EXPLORING THE IDEOLOGICAL IMPLICATIONS OF QUESTIONS IN ELICITATION IN COURTROOM CROSS- EXAMINATION DISCOURSE IN GHANA

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Abstract

Language has been identified as more than just a tool for communication. In many discourse domains, language has come out as an effective tool for enacting and recognising power, manipulation, ideological stance, and identities. Using Discourse Analysis as a methodological tool, this paper examines question as an elicitation strategy used by counsels during cross examination in Ghanaian legal discourse. Dwelling on fifty court transcripts from Ghanaian courts, the paper discusses the types and functions of questions used in elicitation during cross-examination of witnesses and defendants by counsels. Results show, among others, that questions in elicitation serve ideological more than informative functions. This result has theoretical and pragmatic implications for legal discourse practitioners.

Keywords: Legal Discourse, Elicitation Strategies, Ghana, Discourse Studies

1. Introduction

Questions are usually discussed as grammatical forms used to elicit information, as attention getters or conversation strategies for sustaining interest among interlocutors. Questions are sentences, phrases or even gestures that show that the speaker or writer wants the reader or listener to supply them with some information, perform a task or in some other way respond to the request. Various types of questions are identified by linguists (see Quirk & Greenbaum, 1973; Danet et al., 1980). The context in which communication takes place is significant in determining the kind of response questions elicit. Questions can also be seen as grammatical forms with pragmatic functions. In discourse, questions are sometimes used strategically by interlocutors of greater authority against those without power (Fairclough, 2001). More powerful participants in a discourse tend to ask the questions whereas the less powerful participants are required to provide answers to the questions asked.

The notion of discourse as an extended communicative or interactive act or as simply an address has been greatly altered. For discourse to be meaningful, every part of it must be shared, understood and accepted by the discourse community (Gee, 1999). Legal discourse, as a specialized form of discourse, ranges from discourses of sworn affidavit, marriage ordinance to the courtroom where arbitration takes place. This paper discusses the discourse of courtroom interaction, focusing on the use of questions in elicitations. Courtroom discourse encompasses many different kinds of spoken, written and even non-verbal language, which includes defendants and witnesses' submissions; the argumentative and persuasive lawyer talk; question and answer session and the declarative and imperative mode of sentences contained in judges' overruling, instructions to juries, judgements, among others. Prominent among these forms of discourse is the elicitation and response session in cross-examinations. Elicitation, a process of verbally or non-verbally getting information from someone or making someone react in a particular way, takes different forms, with questions as the commonest.

Questioning is used in legal discourse to solicit the narrative of the speaker and have him or her retell events from a particular perspective. Most often, addressees respond to questions in the courtroom using narrations. Gergon (1994) argues that narratives in courtroom testimonies are either attempts by witnesses to recall actual events or fictional contrivances. Similarly, Thornborrow (2007) argues that narratives function to structure the production of opposing opinions and stances. Yes-no questions as well Wh-questions are used in elicitations in legal discourse.

In legal discourse, some types of questions asked by legal professionals during courtroom cross-examinations are geared towards promoting power imbalance between the professionals and litigants, accused or witnesses. Such questions position the interrogator as one wielding power over the addressee because questions can be made to perform pragmatic functions that go beyond just eliciting information. Four devices embedded strategically in questions, and usually used for exercising power over others are "interruption, enforcing explicitness, controlling topic and formulation" (Fairclough, 2001). They may not be overt to the participants in the discourse and as such may create an ideological sense in the discourse.

2. Conceptual Analysis

It is important to situate this study in the body of knowledge informed by the conceptual framework of discourse and ideology. Ideology is usually exercised in a hidden and latent manner, and embraces other social conditions and contexts that make it possible for people to be dominated and exploited (Althusser, 1971; Wodak, 1989; Fairclough, 1992; 2001). Ideologies are closely linked to power because the nature of ideological assumptions are embedded in particular conventions that depend on the power relations underlying the conventions; and also because they are a means of legitimizing existing social relations and differences in power, through the recurrence of ordinary familiar ways of behaving. Ideologies are crucial to the constructions of meaning that contribute to the production, reproduction and transformation of relations of domination (Fairclough, 1992). This study, in discussing courtroom discourse in Ghana, investigates how unequal power relation is enacted between legal professionals, on the one hand, and defendants as well as witnesses on the other, by the use of elicitation questions.

