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Pursuing and resisting argumentative projects in Q&A sequences during a trial

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ABSTRACT

In jury trials, attorneys must build arguments about the facts and how these facts should be interpreted, and this happens through Q&A sequences with their own and the opposing party's witnesses. The structure of the courtroom interrogation usually disadvantages witnesses, especially in cross-examination because attorneys have the upper hand in the exchanges. This paper analyzes the Q&A sequences in a trial involving lawyers as witnesses and concerning abstract issues to investigate the different strategies attorneys and witnesses use to engage argumentatively. Specifically, the data are from a civil rights trial in which a female attorney sues a law school for not hiring her as an instructor. The suit alleged that the law school politically discriminated against her following her job talk because of her conservative political views. The paper shows how attorneys with their own witnesses can engage in co-reasoning, and how attorneys and the opposing side's witnesses can resist each other's argumentative projects. More specifically, we show that a question's answerability is a key resource which can be exploited by both attorneys and witnesses.

1. Introduction

"Argumentation is part of any lawyer's DNA" (Sullivan, 2015). Across the internet assertions such as this one that proclaim attorneys are better arguers than others, are easy to find. This skill is what law schools train lawyers to do, as it is at the heart of both oral and written legal work (Mertz, 2007). Question-answer (Q&A) sequences in witness interrogations are sophisticated manifestations of argumentation skills. In cross-examination, what Walton (2006) labels as an examination type of argument, attorneys put together answers to decontextualized questions given by the witnesses to form an argument in favor of their case (Hobbs, 2003).

A key issue in understanding courtroom examination, both direct (examination-in-chief) and cross, is to consider how Q&A sequences contribute to and resist the larger project of each attorney. To get jurors to understand the facts of the case and what these facts mean so that they support an attorney's argument, participants are engaged in what we label the *argumentative project*. Following Feteris (2012), we recognize that trials are at their core, situations in which two parties pursue opposing standpoints. Given that witnesses are also brought in by one of the sides, in a trial it is not just the attorneys who are arguing. The concept of argumentative project has a family resemblance to the idea of perlocutionary effect and the

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genre notion of communicative purpose (Askehave and Swales, 2001; Garzone, 2015). These concepts build on the notion that language is being employed to accomplish a goal and have an effect. The concept of argumentative project differs from Austin's (1962) concept of the intended perlocutionary effect in that it is focused on a trial, a significantly larger unit of discourse than an utterance. It differs from the perlocutionary effects of speech act complexes (Van Eemeren and Grootendorst, 1984) in that each argumentative project may have multiple participants who do not have the same individual aims and argumentative rights. Finally, it differs from communicative purpose in genre studies in its attention to the fact that there are always two competing argumentative projects in a trial genre. While not all witnesses will share the argumentative project of one of the attorneys, in civil cases, plaintiff and defense witnesses should have argumentative projects in line with their attorney's.

Generally, witnesses are in a weaker position than attorneys to define the matter under discussion due to the Q&A structure. To gain more insight into how questioning and answering sequences can relate to a trial's argumentative projects, we focus on a trial in which witnesses, as well as the questioners, were attorneys and thus more skilled to engage in a trial's argumentative projects. In such a trial we expect to find novel strategies for pursuing and resisting the competing argumentative projects.

Wagner v. Jones et al. was a 5-day civil rights trial in which Teresa Wagner had brought a lawsuit against Carolyn Jones, the Dean of the University of Iowa Law School, alleging that the law school had failed to hire her as an instructor because of her conservative political views. Dean Jones was thus accused of allowing political discrimination. With but a few exceptions (e.g., a law school librarian) all parties in the *Wagner* trial were trained in law: the dean, associate deans, law school professors, the trial attorneys, the plaintiff, and the judge were all lawyers.

We use this trial about political discrimination to identify strategies of advancing and resisting argumentative projects during Q&A sequences. We show how affordances of questions and answers work to establish a preferred view on the case at hand. That is, given that questions are strategic (Hobbs, 2002) and that attorneys challenge answers by witnesses to support their position, we consider specifically what was disputed and how expert arguers navigate the Q&A structure to manage the information—the "facts"—which gets established.

