions across Crown witnesses during examination by the prosecution reveal relatively little variation. In sharp contrast, however, the percentage of declaratives during cross- examination to DEFEN witnesses by the sympathetic Defense counsel is remarkable lower than to hostile PROSecution and AMBivalent witnesses (25.8% versus 55.2% and 52.5% respectively). Similarly, CHARACTER witnesses attract a very low percentage of declaratives from the sympathetic defense counsel during examination (2.2°k) but a very high percentage from hostile prosecution barrister during cross- examination (52.3%).

TABLE 3C: **Declaratives BY Witness affiliations**

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
Declaratives	63	19	77	337	1	497	24.2
C% (of total)	20.0	18.1	21.7	27.4	2.2		
CROSS-EXAM.	-	?	+	?-	-	No.	C%
Declaratives	284	52	57	379	23	795	48.2
C% (of total)	55.2	52.5	25.8	49.1	52.3		

The distribution of declaratives is a necessary consequence of the inverse relation of questions to each of the witness categories and makes evident a fundamental barrister questioning strategy. Namely, barristers direct fewer questions and more declaratives to hostile witnesses and fewer declaratives and more questions to witnesses with sympathetic views to the one they wish to convey to the jury. Therefore, a high percentage of questions is sooner indicative of greater familiarity (and trust) in what the witness will say than a low percentage of questions. While a higher percentage of declaratives is indicative of greater barrister direction in the witnesses testimony.

6.0 Second Variable: Question Types

6.1 Question values

The above distribution of contribution types gives a general outline of the use of questions in the Supreme court trial used in this study. Analysis of the second variable (question types) looked at this phenomenon more closely. In the original study on which this paper reports (Luchjenbroers 1993), questions were coded according to their specific type. In particular, the data were coded into categories that reflect each of the three major question classes (yes/no, wh- and alternative questions)¹⁵, question subtypes (i.e., tag questions); and declaratives (declarative questions). All categories were also coded to capture positive and negative bias. Additionally, a category was formulated to capture barrister contributions that are not questions (NQ) - i.e., those that do not add to the crime narrative being constructed (e.g., instructions, explanations, encouragements (ENCO) - cf. 23).

(23) *Go on*

ENCO NQ

This resulted in a total of nine values for the variable question types. However this paper reports on only the more illuminating results derived from the analysis of this variable; notably the distributions of: positive and negative bias, and ‘wh-’ & alternative questions which are thought to be open questions.

The category of No Question’ (NQ) largely reflects that of SAFs (speech acts other than questions and declaratives) although these are not exactly the same. In particular, although all NQs are SAFs, not all SAFs are NQ (e.g., (24). The main clause of this contribution is both an instruction (SAF) and a positively biased declarative (PDC), even though it invites a response as would a ‘wh-’ question.

(24) #196 *Well, perhaps you could tell us again why you say the barbecue fork was there?*

INST SAF.PDC

¹⁵ Question type categories follow those outlined in Quirk & Greenbaum 1972.

witness *It was left after a barbecue that we had gone to and it belonged to a set that his brother owned, one of those cooking sets He was studying at (Institute) at the time.*

As these have largely been discussed above in 5.2 (SAFs), NQs will not be discussed in this section. The category of positively biased contributions include positive yes/no questions (PYN), positive tag questions (PTG) and positive declaratives (PDC) - e.g., (25-27).

- (25) #8 *did you both reside at flat x?* PYN [W2E:8]
 (26) #12 *and there are 7flats at (place), (#13) Is that so?"* PTG [W2E:12.13]
 (27) #10 *and all of that 11 months was with the deceased?* POC [W2E:10]

The distribution of negatively biased contributions include negative yes/no questions (NYN), negative tag questions (NTG) and negative declaratives (NDC) - e.g., (28-30).

- (28) *didn't you both reside at flat x?* NYN
 (29) *and there are 7 flats at (place), Isn't that so?* NTG
 (30) *and all of that 11 months was not with the deceased?* NDC

The distribution of wh-questions (WHQ) includes contributions of the type in (31):

- (31) #5 *What is your occupation?* WHQ [W2E:5]

The only remaining category is alternative questions (ALTQ) - e.g., (32):

- (32) #45 *Was that frequently or in frequently done?* ALTQ [W2E:45]

Alternative questions are quite distinct from wh-questions in that they do not ask for added information. The limited options given in these questions make them very much like yes/no questions and tag constructions; however, they do not lend themselves to the same kind of categorization in terms of bias. However, all these contribution types can be limiting in the answers they attract. Given in (33) is a breakdown of the types of questions (examples given above) in terms of the nature of the answer prompts they provide and the answers given. In all four cases (yes/no, declaratives, wh- and alternative questions), the barrister's questions are used as prompts for the witness to provide a required and largely specified a bit (supplement) in his or her response (Luchjenbroers 1991: 93).

(33)	<i>example</i>	<i>(question)</i>	<i>Prompt</i>	<i>(witness) Answer</i>
(25)		Y/N-Q	Yes or No?	<i>yes</i>
(27)		Decl.	Yes or No?	<i>yes</i>
(31)		wh-Q.	your occupation is ___?	<i>hairdresser</i>
(32)		Alt-Q.	frequent or infrequent ?	<i>in frequent</i>

Throughout this study questions were coded according to the main clausal element type and therefore not all contributions that contain a negative element are coded as having a negative bias. For example, (34) was coded as a positive declarative (Poc) and not a negative declarative (Noc), but the following examples (35 and 36) are. The difference is that in (34) the main clause is positive.

- (34) #258 *He was the kind of man who didn't take criticism very easily?* PDC [W2XE:258]
 (35) #36 *and really no trouble at all to close the gates after you come in?* NDC [W2XE:36]
 (36) #99 *and on no occasion did any member of the accused's family say a cross word to you?* NDC [W2XE:99]

Additionally, coding according to the main clausal element type does not always capture the element that has been answered, as with indirect speech acts. For example, (37) combines the positive yes/no request with an enclosed whquestion, but was coded according to the positive Yes/no (**rYN**) main clause.

(37) #35 *Now in relation to the location of that car, can you point to the jury where the flat you occupied was?* **PYN [W2E•35]**
witness *the right hand side*

6.2 Results: Question distributions

The distribution of question types put to witnesses by respective barristers across the **two** phases of witness testimony is given in Table 4. In this table it is evident that few contributions of this trial were framed with a negative bias (4.2%); although almost 90% of these occurred during cross-examination (88.2%). Notable also is that a higher proportion of cross-examination contributions are positively biased than during examination (75.1% and 62.3% respectively); however, this is a function of the distribution of wh-questions occurring during these phases (8.1% during examination and 16.7% during cross-examination, respectively). In effect, 71% of all wh- and alternative questions occur during examination. These findings illustrate the basic natures of examination and cross-examination procedures: namely, wh-questions serve to elicit information which is compatible with the basic function of the examination phase; while negatively biased contributions are more challenging in nature - also compatible with the basic nature of cross-examination.