2.1 Ideology and Language Use

Ideological discourses contribute to the maintenance and transformation of power relations within a discursive network within which ideology is seen as an important means of establishing and maintaining unequal power relations. Fairclough (2001) further argues that power struggle, as manifest in social groups, is evident in the relationship between the state (government) and other social groups over which it exercises a certain degree of control. These groups include the security agencies, the civil service, government parastatals and corporations. The ideologies that are often classified as everyday metaphors and concepts, though hidden,

need to be analysed to bring out what Fairclough refers to as "common sense, power and resistance" (Fairclough, 2001).

Resistance is fueled by the notion that power is not the prerogative of the more powerful participant in a discourse. Power is a shared property of all and indeed the vulnerable in a discourse could also exercise power, and they do so in several ways. The less powerful in a discourse can resist by being silent, ambiguous and incoherent, deviate or resist the power in the discourse. Halliday (1985), cited in Fairclough (2001), asserts that the oppressed can re-appropriate acts of oppression and dominance by employing what he calls *anti-language*, a kind of oppositional language that is used as a conscious alternative to the dominant or established discourse types.

Since ideology promotes power that is less obvious in institutional text and talk, it is very relevant to this study in view of the fact that discourse often occurs in institutional settings which incorporate powerful ideological frameworks deeply embedded in larger social, economic and political structures and processes.

2.2 Questioning as a Discursive Practice in Legal Discourse

The discourse of the legal system has specific orders of discourse embedded in its discursive practices. These include the direct and cross-examination segments as well as re-examination.

In direct examinations, counsels lead their clients and witnesses who are testifying for their clients to give evidence in such a manner that their clients do not incriminate themselves. In this phase, the lawyer questions his/her own client or a witness testifying for his/her client. Direct examination may elicit both direct and circumstantial evidence. Witnesses may testify to matters of fact and, in some instances, provide opinions. They also may be called to identify documents, pictures or other items introduced into evidence. In this case, counsel-witness interaction is typically cooperative, non-coercive, and the witness is given the opportunity to narrate her story with relative freedom. Thus, the questions asked in this phase are usually Wh-questions (Luchjenbroers, 1993, 1997).

Cross examination, on the other hand, according to Lipson (2008: 1), involves "the ability to stare an enemy litigant in the eye with the understanding that you are going to take control of his mind and speech". Cross-examinations tend to be sites where subtle construal of judgement and questions are used as strategic instruments of domination and testimony management. In cross-examination, interaction is generally unsympathetic, non-compromising, non-cooperative, and coercive. Perhaps the most popular questions used in cross-examination are leading questions that emanate from tag questions, yes-no leading and/or argumentative

questions. Several studies of language in courtroom hearings have highlighted the multifunctional and coercive nature of questions in cross-examination (see Pozner & Dodd, 1993; Luchjenbroers, 1997; Danet, 1980). The questioning strategies used by counsels can affect the presentation of submissions and evidence by witnesses. It appears that two main types of questions are used in cross-examination: those that are coercive and meant to weaken and rebut witnesses' testimonies (Danet *et al*, 1980) and those that seek to obtain information, or to enact social status and authority (Philips, 1984).