Below, we first (Section 2) review what we know about Q&A sequences, particularly attending to how what is said in these sequences does argumentative, moral work. After describing the trial, the data, and the discourse analysis approach (Section 3), we focus on specific question-answer sequences during the *Wagner* trial. The analysis begins (Section 4) by showing how attorneys engage in a practice of co-reasoning during direct examination to further their argumentative project. Then (Section 5), we show how during cross-examination defense witnesses resisted attributions of emotion designed to suggest political bias. In the next section (Section 6), we identify a relatively ignored aspect of polar questions—their answerability—that shapes the attorney's ability to pursue their argumentative project. Last (Section 7), we show that a witness can also use this aspect to resist a project. In concluding we highlight how this case study of a civil rights trial involving expert arguers as both witnesses and trial attorneys generated new insights regarding Q&A sequences in trials.

2. The practice of questioning

D'Hondt and May (2022) argue for the importance of critically unpacking the language of the law. In this endeavor, questioning has been a major focus, for as Mills (1940, p. 904) long ago noted, questions are all about "the avowal and imputation of motives." Criminal trials have received the most attention (e.g., Heffer, 2010; Matoesian, 1993; Penman, 1990), but questioning in other arenas has also been studied, including voir dire (Shuy, 1995); appellate argument (Tracy and Parks, 2012); small claims with interpreters (Angermeyer, 2016, 2021); contested custody cases (Aronsson, 2018); and judges taking of guilty pleas (Philips, 1998). In addition, previous studies of questioning have helped us understand how a question's grammatical form links to its likely coerciveness (Gibbons, 2008; Heffer, 2005; Woodbury, 1984); how questioning can build pressure on a respondent through use or avoidance of prefaces, self- and other-reference frames, and strings of questioning (Clayman and Heritage, 2023); and how assumptions are regularly smuggled into attorney questions (Aldridge and Luchjenbroers, 2007).

During cross-examination, attorneys' questions are designed to problematize the character of witnesses, as well as challenging the veracity of what they have said. It is an attorney's job in cross-examination to attack the face of a witness and, if possible, minimize if not destroy the person's credibility (Archer, 2011). Consequently, attorneys' questions frequently convey disrespect and show contempt toward witnesses (Penman, 1990). Moreover, as Raymond (2006: 129) noted, "the constraints on witness responses in courtroom cross-examinations provide for the achievement of an essentially hostile, asymmetrical relationship," leaving little room for the witness to maneuver. Through the order of the questions, the attorney positions details in a specific place within a sequence to support their argumentative position (Levinson, 1983). For example, through contrasts (Drew, 1990) attorneys highlight problematic accounts by witnesses. As shown by Hobbs (2002), attorneys pose strategic questions, challenge evasive answers, and carefully build up descriptions of the case at hand. In this way, attorneys can build the argument which solidifies their case (Hobbs, 2003).

In direct examination during civil trials witnesses usually want to cooperate and advance the argumentative project of their attorney. Responses during this trial phase often advance the goal of the attorney, a practice Akatsuko (1997) described as co-reasoning. Co-reasoning occurs when the interactional project pursued by the attorney is in line with that of the witness. Through their questions, the attorney provides the witness with the conversational floor to make their

shared points. Subsequent questions build onto the answer of the witness and the interaction progresses relatively smoothly.

This is not the case in cross-examinations, where the argumentative project of the attorney and the witness do not align. One type of question format particularly useful in courtroom cross-examination is the polar question, also labeled yes-no interrogatives (YNI). Responses to a YNI can either conform to the question structure by providing yes-no answers (e.g., yep, yeah, nope, no) or can resist, saying something that marks the response as not one in which a straightforward yes-no is warranted (Raymond, 2006). While non-conforming responses to YNI are conversationally dispreferred (Raymond, 2003), they occur regularly in everyday life. In the courtroom there are additional constraints as an attorney may ask the judge to enforce court rules and direct a witness to just answer "yes" or 'no." Or if a witness does manage to squeeze in some additional verbiage, the attorney may ask the judge to strike the remainder of the answer from the record.