TABLE 4: **Question Types**

QUESTION TYPE	EXAMINATION			CROSS-EXAMINATION			TOTAL	
	No.	R%	C%	No.	R%	C%	No.	C%
No Question	387	75.6	18.9	125	24.4	7.6	512	13.8%
Positive Bias	1278	50.8	62.3	1240	49.2	75.1	2518	68.0%
Negative Bias	18	11.8	0.8	135	88.2	8/2	153	4.2%
342	72.0	16.7	133	28.0	8.1	475	12.8%	54.1%
26	60.5	1.3	17	39.5	1.0	43	1.2%	2.4%
TOTAL	2051	55.4	100	1650	44.6	100	3701	100%

Key: WHQ = wh- question R% = Row percent
ALTQ = Alternative question C% = Column percent

The category of ‘no questions’ (NQ) predominantly occurs during examination and has largely been discussed above in 5.2 (SAFs: speech acts other than questions and declaratives). Again, the predominance of SAF.NQs during examination suggests that greater explanation is provided during examination, which presumably does need not to be repeated during cross-examination. Additionally, this imbalance would increase the perception that cross-examination is more challenging (and potentially hostile) in nature than the examination-in-chief.

Tables 5A-C deal with the issues of question biases, and the distribution of wh-questions across the data, as a function of the witness’ assumed affiliations with the accused. Table 4A shows that the distribution of positive bias is largely uniform across each of the two legal phases. All examination witnesses attract between 54.6% and 65.3% positively biased contributions, without any dramatic differences according to assumed witness assumed biases. Even the examination of CHARACTER witnesses by the defense counsel falls within this range. Similarly, the distribution of positively biased contributions during cross-examination

by the defense counsel is largely uniform, although the range is slightly higher - between 71.5%-81.8%. Only the cross-examination of CHARACTER witnesses falls notably below this range (61.4%); however, this percentage does fall within the range of positively biased contributions by that same barrister during the examination phase. Therefore, this distribution may be more the result of barrister style and testimony phase than to assumed witness affiliations.

TABLE 5A: **Positive Bias BY Witness affiliations**

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
Positive Bias	188	67	194	803	26	1278	62.3%
C% (of total)	59.5	63.8	54.6	65.3	56.7		
CROSS-EXAM.	-	?	+	?-	-	No.	C%
Positive Bias	409	81	171	552	27	1240	75.1
C% (of total)	8.0	6.1	12.2	10.4	20.4		

Key: PROS = Prosecution (Crown) witnesses AMBIV = Ambivalent (Crown) witnesses
 DEFEN — Defense (Crown) witnesses POLICE Police (Crown) witnesses
 CHAR Character (Defense) Witnesses

In contrast, the distributions of negatively biased contributions, given in Table 48, show more dramatic contrasts according to assumed witness affiliations. In particular, although the general proportion of negatively biased contributions is relatively low (less than 1% during examination and 8.2% during cross-examination), during cross-examination these are predominantly directed to potentially hostile witnesses (11.3% to PROSECUTION, and 13.6% to CHARACTER witnesses) and not at all to sympathetic DEFEN witnesses. Again, the distributions during examination are more even (around 1%) for both sympathetic and hostile Crown witnesses, although those with uncertain biases (AMBIVALENT and POLICE witnesses) attract no negatively biased contributions at all. In contrast, AMBIVALENT and POLICE witnesses attract roughly half the percentage of those directed to hostile witnesses during cross-examination (6%-8.4%). Therefore, there are distinct differences according to assumed sympathies of witnesses.

TABLE 5B: **Negative Bias BY Witness affiliations**

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
Negative Bias	3	67	3	12	26	18	0.8%
C% (of total)	0.9	63.8	0.9	1.0	56.7		
CROSS-EXAM.	-	?	+	?-	-	No.	C%
Negative Bias	58	6	171	65	6	135	8.2
C% (of total)	11.3	6.0	12.2	8.4	13.6		

The distribution of wh-questions (Table 4c) is almost the inverse of the negative bias situation; namely, during cross-examination sympathetic witnesses attract notably more wh-questions than do hostile witnesses (11.8% to DEFEN Witnesses versus 2.9% to PROSECUTION and 2.3% to CHARACTER witnesses). Again the proportion directed to witnesses

of unclear biases lie between these two extremes, although closer to upper end of this range (7.1% - 10.9%). The distributions across witness types during examination is largely even (between 23%-31%), with the exception of the examination of POLICE witnesses (10.7%). This much lower proportion is presumably due to the nature of POLICE witness testimonies that largely involve narration from notes and presenting exhibits to the court. The proportion of negatively biased questions, as well as wh-questions, further illustrate barrister strategies of dealing with witnesses who are predictably hostile or helpful to the barrister's perspectives.

TABLE 5C: Wh-Questions BY Witness affiliations

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
WHQ	74	30	92	132	14	342	16.7
C% (of total)	23.4	28.5	25.9	10.7	30.4		
CROSS-EXAM.	-	?	+	?-	-	No.	C%
WHQ	15	7	26	84	1	133	8.1
C% (of total)	2.9	7.1	11.8	10.9	2.3		

The third variable shows the distribution of witness answer types. This variable includes minimal, elaborated, and evasive answers to questions, as well as those occasions when witnesses give no response at all - whether given an opportunity to answer or not. The first of these types are instances where the witness gives a response that is not an answer - e.g.:

- 1 *No Answer(NA)* - e.g., *I can't recall.*

Additionally, barrister contributions might not attract an answer because one contribution is followed by another before the barrister turn is over. These fall into three categories: BGR (background contributions), TAG (the coded contribution is followed by a tag question), and 2PT (two-part question! contribution) - these are defined below. In all three cases, the witness is not offered an opportunity to reply until the entire sequence is completed.

- 2 *Background* (BGR) contributions refer to those that precede the contribution that attracts the witness' answer.

(38) #61 *You left and went to Fiji and then came back.* **BGR**
 #62 *How long prior to Mr V's death was your return from Fiji?* [W2E:61-62]
- 3 *Tag* (TAG) code is given to those contributions that are followed by a Tag question; i.e., the coded element that precedes the contribution (tag) that invites an answer.

(39) #12 *and there are 7 flats at (place),* **TAG**
 #13 *Is that so?* [W2E:12-13]
- 4 *Two-Part question* (2PT) refers to an earlier question in a multiple question turn - i.e., a question that precedes the contribution that invites an answer from the witness. This is not meant to imply that two-part [2PT] strings constitute only two questions; the data show that these strings may in fact be much longer than two juxtaposed questions. The label 2PT merely indicates that another question follows the one being coded.

- (40) #43 *did you plan how you would do it?* 2PT
 #44 *what order you would take things in?* 2PT
 #45 *the matters you would cover?"* [W2E:43-45]

The above categories refer to those contributions that precede the units that elicit witness answers. Those that do elicit answers are then coded according to the answer that follows. The types of answers given are either minimal responses that provide only the required answer; or elaborated responses that provide the required answer plus additional information. Additionally however, answers may be informative but evasive with regard to the barrister's questions - i.e., provide information other than what is specifically asked for. These are given an individual value (CTR-ELAB). The coded values for answered contributions are illustrated below.