The cross-examination segment of courtroom discourse is considered the most crucial part of trial cases because it is at this stage that counsels for both sides have the opportunity to impress upon the judge the innocence of their clients and to try to incriminate the other party's witness. Through various strategies, including questioning, counsels construct the opponent's testimony as lies and unreliable with the ultimate aim of pinning the accused or witness to the wall. Questions thus serve to test and/or challenge claims made by the accused or witnesses and also as 'vehicles' to make accusations in order to confront, attack and discredit the witness (Luchjenbroers, 1997). A witness's testimony can be challenged by questioning his/her honesty, as indicated by his/her inconsistent statements, mistakes and omissions in evidence, and any other matters showing a general reputation for untruthfulness. His/her propriety can also be called to question by trying to find out if he/she is reprehensible, as shown by previous misconduct and convictions. It must be noted that questioning in the courtroom may also be a site where power is enacted, negotiated, maintained, lost or worn.

The notion of power in courtroom discourse may have institutional backing because a discourse of power is most often embedded in the social power of groups or institutions. Social power is defined by van Dijk (2006) in terms of the *control* exercised by one group or organization (or its 'members) over the *actions* and/or the *minds* of (the members of) another group, thus limiting the freedom of action of the others, or influencing their knowledge, attitudes or ideologies. For social power and dominance to be effective, they are often organized and institutionalized. It must however be noted that there is nothing like total authority in the hands of the powerful because dominance is often gradual and may be met with resistance or counter-power (van Dijk, 1998). Dominated groups may resist, accept, condone, comply with, or legitimize such power, and even find it "natural", but power is not the preserve for only the dominant group. The power of dominant groups may be integrated in laws, rules, norms, habits, and as a general consensus, and thus take the form of what Gramsci (1971:12) calls "hegemony". The power behind courtroom discourse is sometimes contested, albeit in many covert and overt ways. As Fairclough (2001) reiterates, power is contested and people

have different kinds of power and exercise it in different ways that may even change dynamically in response to the behaviour of others.

Judicial power is a kind of institutionalised power bestowed on a court of competent jurisdiction "to determine controversial issues between two parties to a suit before it for decision, to pronounce judgment and enforce its decisions" (Aikins, 2000:56). The power that courts exercise is vested in it by legislative instruments which empower the judiciary, not only to set up courts of different jurisdiction to hear cases brought before them, but also to appoint judges and magistrates. Article 125 of the 1992 Constitution of Ghana specifies the source of judicial powers as emanating from the people, showing that justice belongs to the people and it is only being kept in custody by the courts on behalf of the people.

3. Background to the Court System in Ghana and data source

Since Ghana's independence in 1957, the court system, headed by the Chief Justice, seems to have demonstrated extraordinary independence and resilience. The Court Act of 1971 defined the structure and jurisdiction of the Courts and established the Supreme Court of Ghana, the Court of Appeal (Appellate Court), which has two divisions --ordinary bench and full bench-- and the High Court of Justice, a Court with both appellate and original jurisdiction. The act also established the "inferior" and traditional Courts, which, along with the others, constituted the judiciary of Ghana (1960, 1979, and 1992 Constitutions). Until mid-1993, the inferior courts in descending order of importance were the Circuit Courts, the District Courts (Magistrate Courts) Grades I and II, and Juvenile Courts. Such courts existed mostly in cities and large urban centres. In mid-1993, however, Parliament created a new system of lower courts, consisting of Circuit Tribunals and Community Tribunals in place of the former circuit courts and district (magistrate) courts. The traditional courts are the National House of Chiefs, the Regional Houses of Chiefs, and Traditional Councils.

The traditional courts are constituted by the judicial committees of the various houses and councils. All courts, both superior and inferior, with the exception of the traditional courts, are vested with jurisdiction in civil and criminal matters. The traditional courts have exclusive power to adjudicate any cause or matter affecting chieftaincy as defined by the Chieftaincy Act of 1971.

The Judicial Service of Ghana 2009/10 Annual Report describes the reforms in Ghana's Judicial Service, which includes the setting up of specialized courts under the High Court.

These include the Fast Track Division, Economic Crimes (Financial) Court, Commercial Court, Human Rights Court and Industrial (Labour) Court which are established to enhance the justice delivery system in Ghana. Also, Regional Tribunals with specialized criminal jurisdiction which have the status of High Court and Alternative Dispute Resolution (ADR) and Mediation meant to help resolve disputes outside the courts are part of the reforms. Other courts that are established as part of the reforms include Family Tribunal and Motor Courts.