In addition, certain attorney utterances, while having the technical format of a question (e.g., the tag question, "You shot him, didn't you?") as the courtroom genre requires, come close to being an assertion about some usually unsavory fact. Prefaces such as "wouldn't you agree that…?" and "Isn't it a fact that …?" are common formulations that express hostility and give "questions" assertion-like power (Sidnell, 2010). This means that witnesses can have a difficult time resisting the argumentation of the lawyer who is interrogating them.

Although the courtroom clearly gives attorney questioners more power than witnesses, witnesses do have agency. They can use their responses to resist what an attorney has sought to build into the questions. Drew (1992) showed how a victim in a rape trial through her rewording of question pieces worked to combat a defense attorney's implications that the sex that occurred was consensual. Reporting details that recharacterize the scene, as he noted, is a way to dispute what is built into a question without directly disagreeing. This is accomplished through what the maximal property of description, which involves the assumption that a description is always the strongest action form possible (Drew, 1992). For example, while banging and knocking on a door convey similar actions, to say that one knocked on the door implies that a person did not bang on it. To describe an action as banging conveys a sense of urgency absent in knocking, which in a trial can implicate the (un) reasonableness of an actor.

Questions about political bias make descriptions of feeling states especially salient. At its simplest, political bias involves responding more negatively in one's words or assessments to persons who hold views opposing one's own. Attorneys' questions can imply witnesses possess negative feelings characteristic of that type of bias, and witnesses' responses can reject or redescribe their feelings in ways that would not match what would be expected of a person politically discriminating. Every turn of talk, Drew (2018) argued, has the potential to generate inferences and implications.

3. Background on the trial, data, and discourse approach

Between 2011 and 2015, U.S. federal courts carried out a pilot project to examine the effect of cameras in courtrooms. During this time, 14 district courts participated, and these selected courts recorded and archived their civil court activities. In this archive are five jury trials which focus on issues of civil rights. In a civil trial, a jury is asked to decide if the plaintiff's or the defendant's story is supported by the "preponderance of the evidence." If the two are equally plausible, a decision is made in favor of the defendant. If the decision is made for the plaintiff, a sum of money is awarded. When a civil case arrives at trial, a quite unusual event (Langbein, 2012), extensive fact-finding work will already have been done and be available to all. That is, a civil case begins with attorneys taking sworn statements (depositions) from key parties and relevant witnesses. It is this shared fact-finding phase that leads to all but 1 to 2 percent of civil cases in the US to either settle or be dismissed. For cases that proceed to trial, the facts are ones that do not speak for themselves. They can be interpreted differently and woven together to create competing stories. In addition, when a trial occurs, attorneys use the depositions gathered earlier to challenge witnesses' veracity. Thus, cross-examination is highly argumentative, and witnesses can be expected to resist the argumentative project pursued by the interrogating attorney.

Wagner v. Jones was a trial that occurred in a federal court in Iowa in October of 2012. Below is a summary of the issues and trial, taken from the archive website.[1]

> Trial Summary: Wagner contended that Jones repeatedly refused, and continues to refuse, to hire her as an Instructor of Legal Analysis Writing, and Research (LAWR) because she and the voting law faculty did not approve of her political views and affiliations. She argues that this motive behind the refusal to hire her is in violation of her First Amendment rights. Wagner has requested that Jones compensate her for lost income and benefits and emotional damages and that she be hired in the position. Wagner is a Republican and has advocated conservative views, in particular being against abortion and euthanasia, and she had been affiliated with conservative public policy organizations. Defendant Jones is a registered Democrat, as were at least 46 of the 50 faculty members. Only one faculty member was a registered Republican. Wagner had extensive writing experience, practice experience, and legal teaching experience. Instead of her, the College of Law hired a man who had only recently graduated from law school and had no writing, practice, or teaching experience. The defendants allege that Wagner was not hired because in her job talk she said that she believed it was not her task as a writing instructor to teach legal analysis. After 3 days of deliberations in this trial, the jury