- 5 *Minimal Response - Yes (MR-Y)* - e.g., *Yes; That's correct.*
 6 *Minimal Response - No (MR-N)* - e.g., *No; I don't think so.*
 7 *Content Response-x (CTR-X)* includes those answers that provide the information required of a wh-question (e.g., 41). This category also includes answers to alternative questions (e.g., 42).
- (41) #166 *What nationality was Mr Y?* (CTR-X) [W2E:166]
 witness *Austrian.*
 (42) *Was Mr V Austrian or Hungarian?* (CTR-X)
 witness *Austrian.*

Within this analysis, categories 5-7 are all considered minimal responses, even though traditionally wh- and alternative questions would be considered the types of questions that elicit elaborate answers. However, the perspective taken in this study rests on the observation that these questions can be equally restrictive as yes/no or declarative questions. The following values capture those answers that provide more contentful information.

- 8 *Content Response (evasive) - Elaborated (CTR-ELAB)* are contentful answers that do not directly address the point of the barrister's question. Often these cases arise when the witness tries to avoid polarity in their response, and give a middle-of-the-road response. Hence, these are often used to evade a direct answer to either Yes/No, wh- or alternative questions.
- (43) #47 *Was that the limit of the relationship you had with other occupiers there?* CTR-ELAB [W2E:47]
 witness *Occasionally we might have a chat to them.*

The following values encompass answers that provide the required element plus an elaboration to the content provided by the barrister.

- 9 *Content Response-Yes-Elaborated (CTR-Y-ELAB)* includes those responses where a witness gives a positively biased answer plus additional information.
- (44) #119 *and when the accused man entered on that occasion, did Mr Y say anything to him?*
 witness *Yes, his words were "you're trespassing".* CTR-Y-ELAB [W2E:119]
- 10 *Content Response-No-Elaborated (CTR-N-ELAB)* includes those witness responses that give a negatively biased answer plus additional information.
- (45) #149 *Did you return to the flat that day?* CTR-N-ELAB [W2E149]
 witness *No, I was picked up by Mr Y after work.*

11 *ContentResponse.X -Elaborated (CTR.X.ELAB)* includes those witness responses that give the required element to a wh-question plus additional information.

(46) #71 *What time was this?* CTR-X-ELAB [W2E:71]

witness *It was late in the evening. It was 11 o'clock.*

It is foreseeable that eye-contact may play a role in the discourse dynamics of questions and answers such as the above; however, this is speculative and beyond the data available for this analysis. The categories merely reflect that coding strings such as non-question plus answer strings do occur.

7.2 Results: Answer Type distributions

The distribution of answer types across the data set is given in Table 6. This Table shows that more than a third, in fact 38.1% of all contributions, are backgrounded and therefore do not elicit an answer. These are backgrounded in the sense that they all proceed the (final) contribution of each barrister turn to which the witness is allowed and expected to respond. Furthermore, another third of all barrister contributions (i.e., 36.6%) invite only a minimal response. If the percentage of no. answer (NA) contributions (i.e., 3.2%) is added to these two categories, then 77.8% of all testimony contributions in this trial were supplied by the barrister's questions. This means that in only 22.1% of all occasions where barristers make a contribution to the testimony do witnesses also contribute over-and-above a *Yes*, a *No*, or the required content to a wh-question. This is a far cry from witnesses presenting their individual testimonies in their own words.

TABLE 6: **Answer Types**

AFFILIATION	EXAMINATION			CROSS-EXAMINATION			TOTAL	
	No.	R%	C%	No.	R%	C%	No.	C%
No Answer	64	53.3	3.1	56	46.7	3.4	120	3.2
Background	528	58.1	25.8	374	41.5	22.7	902	24.4
(Pre) Tag	49	29.5	2.4	117	70.5	7.1	166	4.5
2-part Question	95	27.9	4.6	246	72.1	14.0	341	9.2
Backgrounded	672	47.7	32.8	737	52.3	44.7	1409	38.1
MR-Y	468	52.9	22.8	417	41.1	25.3	885	23.9
MR-N	72	55	3.5	59	45	3.6	131	3.55
CTR-X	265	78.4	12.9	73	21.6	4.4	338	9.15
Min. Responses	805	59.5	39.2	549	40.5	33.3	1354	36.6
CTR-ELAB	153	54.6	7.5	127	45.4	7.7	280	7.6
CTR-Y-ELAB	152	62.8	7.4	90	37.2	5.4	242	6.5
CTR-N-ELAB	60	56.1	2.9	47	43.9	2.8	107	2.9
CTR-X-ELAB	145	76.7	7.1	44	23.3	2.7	189	5.1
Elab. Responses	510	62.3	24.9	308	37.6	18.6	818	22.1
TOTAL	2051	55.4	100	1650	44.6	100	3701	100%

Key MR-Y = Minimal Resp. Yes CTR-Y-ELAB = Content elaborated, Yes
MR-N = Minimal Resp. No CTR-N-ELAB = Content elaborated, No
CTR-X = Content (wh-Q) CTR-X-ELAB = Content elaborated, wh-Q
CTR-ELAB = Content (evasive) R% = Row percent
C% = Column percent

Considered in terms of legal phase, these proportions become more dramatic - i.e., the proportion of backgrounded contributions during examination is almost a third (32.8%); while during cross-examination the proportion is closer to half of all barrister contributions (44.7%). Adding together instances of no answer (NA), backgrounded contributions and minimal responses during each legal phase, Table 6 shows that witnesses contribute to the crime narrative in only 24.9% (virtually a quarter) of barrister contributions during examination and 18.6% (less than a fifth) during cross-examination.

In terms of legal procedure, many comparisons can be made as the distributions are largely the same for both legal procedures. The proportions of ‘no answers’ (NA) and evasive responses (CTR-ELAB) are virtually the same - i.e., 3.1% (NA) & 7.5% (CTR-ELAB) during examination; and 3.4% (NA) & 7.7% (CTR-ELAB) during cross-examination. Given that evasive responses (CTR-ELAB) are characterized as being neither positive or negative, this similarity may be surprising as one might expect this statistic to be higher during cross-examination, due to the challenging nature of that procedure.

Variation in the proportions of minimal responses is also slight (39.2% during examination and 33.3% during cross-examination). This slight difference is explained by the higher incidence of minimal responses to wh-questions (CTR-X) during examination. It has already been shown in existing literature that during examination more wh-questions are asked than during cross-examination. Similar variation is found in the proportions of elaborated contributions (17.4% during examination and 10.9% during cross-examination), which is also due to the higher incidence of wh-questions during examination.

In contrast, variation in the proportion of backgrounded contributions is notably larger during cross-examination (44.7% compared to 32.8% during examination). This imbalance is largely due to a greater proportion of tag questions and 2-part questions during cross-examination, which is compatible with the challenging nature of that legal phase.