Two main systems of trial exist in these courts: the adversarial and inquisitorial. The adversarial system is one which involves the giving of oral evidence by witnesses and the testing of that evidence through cross-examination, a system described by Maley (1994) as "the trial of strength" (p. 33); whereas the inquisitorial system has to do with inquiring into the matter before the court so as to establish the truth. The adversarial system is vigorous in nature with the defense counsels using ingrained patterns of testing oral evidence through leading questions (Cossins, 2009). This paper discusses the data as recorded in such discourse in Ghanaian courts.

Data for this study were gathered from two research sites – the Judicial Service Court Complex in Cape Coast (JSCC) and the Judicial Service Court in Accra (JSCA), both in Ghana. The JSCC complex houses nine courts – six high courts, two of which are specialized courts (commercial); two circuit courts, and two district courts and administrative offices. The Commercial Court Complex in Accra is situated within the premises of the Supreme Court, which is part of a larger court complex that accommodates several courts, including Commercial Court 'A' used in this study.

The sampled data for this study involved 50 official transcripts of courtroom cross-examination proceedings. Out of these, 20 were from a Circuit Court in Cape Coast, and 15 each from a High Court One in Cape Coast and a Commercial Court in Accra. The reason for collecting data from the three courts was not for the purpose of comparing data obtained from different types of Ghanaian courts, but rather to broaden the spectrum of the site in order to collect enough transcripts. Due to the sensitive nature of the site, the researchers could not record the proceedings on the spot but had to use official court transcripts accessed from the courts. It could be argued that the transcripts might have been recorded for other purposes and so may not contain all that a discourse analyst might need; but the authenticity is embedded in the fact that the courts had recording devices installed that captured the exact proceedings, thus ensuring that the recordings are actually naturally occurring data. The transcripts came from such recordings.

4. Discussion and Results

In line with Fairclough's (1995) three-tier model of Critical Discourse Analysis, this section is divided into two parts. The first part gives a vivid description of the use of questions as elicitation strategies used by counsels during cross-examination while the second part deals with the explanation and interpretation of these strategies. Three main types of elicitation strategies used by counsels during cross-examination were identified and they are interrogatives, declaratives and imperatives, as illustrated in Figure 1

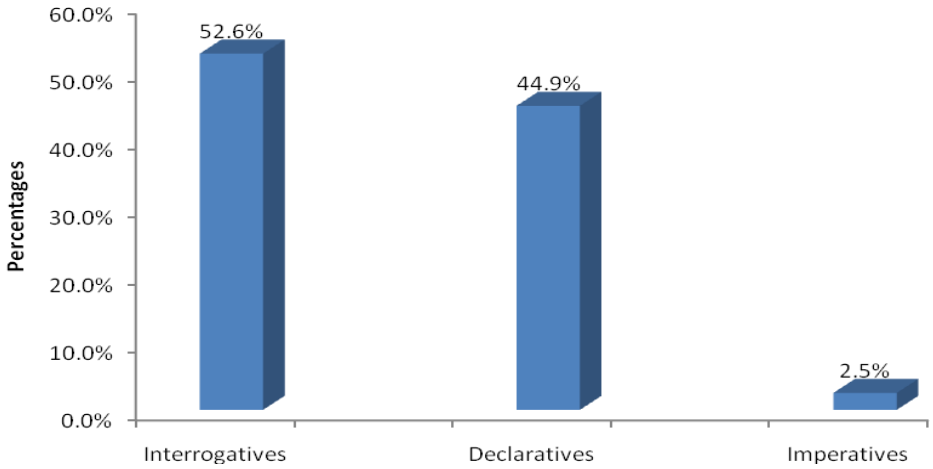

Figure 1: Elicitation strategies in courtroom cross-examination (Source: Fieldwork, 2011)

Interrogatives were used more than the other strategies in the transcripts used in this study. This provided the impetus for the focusing on questions in this paper.