[1] https://www.uscourts.gov/cameras-courts/wagner-v-jones-et-al.

initially deadlocked on both counts. It then rendered a verdict for the defendant on Count One (political discrimination) and continued to deadlock on Count Two (equal protection). The Court entered judgment for Defendant on Count One and declared a mistrial on Count Two.

The following information results from observation and research on this trial.

Additions from research and observation: The trial outcome was challenged by Plaintiff due to the initial deadlock on both counts, resulting in a second trial and another appeal. Across this first trial there were 16 witnesses; 6 depositions were also read into the record.

Data included detailed notes of the videotaped, 5-day trial, including conferences between the judge and attorneys when the jury was removed. In addition, following review of the notes, verbatim transcripts were created of twelve trial segments, totaling 11 h. Verbatim transcripts include words, uhs and ums, and repetitions and partial words of the speakers. Transcribed segments focused on direct- and cross-examination of witnesses. Also transcribed were the judge's instructions to the jury and the attorneys' opening statements and closing arguments. Important details for the analysis are marked in italics.

In this study we employed action-implicative discourse analysis (AIDA) (Craig and Tracy, 2021; Tracy, 1995, 2008). AIDA has been influenced by, and draws on concepts developed in, earlier discourse approaches, especially conversation analysis (Drew and Heritage, 1992) and interactional sociolinguistics (Gumperz, 1999). Similarly to these two approaches AIDA looks carefully at sequences of actual interaction to build interpretations. In contrast to both approaches, though, it uses a simpler transcription system. It differs from conversation analysis, in its use of features of context not visible in talk. It differs from interactional sociolinguistics in its focus on interactional troubles linked to institutional roles rather than ethnic backgrounds. AIDA, as its name suggests, seeks to identify the goal-driven actions that talk is accomplishing to address the interactional problems that an institutional site presents its participants. In a civil trial advancing the argumentative project of one's own side and resisting the argumentative project of the other are major goals.

Applying the concept of argumentative project to this trial, we can say that the plaintiff's project was to get the jury to see the Dean and the law school faculty as engaging in political discrimination against Wagner in their decision not to hire her. In contrast, the defense's argumentative project was to show that there had not been political discrimination and there were acceptable reasons to not offer Wagner the faculty position. Next, we look at how these projects were pursued and contested in Q&A sequences.

4. Co-reasoning

In civil trials attorneys engage in the practice of co-reasoning with their own witnesses. We can observe an example of this in excerpt 1. Prof-B is allowed to extensively answer the questions by the defense attorney, as their argumentative projects align. Both are working to dispel the likelihood that there was political discrimination. The topic of questioning was whether Wagner's politics were discussed during the interview. Prof-B is testifying that this was not the case.

Excerpt 1: AD=Attorney for Defense, B=Professor B.

1 AD: Okay. At the job talk, were Ms. Wagner's politics, views, or affiliations discussed in any manner?
2 B: They were not.
3 AD: Would you remember if they were?
4 B: I certainly would, cause *I would have gone through the ceiling.*
5 AD: Why is that?
6 B: Because, uh I believe number one, first of all, uh I teach the First Amendment, and discriminating against uh uh an employee at any state institution uh on the basis of their political point of view, A, is unconstitutional. B, it's dysfunctional. We are an educational institution. An educational institution needs to have all points of view uh available to be discussed and presented. Nothing is more frustrating to me when I teach constitutional law to discuss a controversial contemporaneous [coughs] political subject. And I get people who don't want to discuss views that are thought to be popular or unpopular. The popular ones they're always willing to discuss. But it's the unpopular ones that I frequently in class hafta prod people to make the unpopular argument, and if they don't, I've gotta make it, and I certainly do. So I definitely believe that not only would it be improper to discriminate on that. That's why I *would have blown up* if that's uh not the case, but also it's functionally necessary for good education. We are educating lawyers, lawyers hafta be able to handle all sides of an issue. You can't handle all sides of an issue unless you understand the arguments on all sides.