Tables 7A-D display these values in terms of the assumed witness affiliations during both legal phases. Table 7A shows the distribution of ‘no answer (NA) given in the data. Among Crown witnesses, DEFEN witnesses produce a higher proportion of ‘no answer’ during both examination and cross-examination phases (4.2% and 5.4% respectively). Similarly, PROSecution witnesses produce few instances of ‘no answer’ regardless of legal phase or interrogating barrister (2.9% during examination and 1.9% during cross-examination). This then suggests that the proportion of ‘no answers’ may be more attributable to the nature of the witness, than their relation to the interrogating barrister - i.e., DEFEN witnesses may be more defensive. Compatible with this suggestion is that the proportions of ‘no answer’ to CHARACTER witnesses constitute the highest in these data (8.7% during examination and 11.4% during cross-examination). Both DEFEN and CHARACTER witnesses are sympathetic to the defense. As defense witnesses are potentially hostile to examination by the prosecution, the higher proportion of ‘no answer’ could be construed as an unwillingness to answer. However, CHARACTER witnesses, who are examined by the defense and who are predictably compassionate to the accused’s defense, present an even higher proportion of ‘no answers’. Hence it would seem that ‘no answer’ is itself not necessarily an indication of an unwillingness to answer.

TABLE 7A: ‘No answer’ BY Witness affiliations

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
No Answer	9	1	15	35	4	64	3.1
C% (of total)	2.9	0.95	4.2	2.9	8.7		

CROSS-EXAM.	-	?	+	?-	-	No.	C%
No Answer	10	3	12	26	5	56	3.4
C% (of total)	1.9	3.0	5.4	3.4	11.4		

Key: PROS = Prosecution (Crown) witnesses AMBIV = Ambivalent (crown) witnesses
DEFEN = Defense (Crown) witnesses POLICE = Police (crown) witnesses
CHAR = Character (Defense) Witnesses

Table 7B shows the distributions of backgrounded contributions according to assumed witness sympathies. In particular, during examination the average percentage of backgrounded contributions toward Crown witnesses is 28.4010 and is highest among POLICE witnesses (37.4%) but lowest among AMBIVALENT and DEFEN witnesses (20% and 25.9%, respectively). Both PROSECUTION and DEFEN witnesses show frequencies around the general average (30.3% and 25.9% respectively). The higher proportion evident among POLICE witnesses may be due to their different testimony styles. In contrast to Crown witnesses, CHARACTER witnesses present only 6.5% backgrounded contributions. However, this finding may be due to the extreme brevity of questions and content of these testimonies.

TABLE 7B: **Backgrounded contributions BY Witness affiliations**

EXAMINATION	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
	+	?	-	?+	+	No.	C%
BGR	27.5	15.2	20.9	28.4	4.3	528	25.8
Tag	2.9	1.9	2.5	2.3		49	2.4
2PT		2.9	2.5	6.7	2.2	95	4.6
Backgrounded	96	21	92	460	3	692	32.8
C% (of total)	30.3	20.0	25.9	37.4	6.5	95	4.6

CROSS-EXAM.	+	?	-	?+	+	No.	C%
BGR	30.5	21.2	13.6	20.2	2.8	374	22.7
Tag	9.5	5.1	0.4	7.3	3.6	117	7.1
2PT Qn	14.8	19.2	12.2	15.3	3.6	246	14.9
Backgrounded	282	45	58	330	22	737	44.7
C% (of total)	54.8	45.5	26.2	42.8	50	95	4.6

Key BGR + Background contribution R% = Row percent
Tag = contribution before a tag C% = Column percent
2PT = first of multiple question sequence

The most notable statistic to emerge from the distribution given in Table 7B is that the percentage of all three backgrounded contributions across witnesses is as high as 54.8% to PROSECUTION and 50% to CHARACTER witnesses, both of whom are assumed antagonistic to the goals of the respective cross-examining barristers. This contrasts starkly with 26.2% backgrounded contributions to non-hostile DEFEN witnesses by the defense barrister. Although all these statistics indicate a low informational input by witnesses during cross-examination, witnesses who are not hostile to the perspectives of the cross-examining barrister provide more information than those who are assumed hostile. Therefore, non-hostile witnesses have more opportunity to contribute to their testimonies than do assumed hostile witnesses. Hence, these findings are a measure of barrister control of the informational content extended to the jury by witnesses.

Additionally, the relatively high proportions of 2-part (2P1) questions (4.6% during examination and 14.9% during cross-examination) belies the generally accepted norm of ‘one question at a time’. Notably, during examination these are nonexistent to sympathetic PROSECUTION witnesses and although there is little variation during cross-examination, the proportion is lowest to sympathetic DEFENSE witnesses (12.2%). The distribution of Tags is similarly surprising as the proportions are much lower than initially expected (only 2.4% during examination and 7.1% during cross-examination); although again these are lowest during cross-examination to sympathetic DEFENSE witnesses (0.4%) and none at all to sympathetic CHARACTER witnesses during examination, by the same defense barrister. While during cross-examination the proportion is significantly higher at 9.5% to hostile PROSECUTION witnesses, although still a relatively small proportion.

Table 7C shows the distributions of minimal responses across the respective witness groups. Here percentages by different witness classes also varies according to assumed sympathies. In particular, during cross-examination sympathetic DEFENSE witnesses provide a high 44.8% minimal responses, while hostile PROSECUTION and CHARACTER witnesses provide 33.1% and 27.3% (respectively).

TABLE 7c: **Minimal Responses BY Witness affiliations**

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
Mr-Y	25.0	24.7	15.5	23.4	45.7	468	22.8
Mr-N	4.4	0.95	5.9	2.9		72	3.5
CTR-X	19.0	21.0	17.2	9.1	21.7	265	12.9
Min. Resp	153	49	137	435	31	805	39.2
C% (of total)	48.4	46.7	38.6	35.4	67.4	95	4.6
CROSS-EXAM.	+	?	-	?+	+	No.	C%
Mr-Y	26.3	34.4	33.0	21.4	22.8	417	25.3
Mr-N	5.4	3.0	3.2	2.5	4.5	59	3.6
CTR-X	1.4	1.0	8.6	5.9	3.6	73	4.4
Min. Resp	170	38	99	230	12	549	33.3
C% (of total)	33.1	38.4	44.8	29.8	27.3	95	4.6

Key Mr-Y = Minimal response - Yes R% = Row percent
 Mr-N = Minimal response - No C% = Column percent
 CTR-X = Content response (Wh- element only)

This again supports the suggestion that a higher proportion of minimal responses is indicative of a greater accord between witness and barrister perspectives. Notably, POLICE witnesses also provide fewer minimal responses (29.8%); however, this is thought to reflect their testimony format of reading out reports and presenting exhibits to the court. Additionally, the percentage of minimal responses by POLICE witnesses during examination is also the lowest of the range (35.4%); while sympathetic PROSECUTION witnesses produce the highest proportion (48.4%) and hostile DEFENSE witnesses produce noticeably fewer (38.6%) - toward the bottom of the range. The suggestion that more minimal responses correlates with a greater accord between witness and barrister perspectives is best illustrated by CHARACTER witnesses who provide a huge 67.4% during compatible examination but only 27.3% during incompatible cross-examination.