4.1 The Use of Questions as Elicitation Strategy

Five types of interrogatives were identified in the data: Wh-questions, yes-no questions, question tags, declarative yes-no questions and declarative + Wh-questions. The most commonly asked questions were the declarative yes-no type question (39% of all questions asked.) This is followed by yes-no questions which represent 36%, Wh-questions 22%, declarative Wh-questions 2% and question tag 1%. It could therefore be seen that although interrogatives formed a greater part of the elicitation strategies, questions used in the elicitation varied by structure depending on the purpose or function, as would be discussed later.

Table 1: Types of interrogatives in courtroom cross-examination

Types	Examples
Wh-question	i. Where is the land in dispute? ii. What provisions of the constitution are you talking about?
Yes-No question	i. Did he ever stay in Nigeria? ii. Was your installation at the direction of the Holy Spirit?
Question Tag	i. Once you have a contract you should know the terms of the contract, shouldn't you?
Declarative Wh-Question	i. Mr. Blay, before you were the business Development Officer of the Daily Guide, what work did you do?
Declarative Yes-No Question	i. Now before you started this work did you receive any contract? ii. You told the court Tudah has refunded 120m cedis, do you know how the money was paid?

The interrogatives can also be classified as either Wh- questions or leading questions. Leading questions comprise yes-no questions, declarative yes-no questions, declarative Wh-question and question tag. This latter classification, favoured by other researchers (see Luchjenbroers, 1997; Huddleson & Pullum, 2002; Tkačuková, 2010), is used in the discussion.

4.2 Leading questions

Leading questions are the most preferred kinds of questions by cross-examiners. They are questions that suggest to a witness the answer which the party examining desires the witness to give. One category of leading questions found in the data is declarative questions. In declarative questions, a statement that precedes the question serves as a preamble to the question. The counsel gives some background information or narration, with 'yes' or no question serving as a 'tag'.

4.3 Declarative Questions

Two types of declarative questions were identified in the data - declarative yes-no questions and declarative + Wh-question. Declarative yes-no questions are assertive in nature in that the speaker makes an assertion which is then followed by a yes-no question. Here are some examples:

(1)C: *And these are charges that they deducted from the total payments made to De Simone, is that correct? (COC 3; 26-4-2010)*

(2)C: *But at any particular time it is the person who occupies the stool who signs as the guarantor and other persons witnesses it, is that not the case? (HC BI.13/20/2010; 7-6-2004)*

The preamble to the examples above: (And *these are charges that they deducted from the total payments made to De Simone* and *But at any particular time it is the person who occupies the stool who signs as the guarantor and other persons witnesses it*) show that the questioner (counsel) has a foreknowledge of the subject matter. The counsel is therefore not eliciting information to be informed or educated about the subject matter, but rather seeking confirmation or denial from the respondent in order to prove or disprove what the counsel already knows. Ideologically, this strategy indicates dominance on the part of the counsel because he/she tries to frame the question in a way as to direct the witness to answer in a certain kind of way that may not favour the witness.

The declarative + Wh-question identified in the data starts with a statement and ends with Wh-questions. One may argue that this kind of question should be treated as a Wh-interrogative question since the second part begins with a Wh question-word. Even though the second part of the question is a Wh-question which may elicit an open-ended response, its antecedent, the declarative is leading, thereby constraining the respondent from giving a long windy narrative. That is, the manner in which the question is asked, no doubt, compels the respondent to give a yes-no or short answer. The following example illustrates this:

(3)*C: But yesterday you did mention the exact amount of executed works, where did you get the figure from?*

R: I was informed. (CRC 2; 15-4-2009).

The statement that precedes the question in a declarative Wh-question, like declarative yes-no questions, often contain an assertion. A look at the structure of example (3) shows that the statement that precedes the Wh-question is an assertion which gives an indication that the counsel has more information about the subject matter than the witness is aware of. The inability of the witness to use a narrative for response limits how much explanation the witness can give to his/her advantage.