In the excerpt, the defense attorney asks his witness whether Wagner's political views were discussed “in any manner” (t1), a question tilted to align with the witness's preferred answer, who responds negatively (“they were not,” t2, see Heritage and Raymond's (2021) discussion of question polarity). In response to the next YNI about whether he would remember if Wagner's political views were discussed (t3). Prof-B responds that if it had happened, he “would have gone through the ceiling” (t4) and “blown up” (t6). This description of strong emotion which he did not feel, is grounds for believing that Wagner's political views were not discussed. His description implies that he would have had those feelings if the topic had surfaced in the decision-making meeting.

Rather than constraining Prof-B's contribution, the defense attorney asks the open question “why” (t5) to let Prof-B freely respond without constraints. In his next turn, Prof-B provides a lengthy response, in which he even stresses that he argues for these “unpopular” positions himself in class (t6). After this turn, the defense attorney moves on to a new question, showing that the argumentative projects align.

Direct examination is the place for co-reasoning to occur. Occasionally, though, it encounters a blip—an attorney's witness does not quite respond in the manner that the questioner seemed to expect. In such cases it can take several turns to create a

co-reasoning stance. In excerpt 2 the plaintiff's attorney is questioning plaintiff Wagner. The attorney and Wagner are discussing an email she received shortly after her job talk telling her that she did not get the fulltime position but asking her if she would consider an adjunct position.

Excerpt 2: AP = Attorney for Plaintiff, TW= Plaintiff Teresa Wagner.

1 TW: This is what I received after- well, within 48 hours of my job talk, this is what I received, that they um were hoping to have me as an adjunct and that this would be a possible stepping stone to a full-time position.
2 AP: Okay, did Dean Jones ever *tell you* that uh Mr. Janice was wrong, that she never wanted you as an adjunct?
3 TW: No
4 AP: Okay, did Dean Jones ever *tell you* that um she didn't want you to serve any role at the College of Law?
5 TW: No this-
6 AP: Okay
7 TW: It was- it was-
8 AP: You did express interest, is that correct?
9 TW: yes, I- I agreed to um be an adjunct, and then they voted on that in March.
10 AP: *And in fact, isn't it true* that Ms. Jones- or Dean Jones *made a comment* to Mr. Janice about the quality of this offer, namely that he was somewhat of a- a diplomat?
11 TW: *Well*, she *appears* to approve of the note, so that's why as I said it was *odd* if the job talk had been such a failure that this should've come in.
12 AP: *You wouldn't expect* that if you told Dean Jones and all the other faculty at your job talk that you refused to teach analysis, that the Dean of the Law School would still want to have you uh teach as an adjunct, *is that fair to say*?
13 TW: It *seems* inconsistent.

Excerpt 2 starts with the identification of the on-screen item by Wagner. It is the email sent by Mr. Janice, the chair of the faculty search committee. The offer of an adjunct position was presented positively by the plaintiff, as a "stepping stone to a full-time position" (t1). Then, the attorney asks Wagner whether she was ever told that this was an insincere offer, that Janice was presenting her with an opportunity which was just a way not to say that they would not hire her due to her political leanings. Wagner claims she had not been told that this was the case (t3). Next, the attorney asks the same question in a slightly different way (t4) and again, Wagner responds negatively (t5), evidencing her belief that the college was interested in her for an adjunct position. While the goals of Wagner and the attorney officially align, through t5 that state is not yet clear.