Notable also is the low proportion of negative answers (3.5% during examination and 3.6% during cross-examination). The proportions of negative answers are highest to both sympathetic PROSECUTION and hostile DEFENSE witnesses during examination (4.4% and 5.9% respectively). However, during cross-examination the proportion of negative answers is much lower among sympathetic DEFENSE witnesses (3.2%) than among PROSECUTION witnesses (5.4%). In fact, viewing all the distributions of answer biases within each witness class shows that only the DEFENSE witness distributions vary noticeably from examination to cross-examination. In particular, the proportion of positively biased answers in cross-examination is twice the examination proportion (33% vs 15.5% respectively); while the proportions of negatively biased answers in cross-examination is roughly half the examination proportion (3.2% vs 5.9% respectively).

Also well documented in existing literature is that wh-questions predominantly occur during examination, and are relatively unused in cross-examination. This analysis of witness answers similarly shows that the proportions of wh-question answers (CTR-X) are generally much higher during examination; however, analysis in terms of witness affiliations reveals more startling distributions. In particular, during cross-examination the proportion can be as low as 1% - 1.4% to Crown witnesses (AMBIVALENT and PROSECUTION witnesses) while as high as 8.6% to DEFENSE witnesses during the same legal phase by the same barrister. In fact, the proportion of CTR-X answers by DEFENSE witnesses during cross-examination is comparable to the proportion of CTR-X answers to POLICE witnesses during examination (9.1%). Notably, the proportion of CTR-X answers by POLICE witnesses during examination is low - less than half the proportions of this answer type by all other witness categories during examination (19% - 21.7%). This is thought to be due to their testimony format of presenting exhibits and reading reports out to the court. However, the point to be made here is that the distributions of wh-questions and CTR-X answer types is as much dependent on assumed witness sympathies as testimony phase.

The distributions of Elaborated and Evasive (CTR-ELAB) Responses are given in Table 7D and the general picture shows that witnesses contribute to 24.9% of Examining barrister's contributions and 18.4% of cross-examining barrister's contributions over-and-above a *Yes*, *No* or fill-in-the-blank answer to a wh-question. The distributions of evasive responses is unclear in terms of witness biases. In particular, PROSECUTION witnesses produce relatively few during both legal phases (4.8% during examination and 5.1% during cross-examination) and even though DEFENSE witnesses produce more during both legal phases (9% and 7.3% respectively), these proportions are well within the ranges set within each legal phase - with the exception of CHARACTER witnesses who produce very few during -both procedures (2.2% and 4.5% respectively). The distributions of elaborated responses that give the required response plus a contentful addition (Elab. Resp.) similarly show that PROSECUTION witnesses produce relatively few such contributions during both phases (13.6% during examination and 5.1% during cross-examination). Even though the proportion during examination is more than twice the cross-examination proportion, it is still noticeably low for that procedure, where DEFENSE witnesses produce 22.3% to the hostile prosecuting barrister and 16.3% to the sympathetic defense counsel.

The distributions of minimal and all elaborated response types show noteworthy distributions. Namely, during examination sympathetic PROSECUTION witnesses show a high percentage of minimal responses (48.4%) but a low percentage of elaborated responses (18.4%). This contrasts with DEFENSE witnesses who show a lower distribution of minimal responses (38.6%) but a higher percentage of elaborated responses (31.3%). This suggests that witnesses whose testimony is compatible with barrister perspectives contribute less and allow barristers to relate more of the trial narrative than do hostile witnesses. This suggestion is further

supported by the distributions among CHARacter witnesses examined by the defense, who also show a very high percentage of minimal responses (67.4%) and a low percentage of elaborated responses (15.2%). In effect, the distributions across witnesses during examination, which is the legal phase associated with telling the story', show that even though 20% to **37.4%** is related by barristers in the form of backgrounded contributions, the actual proportion of minimal versus elaborated contributions depends on the relation between witness and barrister assumed biases toward the defense or prosecution of the defendant.

TABLE 7D: **Elaborated & Evasive (CTR.ELAB) Responses BY Witness affiliations**

	PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION	+	?	-	?+	+	No.	C%
CTR-ELAB	4.8	12.4	9.0	7.5	2.2	153	7.5
Elab.Resp	13.6	20.0	22.3	16.8	15.2	357	17.4
TOTAL	58	34	111	299	8	510	24.9
C% (of total)	18.4	32.4	31.3	24.3	17.4	95	4.6
CROSS-EXAM.	+	?	-	?+	+	No.	C%
CTR-ELAB	5.1	7.1	7.3	9.8	4.5	127	7.7
Elab.Resp	5.1	6.0	16.3	14.2	6.8	181	10.7
TOTAL	52	13	52	186	5	308	18.4
C% (of total)	10.2	13.1	23.6	24.0	11.3	95	4.6

However, looking at Table 7D as a whole, it is evident that during both legal phases, PROsecution and CHARacter witnesses provide elaborated responses the least (18.4% and 17.4% during examination and 10.2% and 11.3% during cross- examination, respectively), while DEFEN witness contribute almost twice that statistic during examination (31.3%) and more than twice that statistic during cross-examination (23.6%). This finding suggests the proportion of elaborated responses is less a matter of assumed biases than of characteristics of witnesses, and invites the speculation that witnesses in favour of the defense react differently in court settings than do witnesses in favour of prosecution.

The final variable considered in this study is the amount of witness contributions that barristers build onto. This variable is called interactivensness and is discussed in the next section.

8.0 Fourth Variable: Interactivensness distribution

8.1 Interactivensness values

The Interactivensness variable reveals the extent to which barrister contributions interact with (i.e., follow from) witness answers. The researcher's basic position is that the barrister provides the details of the case. Consequently, further analyses based on just the barrister talk are justified. However, to provide statistical evidence for this position, an additional count of the number of barrister turns that build onto witness answers, as opposed to the preceding barrister turn, was conducted. The following values were used in this count: (i) Non-Interactive, (ii) Interactive Speech Acts, (iii) Interactive, and (iv) Apparently Interactive. These are illustrated below:

1 *Non-Interactive* (N.I) contributions are ones that do not build onto the witness's preceding response. In the following extract, each successive question concerns different information from the content of the preceding witness answer, even though all questions in this extract are about the one larger issue (the accused burst into the flat) - i.e., #116 asks about time, #117 asks about manner, #118 asks who else was present and #119 asks for conversation content.