4.4 Yes-No questions

The second most common type of leading question is the yes-no question which represents 36% of the questions asked by counsels. In yes-no questions, the operator is placed before the subject, and the sentence is given a rising intonation (Quirk & Greenbaum, 1973). They are also referred to as closed questions because the set of possible answers is closed, containing just two members - yes or no.

(4)C: Do you know why your client imported the vehicle?

R: I would not know.

Example (4) above illustrates the fact that yes-no questions are asked because counsels expect, in most cases, a yes for response. In the example, the counsel was compeled to repeat the questions because in each case, the witnesses refused to give a yes response, but were rather evasive. This type of question limits the preferred answer of yes or no, but witnesses can be deliberately evasive in discourse situations (Penz, 1996).

4.5 Question Tags

Question tags are said to be declarative statements with postponed tags through which speakers seek agreement with the content of the statement (Schiffrin, 1987). Question tags form another type of leading questions which can be manipulative in nature. Examples from the data include:

(5)Q: You have admitted that the Constitution was compiled at the time when Matapoly Moses was alive, didn't you say so? (HC3; 16-5-2010)

(6)Q: So that you cannot tell as a fact that that is the actual amount owed you, can you? (CRC 20; 2-3-2008)

The question tags suggest that the speaker has certain assumptions and inclines towards a certain answer. Tsui (1992) and Penz (1996) argue that question tags are always conductive and never neutral and that they usually direct the answer towards 'yes'. Although most scholars consider question tags to be the most coercive as they have additional pragmatic meanings (see Pozner & Dodd, 1993; Berk-Seligson, 1999), and therefore are the most preferred choice for cross-examiners, the data yielded fewer question tags than other types of leading questions. They constituted only one percent of the total questions asked. This may be due to the fact that the taglines in most of the statements are dropped, thereby reducing them to mere declaratives.

4.6 Wh-Questions

General Wh-questions, which are usually formed with the aid of one of the Wh Question-words (who, whom, whose, what, which, when, where and how), are strongly avoided in cross-examination because they are open-ended and may elicit unexpected answers from witness. Such questions are different from the declarative + Wh-questions because they are solely Wh-questions without preambles. There were few instances where this type of question was used. Examples in the data include:

(7) C: When did you know you were going to give evidence in this case?

(8) C: Why did you go to your cabinet? (HC 1; 19-4-2010 for both 9 and 10).

The lack of popularity for this type of question stems from the fact that when witnesses are asked such questions, they gain the chance to narrate their answers, thereby clouding the purport of the question and evading any trap the counsel might have set by the use of the question. Though the Wh-question was not a popular type, they were used not only to elicit information but also to engage in a discourse that had semantic implications for both counsel and witness and these would be discussed in the next section.

5. Functions of Question in Elicitation Strategies

In all, six main functions that questions perform as an elicitation strategy used by counsels during cross-examination were identified: constraining witness/defendant's responses, discrediting witnesses and their testimonies, luring defendants and witness, confusing

defendants and witnesses, stamping counsels' authority and seeking confirmation to propositions by counsels.

In enacting power asymmetry in the courtroom, counsels try to control the type of responses they expect witnesses and defendants to give. In order to put tight reins on witnesses/defendants, counsels expect yes-no or short responses from them. The most potent weapon often used by counsels to achieve this feat includes question tag, yes-no questions and complex sentences. The use of yes-no questions to constrain the responses of defendants and witnesses is exemplified earlier in this paper, in Example (4). Owing to the coercive nature of this type of question, a narrow range of answers – either yes or n-- is preferred. The following extracts which are follow-ups to Example (4) illustrate counsels' preference for yes-no responses from witness:

(9) *C:* *You are a very experienced agent so please tell the truth, now I repeat the question, that area inside the port are you telling this court that that place is earmarked by GHAPOHA for APS alone?*

R: *It is earmarked for delivery of truck and other moveable vehicles for handover to the respective agent for final delivery.*