In turn 10, the plaintiff's attorney inquires whether Wagner is aware of a "comment" by Dean Jones. In describing Janice as "somewhat of a diplomat" the attorney seems to be asking Wagner to confirm that she knew the college was against hiring her when they offered her the adjunct position, much as a comment when two people depart and one says something about "getting together soon" often is neither meant nor taken literally. Wagner responds to this question with the discourse marker "well" (t11), suggesting she is not going to respond in line with the question posed (Heritage, 2015). Wagner claims that Dean Jones "appears to approve of the note" but contrasts this with the assessment of the job talk (t11). Rather than directly claiming that she knows what the Dean and Janice have discussed, Wagner only makes a claim about what "appears" to be the Dean's position and that she thinks this is "odd." This "odd" juxtaposition aligns with the suspicion the plaintiff's attorney has been pursuing. The attorney stresses that "you wouldn't expect" (t12) both elements to be true. Next, Wagner aligns by claiming that "it seems inconsistent" (t13). Thus, although not occurring seamlessly, the witness and the plaintiff's attorney engage in co-reasoning to forward their shared argumentative project.

In sum, in civil trials attorneys can engage with their own witnesses in co-reasoning to establish the basic facts of their case. In these two excerpts, we have seen two distinct strategies attorneys can employ. In excerpt 1 the interactional project of the attorney and the witness aligned fully and the attorney was able and willing to give the floor for an extended turn to the witness without providing any further redirection. In excerpt 2 we saw an attorney casting suspicion on the other party, but having this be partly rejected by his witness, which led the attorney to soften the accusation until the statement was something that could be affirmed by the witness.

5. Witnesses resisting attorney's attributed emotions

Co-reasoning is largely an activity of direct examination. When attorneys cross-examine witnesses, the project of the attorney and the witness are not aligned, and witnesses do work to resist interpretations advanced through attorney questions. In the case of *Wagner,* the character of faculty parties' emotional stances was often a focus. Determining the witnesses' emotions about Ms. Wagner not being hired was essential to establish the accusation of political discrimination. Furthermore, in a trial context, it is particularly important to appear *not* upset by verbally attacking questions, as everyday communicators routinely seek to do when they make po-faced responses to hostile teases (Drew, 1987).

Consider an exchange between the plaintiff's attorney and Professor C who had had a friendly advising relationship with Wagner prior to her job interview. The plaintif'sf attorney attributes to Prof-C an emotional state which could indicate political bias, but that description is resisted by the witness.

Excerpt 3: AP=Plaintiff's attorney and C=Professor C.

1 AP: And isn't it true that she told you at one point that she had gone through an interview process for an Associate uh Professor tenure track position?
2 C: It- she told me that she had uh- yes, I believe that's right.
3 AP: And she told you that it was at a small Catholic school in Ann Arbor, correct?
4 C: She told me that it was at Ave Maria Law School, yes.
5 AP: *And you reacted kind of shockingly, correct?*

6 C: *No, I don't believe I reacted shockingly.*
7 AP: You did tell her not to tell the uh um full- the faculty for the full-time when she was interviewing *not to mention her affiliation* with Ave Maria University, correct?
8 C: I don't believe that's exactly what I told her, no. I believe I told her that *I wouldn't talk about receiving a job offer from that particular law school*, that I didn't think that was something that was relevant to the interview process.

The plaintiff's attorney raises the fact that Wagner had told Prof-C about a "tenure track position" for which she was being interviewed (t1) and that this school was "a small Catholic school" (t3). Although Prof-C does answer "yes," he prefaces his response by identifying the particular Catholic School that made the offer. The plaintiff's attorney portrays Prof-C's reaction to Wagner's news about interviewing at Ave Maria Law School as "kind of shockingly" (t5). This emotional reaction regarding her interview at this institution implies that Prof-C has something against religiously affiliated law schools, which is a potential sign of political bias against conservatives. In the next turn, Prof-C denies this reaction outright (t6). The plaintiff's attorney then asks about the fact which implied that Prof-C would have reacted "kind of shockingly," which was "not to mention" this affiliation (t7).