(47) #116 *Now, when the accused burst into the flat again how long after the first incident was that?*

witness *15 minutes, maybe.*

#117 *What was his manner on the second visit to the flat?* N-I

witness *Very much the same as the first.*

#118 *and was anybody else there at the time, other than yourself and Mr Y?* N-I

witness *MrS was in the flat.*

#119 *and when the accused man entered on that occasion, did Mr Y say anything to him?* [W2E:116-118] N-I

2 *Interactive Speech Acts* (ISA) include speech acts other than questions or statements that interact with the discourse participant, rather than discourse content. These make discourse appear more interactive than, in fact, may be the case.

(48) #99 *What happened after he said that he would shoot you and Mr Z?*

witness *No, not Mr Z and I, but Mr Y and Mr Z.*

#100 *Yes ,all right* ISA

3 *Interactive Content* (ICT) include contributions that relate directly to the content of the witness's preceding contribution; and more specifically, that same link could not have been established without the witness's preceding response (i.e., this does not include information already in the discourse space).

(49) #119 *and when the accused man entered on that occasion, did Mr V say anything to him?*

witness *Yes, his words were "You're trespassing".*

#120 *and who said what **after that**?* ICT

witness *Mr S got up after that.*

#121 *What did he do **after he got up**?* ICT

4 *Apparently Interactive* (API) contributions are usually indirect speech acts that also interact more with the discourse participant than with discourse content - e.g., *Can you see... Do you know.*

(50) #35 *Now in relation to the location of that car, **can you point to the jury where the flat you occupied was?*** API

witness *The right hand side.*

(51) #43 ***Can you tell us why its the normal practice?*** API

API contributions are generally indirect speech acts and really ought not be confused with barrister concern with what the witness can or cannot see, know, or is capable of doing.

Similarly, these ought be contrasted with ICT contributions, as they show an interaction with the witness as opposed to what that person is saying. Hence, both ISA and API contributions interact with the person, but only icr interacts with the content of a witness's responses.

8.2 Results: Interactiveness distribution

Table 8 shows the distribution of interactiveness values defined for this study. Notably it shows the extent to which barrister responses do not build onto witness answers. In particular, across both testimony phases Non-Interactive (N-I) barrister contributions account for 62.9% of the data. Interactive speech acts other than questions (ISA) account for a further 16.6%, while 8.8% are apparently interactive (API), leaving only 11.7% of all barrister contributions that interact with the content of the previous response offered by the witness. Notably also is that this percentage is relatively uniform across both legal procedures - meaning that during neither legal phase do barristers interact with the content of witness answers the barristers ask for. In contrast, the proportion of Non-Interactive contributions is marginally higher during cross-examination, which is compatible with the more challenging nature of that legal phase. However, the proportion of Non-Interactive is still almost 60% of examination testimonies, while that legal phase is thought primarily responsible for enabling the witness telling his or her own story.

Such a low Interactive Content (ICT) percentage is exacerbated by the high percentage of minimal responses; namely, if a witness's only contribution is either *yes* or *no* then witnesses cannot be said to be contributing much to narrative content; nor can barristers be said to be interacting with the content of witnesses responses. The result is that discourse building can hardly be thought to include significant contributions from witnesses, or that witnesses tell their own story in their own words. These statistics therefore illustrate in a different form the powerless witness role of merely providing the required bits to the barristers characterization of the events.

TABLE 8: Measure of interactiveness

INTERACTIVE	EXAMINATION			CROSS-EXAMINATION			TOTAL	
	No.	R%	C%	No.	R%	C%	No.	C%
N-I	1208	51.9	58.9	1119	48.1	67.8	2327	62.9
ISA	441	71.7	21.5	174	28.3	10.6	615	16.6
ICT	239	55.1	11.7	195	44.9	11.8	434	11.7
API	163	50.2	7.9	162	49.8	9.8	325	8.8
TOTAL	2051	55.4%	100%	1650	44.6%	100%	3701	100%

Key N-I = Not Interactive ISA = Interactive Speech Act
 ICT = Interactive Content API = Apparently Interactive
 R% = Row percent C% = Column percent

Table 9 shows the distribution of interactive contributions according to witness assumed affiliations. This table reveals stark contrasts between hostile DEFEN witnesses examined by the Crown, and sympathetic CHARACTER witnesses examined by the defense.

In contrast to the other three Crown witness groups (PROSECUTION, AMBIVALENT and POLICE) who are treated to a generally high proportion of Non-Interactive contributions (N-I) and a correspondingly low proportion of Interactive Content (ICT) contribution by the prosecuting barrister (60-65% and 7-14.3% respectively). However, DEFEN witnesses face a much lower proportion of Non-Interactive barrister contributions (46.8%) and CHARACTER witnesses face a much higher proportion (84.8%). Similarly, the proportion of Interactive Content

contributions between the same two classes of witnesses shows a predictable inverse relation (26.7% and 2.2% respectively) beyond the general range set by the other three witness classes.

TABLE 9: **Interactiveness BY Witness affiliations**

		PROS	AMBIV	DEFEN	POLICE	CHAR	TOTAL	
EXAMINATION		+	?	-	?+	+	No.	C%
	N-I	61.7	64.8	46.8	60.2	84.8	1208	58.9
	ISA	18.05	16.2	19.7	23.7	13.0	441	21.5
	Interactive	13.3	14.3	26.7	7.0	2.2	239	11.7
	API	6.95	4.7	6.8	9.1	21.7	163	7.9
TOTAL (No)		316/100%	105/100%	355/100%	1229/100%	46/100%	2051	100%
CROSS-EXAM.		+	?	-	?+	+	No.	C%
	N-I	61.3	71.7	65.2	72.0	75.0	1119	67.8
	ISA	8.9	6.1	12.7	11.0	20.5	174	10.6
	Interactive	15.2	9.1	11.3	10.5	4.5	195	11.8
	API	14.6	13.1	10.8	6.5		162	9.8
TOTAL (No)		514/100%	99/100%	221/100%	772/100%	44/100%	1650	100%

Key PROS = Prosecution (Crown) witnesses AMBIV = Ambivalent (Crown) witnesses
 DEFEN = Defense (Crown) witnesses POLICE = Police (Crown) witnesses
 CHAR = Character (Defense) witnesses

Both results are Contrary to what one might otherwise expect; namely, that non-interactiveness would be greater to hostile witnesses and lower to witnesses whose perspectives were Compatible with those of the examining barrister. Remarkably, these findings suggest that barrister contributions interact more with witnesses whose perspectives are Contrary to the barrister's, than with witnesses with compatible biases. This is interpreted as an increase in Conflict, rather than a decrease. As suggested by Luchjenbroers (1991b: 94) this is indicative of the challenging nature of the cross-examination of hostile witnesses in that one must first firmly establish what the witness is saying before challenging that testimony.