(10) *C:* *I am putting it to you that your client imported the vehicle because he wants to sell the vehicle?*

R: *That is correct".*

(11) *C:* *Apart from APS are there other stevedore operators in the port?*

R: *Yes.*

(12) *C:* *And these other stevedore companies if they discharge vehicles they also use the same place?*

R: *Yes.*

(13) *C:* *From your experience is it that at any particular point in time you can have vehicles on that area having been discharged by different stevedore operators all put at that same area?*

W: *Yes.*

(Extracts 9 to 12 taken from HC 1; 12-3-2008)

The responses to Examples (5) and (9) flout the maxim of quantity which forbids speakers from giving more information than is required. In the cases under investigation, the witness intentionally opts out of observing the convention of courtroom discourse by indicating

his unwillingness to cooperate, a situation that Grice (1975) and Fairclough (2001) refer to as resistance. The response to (10) is closer to what the counsel expects, but he is not yet satisfied and so several follow-up questions are asked until the defendant is coerced into giving "yes" responses which finally satisfies the counsel. From the interaction between the counsel and the witness, it is clear that by asking a yes-no question in Example (5), the counsel expected a "yes" to his question and since such an answer was not forthcoming, he persisted by repeating the question Similarly, the preferred answer to question (9) was not given and so, the counsel, becoming slightly agitated repeated the question but this time used a stronger wording in Example (10): *"I am putting it to you that your client imported the vehicle because he wants to sell the vehicle?"* And the response is *"That is correct"*. Still hoping to get the preferred answer, the counsel gives a follow-up to the last question to elicit the preferred response. Repetition and reframing of the question several times is an indication of power and dominance. By reframing the question the counsel gets the witness to give the preferred answer, thus confirming Richman's (2002) assertion that the counsel makes the witness go back over some of the terrain covered during direct examination, forcing the witness to concede "facts" inconsistent with the previous narrative.

Question tags were also used to constrain respondents' responses, as shown in Example 14 below.

(14) *Q:* *She was on her way to the farm when you assaulted her, wasn't she?*
R: *No. (HC3; 29-10-2009).*

In the example above, the counsel manipulates the witness's response through the statement that preceded the tag; and as can be seen, the response is simply "no". Example (14) shows how the counsel tries to constrain the defendant's contribution by way of direct attack "*She was on her way to the farm when you assaulted her"* then he asked for confirmation *"wasn't she?*" Here, the counsel displays power and authority to make the witness accept the meaning in the declarative. Whichever way the defendant answers the question constrains the defendant and puts the defendant in an awkward position. A "yes" or "no" answer does not absolve the defendant of wrongdoing because the presupposition is incriminating in each answer. If the defendant answers 'yes', it presupposes he assaulted the victim on her way to the farm. If he answers 'no', that presupposes he assaulted her, but possibly not on her way to the farm. The deliberate violation of the maxim of manner in the way the question is framed

constrains the witness from engaging in any lengthy narrative that will give the defendant room to present his thoughts extensively and consequently absolve himself.

One other function that the questions, used as elicitation strategies, perform is that of discrediting the witness so that his or her testimonies will not be looked upon favourably by the judge. Counsels often do this through the use of questions that are cloaked as complex sentence patterns, heavily-laden with embedded clauses such that the witness or defendant loses focus of the information elicited. For example:

(15) *Q: Is it not true that the first day that you gave evidence you told the court that the accused brought to you a copy of a document showing the name Baffour Appiah as the owner of the land*

A look at the complex subordination in the example shows how confusing the utterance can be to a witness or defendant in a courtroom interaction.

Another function of elicitation questions is using cognitive manipulation to extract information from defendants or witnesses. In the data, there was subtle use of ideology where counsels tried to elicit preferred responses from witness through deception. When counsels are confronted with hostile witnesses or defendants and it is obvious that these may refuse to cooperate, they tend to resort to cognitive manipulation to obtain their preferred responses. They lure witnesses/defendants to confession. In the data, this function was executed when the counsel tried to be friendly and spoke in a manner devoid of accusation as exemplified below:

(16) C: So after that meeting, after you had accepted that monies had been mistakenly paid, you then like a true Christian wrote to the bank admitting that and proposing a payment plan? (COC, BFS 292/08).