In response, Prof-C offers an alternative account of what he said and thus how he reacted. He did not say, "not to mention her affiliation," but rather, he told her that talking about a "job offer from that particular law school" was not relevant to the upcoming interview at the University of Iowa. Why it was not relevant was not stated in the pre-interview conversation but one guess from Prof-C's formulation as well as information provided elsewhere in the trial was that the University of Iowa's law school was in a different league than Ave Maria. In fact, this is the case. In 2020 the *US News and World Report* ranked Ave Maria in the 4th tier of law schools whereas the University of Iowa was ranked in the 1st tier. Prof-C's rephrasing, therefore, can be interpreted as a comment informing a job candidate, obliquely and politely, that a job offer from a tier-4 school is not good evidence for being considered at a tier-1 school. That is, he was offering her reasonable advice, not reacting "shockingly."

Later in the exchange between the plaintiff attorney and Prof-C, they discussed an emotional state of a colleague of Prof-C ("he" in the transcript), who supposedly had expressed a negative opinion about Wagner's potential hire. Again, the plaintiff's attorney attempts to attribute an emotional state which could indicate political bias.

Excerpt 4: AP=Plaintiff's Attorney and C=Professor C.

1 AP: In fact, he spoke out against Teresa re- being a candidate, correct?
2 C: Yes, I believe he did. Or being hired, not being a candidate.
3 AP: I'm sorry. He spoke out about tendering her an offer.
4 C: Yes.
5 AP: Full-time position.
6 C: Yes.
7 AP: And he's *quite adamant* about *that*, correct?
8 C: He was *quite adamant* about *the quality of her presentation*, is what he was adamant about.

The plaintiff's attorney raises that "he," the colleague under discussion, "spoke out" against Ms. Wagner (t1). Prof-C affirms this along with correcting that colleague did not object to her being "a candidate" but against her "being hired" (t2). After a couple of turns, the attorney describes that colleague as "quite adamant about that" (t7), with "that" referring back to "tendering her an offer" (t3) for a "full-time position" (t5). The plaintiff's attorney presents the talked about "he" as having strong negative animus toward Wagner, a sign that this colleague was committing political discrimination. Strong negative feelings about a person's hire imply that there may be something behind a person's assessment of a candidate. Prof-C reformulates the stance towards being "adamant about the quality of the presentation" (t8). He shifts *what* the colleague was adamantly negative about: It was about the presentation quality in the interview, something each faculty in the law school is expected to assess and which is a reasonable ground to vote against hiring a particular candidate. Through reformulations, the argumentative project of the attorney was resisted by the witness.

In the following exchange with Professor S, the plaintiff's attorney again attributes a feeling state which could indicate political bias. This description is directly rejected by the witness.

Excerpt 5: AP =Plaintiff"s attorney and S=Professor S.

1 AP: At the job talk on uh January 24, 2007, isn't it true that you were *glaring* at my client *the entire time?*
2 S: *Oh, no*, I actually liked Teresa and I was hoping she would get the job.

The plaintiff's attorney implicates political bias through his description of Prof-S as "glaring" at Wagner, and not just for a moment but "the entire time." In using an extreme case formulation, "entire time" (Pomerantz, 1986), paired with a verb that conveys strong negative feelings, we see the attorney working to show the law school as being a hostile place for a conservative person. Prof-S responds to this YNI with a straightforward "no" that is prefaced the news mark "oh," which conveys that she is surprised by this characterization (Heritage, 1984). This surprise is subsequently amplified by her next statement espousing her liking of Wagner and her pre-interview hope that Wagner would get the job, undermining the description that would suggest political bias.

In these three instances, we see the plaintiff's attorney implying parties had the kind of negative feelings that cue a possible discriminatory stance. In responses, attorney witnesses either disputed the implication directly, as seen in excerpt 5, or implicated through their description an alternative feeling. In Excerpt 3 the proposed feeling (being shocked) was reformulated as a mild concern about appropriateness; in Excerpt 4, the source of the feeling (the presentation vs. the person) was changed, thereby undercutting what the plaintiff's question had implied. Thus, witnesses carefully reformulated the description advanced by the attorney to support their side's argumentative project. There are, however, cases in which

attorneys can redirect the interaction to advance their ongoing argumentative project and witnesses have limited ability to maneuver.