9. Discussion

This analysis was the first of four performed for my dissertation (Luchjenbroers 1993) and had the function of establishing the extent to which witnesses' testimonies are presented by the witnesses or by the respective barristers. Earlier literature on courtroom discourse (e.g., Danet 1980) has long suggested that witnesses have little or no power in this setting, and it was hypothesized that very little of the crime narrative conveyed to the jury is entrusted to witness contributions. Clearly evident from the data is that barristers have their line of argument well planned before actual discourse commences. Glissan (1985:66) explains that advocates should know their brief in detail and exactly what evidence they want from each individual witness. This is possible, not only due to pre-trial procedures, but also the repetition of courts. The data has shown evidence of this in two ways: namely, the break in testimony of one witness by three intervening testimonies, to provide the defense counsel with sufficient time to fully prepare for cross-examination of that witness; and secondly, the nature of questioning itself. Such evidence was derived from the above analyses of barrister contributions and witness answers and the degree of interaction between the two variables.

The first variable to be examined, barrister contribution types, revealed that not quite half the total number of all barrister contributions are interrogative forms (48.3%). Given that question-answer routines typify courtroom proceedings, this must be seen as a low percentage. When viewed in terms of legal procedures (i.e., examination vs. cross-examination phases) the proportion of barrister questions is slightly higher during examination (53.35%) and slightly lower during cross-examination (41.9%). Hence, the two questioning phases differ less than one might have thought. In contrast, the proportions of declaratives does contrast the two proceedings (24.2% vs 48.2%, respectively). The greater proportion of declarative forms during cross-examination is consistent with the fundamental nature of the procedure - i.e., to challenge and create doubt in the story put forward by the prosecution. Both the high proportion of declarative forms and the low proportion of **SAF5** (speech acts other than questions and statements) - i.e., 9.9% vs. 22.45% during examination - would lead to the perception that cross-examination is a more hostile procedure for witnesses, regardless of their biases toward the prosecution of the defendant.

Analysis of the second variable, question types, revealed phenomena that are contradictory to earlier work on courtroom discourse. In particular, the proportion of negatively biased questions (interrogative or declarative forms) is particularly low throughout the trial (4.2%); although almost all occur during cross-examination - i.e., 88.2% of all negatively biased questions occurred during cross-examination. However, Compatible with earlier research on courtroom discourse, wh-questions predominantly occur during the examination phase; in fact, examination sees roughly twice the proportion of wh-questions of cross-examination (16.7% vs. 8.1%). However, even during examination, the proportion of wh-questions can hardly be thought consistent with allowing the witness to tell his or her own story.

The distributions of the third variable, witness answers, has possibly revealed some of the more notable findings of this study. Namely, that 38.1% of all contributions are backgrounded in that they do not elicit (nor do they invite) an answer from the witness. Furthermore, another third of all barrister contributions (i.e., 36.6%) invite only a minimal response - i.e., a *Yes*, a *No*, or the required 'bit to a wh-question. If the percentage of no-answer (**NA**) contributions (i.e., 3.2%) is added to these two categories, then 77.8% of all testimony contributions in this trial were supplied by the barristers. This is a far cry from witnesses presenting their individual testimonies in their own words. Of course, this does not mean that witnesses only provided 22.2% of their testimonies; this only means that in 22.2% of all barrister contributions did they make some contribution.

Comment must also be made of the principle of 'one question per turn' that is supposed to upheld in courtroom discourse (cf., Glissan 1985). In this particular trial it was evident that as the trial progresses and important issues have not been resolved to the barrister's satisfaction, the length of turns (i.e., the number of questions they contain) get progressively longer. Consider, for example the following example (52), taken from the cross-examination of witness #2. Notably, the issues raised in this extract have been introduced twice before, at a much more gradual pace; therefore, this turn also functions largely as a kind of summary (cf. Lane's (1985) question cycles). Within this single turn, seven questions were asked, over-and-above the statements (including quotes) and instructions to the witness. Almost remarkably the witness answers *yes*. This seems a rather phenomenal feat of memory, and one must wonder to what extent the witness has truly processed all this information as presented, or conversely, to what extent the barrister might be said to have 'worn down' the witness into submission.

(52)¹⁶ #387 *I suggest*

#388 *when you gave evidence in November last year you were asked this question,*

#389 *“You put in the statement, your written statement about the barbecue fork, Mr V having it there in case he got into trouble and needed it?”*

Answer: “Yes”

Question: “And you say he put it in there because you thought that if he was in trouble he would have gone to the car and used the barbecue fork to defend himself?”

Answer: “Right”

“And was that put into your statement because it was your belief that at the time he was shot he was either on his way to the car or attempting to get into the car and get the barbecue fork?”

#390 *Did you reply,*

#391 *“To grab a weapon”?*

#392 *Were you then asked*

#393 *“And that was your belief at the time you made this statement to the police?”*

#394 *Did you reply*

#395 *“That’s right”*

#396 *Were you then asked this,*

#397 *“And that was a belief you had formed because you knew Mr V quite well?”*

Answer: “Yes”

#398 *Well, now I will take you through those one by one again if you like,*

#399 *but were you asked those questions*

#400 *and did you give those answers when you gave evidence in November of last year?*

witness *Yes*

#401 *and were they truthful answers?*

[W2XE:387-401]

witness *Yes*

In general, witness biases showed relatively little effect during the examinations of witnesses by the Crown throughout the four variables investigated in this study. The real contrasts were generally revealed during the cross-examinations of witnesses, both by the defense and the Crown. In particular, the proportions of questions directed to witnesses can be explained by the assumed biases of witnesses; namely, sympathetic witnesses attract roughly twice the proportion of questions than do hostile ones (62% vs 36.8% by the defense and 27.3% by the Crown); while those with unclear biases attract a medium proportion of around 41%, which is still relatively low. Similarly, the proportions of declarative forms is remarkable low to sympathetic witnesses compared to presumed hostile witnesses (25.8% versus 55.2% by the defense and 52.5% by the Crown). I-fence, barristers direct fewer interrogative and more declarative forms to hostile witnesses and fewer declarative and more interrogative forms to witnesses with sympathetic views to the one the cross-examining barrister wishes to convey to the jury. Therefore, a high percentage of interrogative forms is sooner indicative of greater

¹⁶ The numbering of contributions reflect questions relevant to the witness at the current trial. as opposed to testimony that is read out from a previous trial (i.e., quotes).

familiarity (and trust) in what the witness will say than a low percentage of interrogative forms. While a higher percentage of declarative forms suggests greater barrister direction in a witness's testimony. Consequently, these distributions make evident how contribution types can be counted as a measure of barrister control of the proceedings.

Although the distributions of positively biased questions are hard to interpret, thus showing no real effect due to witness assumed affiliations, the distributions of negatively biased questions are highly revealing. In particular, during cross-examination negatively biased contributions are predominantly directed to hostile witnesses (11.3% to PROsecution, and 13.6% to cHARacter witnesses) and not at all to sympathetic ones. The case with wh-questions was seen to compliment this distribution in that the cross-examination of sympathetic witnesses attract notably more wh-questions than do hostile witnesses (11.8% to DEFEN witnesses versus 2.9% to PROsecution and 2.3% to cHARacter witnesses). Hence, the distributions of negatively biased questions, as well as wh-questions, further illustrate barrister strategies in dealing with witnesses who are predictably hostile or helpful to the barrister's perspectives.