In such situations, counsels feign friendship with the defendant/witness and try to win his or her trust, a strategy that has the potential to make the witness/defendant lose guard. In Example (33), for instance, the counsel interacted with the defendant like a friend and downplayed his guilt by reminding him of being a true Christian, before framing the question in a declarative form. This, no doubt, might have had a soothing effect on the defendant who not being aware that the counsel is trying to lure him to give a confession falls into the counsel's trap. The defendant here might not be aware of the counsel's motive otherwise he would refuse to cooperate with him, thereby breaking the chain or power inequality. Indeed, Fairclough

(2001) maintains that "if one becomes aware that a particular aspect of common sense is sustaining power inequalities at one's own expense, it ceases to be common sense and may cease to have capacity to sustain power inequalities i.e. to function ideologically" (p.71). If defendants and witnesses know where a seemingly harmless conversation with the opposing counsel will lead them, they will be on their guard.

Example (16) may give one the impression that the counsel is just passing a comment but in actual fact, the counsel is manipulating the defendant into incriminating himself. Information that is provided by counsels during cross-examination may appear to be devoid of the aggression and force which often characterize assertions and accusations, but may be equally devastating. This is because it may be difficult for a witness or defendant to determine the extent to which cross-examination could go. Such cross-examination is described by a respondent as 'cross-examination being at large' (Personal Interview, 2011). He asserts that it is difficult for a witness to know where a counsel may be heading during cross-examination. Wodak (1987) confirms this view when she argues that recipients of manipulation are unable to understand the real intentions or to see the full consequences of the beliefs or actions advocated by the manipulator, especially when the recipients lack the specific knowledge used to resist manipulation. Such manipulation is ideological and power-related.

6. Findings and conclusion

This paper set out to examine the use of questions as elicitation strategies. The analysis showed that counsels use various questions to elicit for information from witnesses and defendants. The questions range from Wh-questions through declarative questions to question tags. Though the discoursal function of questions is to ask for information, the discussion showed that counsels used questions not only for eliciting information. The use of Wh-questions recorded the least occurrence possibly because its use did not benefit the questioner but rather the respondent. Question tags, on the other hand, recorded a lot more use in the data, perhaps because they constrained the respondents but worked to the benefit of the questioner. Questions were also used to ideologically show power differentiation. With the counsels showing higher power status and constructing lower power identities for defendants/witnesses, the process of elicitation in the courts of Ghana demonstrated power inequalities and manipulation. It was also observed from the discussion that counsels used questions to constrain defendants and witnesses, to lure respondents into implicating themselves, to maintain their ideological stance

of being the knowledgeable person in the conversation and thereby wielding more power than the other participants.

This paper has identified and recognised the types and use of questions in courtroom elicitation. Questions were used for their rhetorical functions of seeking information, but more importantly, to manipulate defendants/witnesses to accept positions and burdens they would otherwise not accept. As van Dijk (2006) reiterated, manipulators use discourse to make others act not in their own interest but in the interest of the manipulator. Various sections of the analysis showed that counsels in the discourse under study dominated the defendants/witnesses by using their professional position which gives them control in the legal setting. Though it may be argued that defendants and witnesses knew they would be cross-examined, questions are not explicitly stated in conformity with conversational principles (see Grice's (1975) on Cooperative Principles). In effect, defendants/witnesses are strategically managed into more vulnerable positions in courtroom interactions. By focusing on elicitation, we narrow our focus to only questions as strategies used by counsels. Future research may be geared towards in-depth studies into related discourse practices in Ghanaian courtrooms so as to bring to the fore the ideological underpinnings of the rhetorical structures and functions that inform courtroom interaction and interlocutors.

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