Variations according to witness assumed affiliations also show a dramatic effect with respect to the amount of barrister contributions that invite witness responses: i.e., the proportion of backgrounded contributions is as high as 54.8% to PROsecution and 50% to CHARACTER witnesses, both of whom are assumed antagonistic to the goals of the respective cross-examining barristers; but as low as 26.2% to sympathetic witnesses. Additionally, the distribution of Tags is surprisingly low (only 2.4% during examination and 7.1% during cross-examination). However, tags during cross-examination are most frequent toward hostile witnesses (9.5%) and the least frequent to sympathetic witnesses - 0.4% to DEFENwitnesses none at all to CHARACTER witnesses during examination, by the same defense barrister.

Among the barrister contributions that do invite a response, sympathetic witnesses provide a much higher proportion of minimal responses than do hostile ones - e.g., during examination: 48.4% PROsecution and 67.4% CHARACTER vs. 38.6% DEFEN witnesses respectively; and during cross-examination (the complete inverse situation): 44.8% DEFEN vs 33.1% PROsecution and 27.3% CHARACTER witnesses respectively). Similarly, the proportions of elaborated responses are higher for hostile witnesses and lower for sympathetic witnesses (although DEFEN witnesses provide a higher proportion of elaborated responses for both legal phases). It therefore appears that witnesses whose testimonies are compatible with barrister perspectives contribute less (i.e., produce a higher percentage of minimal responses and a correspondingly lower percentage of elaborated responses); thus enabling those barristers to relate more of the trial narrative than do hostile witnesses. Although the converse is true during cross-examination. Hence, witness shows a lower informational input during cross-examination.

This possibility has been offered at different points above; however, in this case the proportions of backgrounded contributions (offered above) must be taken into account. In particular, the proportion of backgrounded barrister contributions toward PROsecution and CHARACTER witnesses is as high as 54.8% and 50% (respectively) and as low as 26.2% toward DEFEN witnesses. Although witnesses have control over whether they provide minimal or elaborated responses when they are given the opportunity to speak, they have no control over the amount of talk provided by barristers (in the form of backgrounded contributions). In effect, PROsecution and CHARACTER witnesses only answer 43.3% and 38.6% barrister contributions; while DEFEN witnesses answer 68.4% (excluding 'no answers'). Comparisons show that PROsecution witnesses produce a ratio of 3-1 minimal to elaborated responses (33.1% - 10.2% PROS); while DEFEN witnesses produce a ration that is almost 2-1 (44.8% -

23.6%). Therefore, even when taking the proportion of backgrounded barrister contributions into account during cross-examination, it is still true that DEFEN witnesses appear to take more control of their testimony than do PROSECUTION witnesses. Somewhat in between these two extremes are CHARACTER witnesses who produce a ratio that is closer to 25-1 (27.3% - 11.3%). Analysis of the fourth variable, degree of interactiveness, revealed that only 11.7% of all barrister contributions relate to (i.e., build onto) the content of the witness's last response. However the examination of hostile DEFEN witnesses is more than twice that general percentage (26.7%).- the degree of interactiveness may be as high as 26.7% (examination of hostile DEFEN witnesses) and as low as 2.2-2.4% (examination and cross-examination of CHARACTER witnesses). Hence, the degree of interactiveness itself does not decrease according to assumed hostility, but instead increases as a means of 'hanging' a witness with his or her own words.

Finally, some indications in the data were revealed regarding barrister style and types of witness in different ways than were initially contemplated. In the first instance, the distributions of SAFs (speech acts other than questions or statements) seem to be a factor of individual barrister style as the Crown produced more SAFs than the defense counsel whether examining or cross-examining witnesses. Additionally, the distributions of positively biased questions shows a slight increase during cross-examination that may be the result of barrister style moreso than legal phase, as the proportion of positively biased contributions toward CHARACTER witnesses during cross-examination resembles the proportions by that same barrister during examination. However, the variations in positive bias do not lend themselves to reliable interpretation and further studies across more trials is needed here.

Additionally, some variations in the distributions seemed to reveal characteristics of the witnesses - i.e., DEFEN and CHARACTER witnesses sometimes showed unexpected characteristics that cannot be explained in terms of their reaction to the (cross-)examining barrister. For example, the distributions of 'no answers' was relatively high across both examination and cross-examination procedures, which suggests that 'no answer' is itself not necessarily an indication of an unwillingness to answer, but maybe a reflection of defensiveness in this setting. Similarly, DEFEN witnesses produce a higher proportion of elaborated responses than (e.g.) PROSECUTION witnesses, for both legal phases, even though they also produce a high proportion of minimal responses during cross-examination by the defense counsel - hence, allowing him to primarily relate the story.

Furthermore, POLICE witness testimonies tend to be quite different from the other groups. In particular, differences were noted in terms of: (i) a notably higher percentage of SAFs during examination (25.2% vs. between 14-19.6% for other Crown witnesses); (ii) a much lower percentage of questions during examination (47.4% vs. between 59- 68% for other Crown witnesses); and (iii) a relatively low proportion of wh-questions during examination (10.7% vs. between 23-31% for other Crown witnesses). These differences may be the result of the different nature of their testimonies (e.g., presenting exhibits to the Court and narrating from their notes taken at the scene) and/or their greater experience with legal interactions.

10. Conclusions

The findings from this study show that witnesses provide little of the informational input to the jury. This is supported by (i) a low proportion of wh-questions (12.8%); (ii) a high proportion of backgrounded contributions (38.1%); (iii) a high proportion of minimal responses by witnesses (62.3% of all answers given); and (iv) the very low proportion of barrister questions that interact with witness responses (11.7%). All illustrate the extent to which barristers can plan their path of reasoning, with no (or little) account for how witnesses might respond. This additionally attests to how little scope witnesses have in influencing a

barrister's line of argument. Hence, These findings reveal the extent to which barristers and not witnesses provide the details of the trial to the jury & which contradicts the myth that witnesses present their individual testimonies in their own words.

Lawyer manuals (e.g., Glissan 1985) argue, and I believe they are correct in the claim that if a story is incoherent, jurors are unlikely to believe it. A major reason for incoherence is when the story is not chronologically correct. In particular, Glissan (1985:97) explains that both examination and cross-examination should proceed chronologically because when 'the events do not flow logically, the narrative is suspect and comprehension of narratives is simplified if presented in chronological order'. Therefore, in that capacity the barrister's function in guiding the narrative process is not only justified but in their client's best interests. However, it is debatable whether they need to monopolise testimonies to the extent that they clearly do. In effect, it would seem that they are unwilling to entrust the trial narrative to witnesses in a belief that they might damage the narrative that barrister is trying to create. Furthermore, the only barristers inclined to allow witnesses greater licence with their testimonies are those from the opposing camp who might benefit from any slip-ups witnesses make. The question then to be asked is whether this serves either the client or the truth process.

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