6. The answerability of concrete questions

In the case of *Wagner*, the attorneys were able to overcome resistance from the witnesses by using the concreteness of their question as an interactional resource. That is, they could present a question as deserving a simple, straightforward answer. Generally, this was the case when the attorney based their cross-examination on concrete materials. For such matters, the attorney could build their argument, while overcoming the witness' resistance to their argumentative project.

In excerpt 6, the defense attorney is cross-examining Ms. Wagner. In the interaction, Wagner is resisting the answer the defense attorney is after, but the attorney uses the concrete referents of the series of questions to get Wagner to respond in the desired way. On the screen in the courtroom is the typed outline of the presentation that Wagner used for her job talk. The defense attorney asked a question about the material shown, and he received an broader answer than he wanted. He pursued his goal of constraining her answer by specifying that his question was "very specific" (t5).

Excerpt 6: AD=Defense attorney and TW=Ms. Wagner.

1 AD Ms. Wagner, we left off with Exhibit 136, we've reduced it a- a little bit on the screen so I believe you'll be able to see the full page on screen?
2 TW Mmmm
3 AD Okay, Where do you- where do you have typed the word analysis on that presentation?
4 TW There are two a- spots where the word analysis appears in the presentation, and then the entire section on active
5 AD Ms. Ms. Wagner, my question is *very specific*. On page one-
6 TW Oh on page one
7 AD Yes
8 TW Oh
9 AD Where is the word analysis typed?

At the beginning of this interrogation, the defense attorney establishes a common empirical orientation. He directs the attention of all in the courtroom toward the document shown on the screen. By checking whether Wagner is able to see the document, he is establishing the relevance of this material in answering questions (t1). In essence the attorney treats the document as "speaking," (Drew, 2006) where Wagner is asked to voice its sentiments. When the attorney asks, "where do you have typed the word 'analysis' on that presentation?"(t3), he treats use of the word in the text as what should count as evidence that a job candidate would give attention to this skill if hired for the position. The word "presentation" could refer to the actual talk at the job interview rather than the outline shown on the screen—and this is the interpretation Wagner orients to in her response, noted that she had 'two spots" where she used the word (t4), but the attorney does not let her answer stand as responsive. Instead he corrects her, telling her to focus on page one of the outline (t5). In turn 4 Wagner tried to resist the attorney's document-grounded view of what it means to teach analysis with her comment about "active," which although interrupted can be understood as working to bring in "active listening," a practice that is being analytical, that she identified several times as important in teaching. The attorney's correction of her response constrained her from strongly building a portrait of her job talk as giving good attention to analysis.

It is important to note that the attorney is making a similar point to what Wagner is willing to answer, namely that the word "analysis" appears twice on the outline. The attorney's plan to display this point, "page by page," though, sets in motion a different implication than Wagner wants to convey about this fact. In Excerpt 7 Wagner challenges the need to go page by page as unnecessary (t6).

Excerpt 7: AD=Defense attorney and TW=Ms. Wagner.

1 AD And page four? Does the word analysis pr- appear in your prepared text?
2 TW Um, I can't see the whole thing.
3 AD Okay, scroll it down for ya
4 TW Um it doesn't appear to, but Mr. Carroll, I think it only appears twice and-
5 AD Well, Ms. Wagner, I-
6 TW *So, we don't hafta go through*
7 AD Well, I-
8 TW Okay
9 AD Ms. Wagner?
10 TW Yeah
11 AD I get to direct the question unless the court directs me otherwise.
12 TW Okay

The defense's attorney is again asking about the word "analysis" (t1). After acknowledging for the fourth time that the word analysis "doesn't appear" on the slide shown, she refers again to the full presentation (t4). The attorney rejects her response, disqualifying it with "well" (t5-7), a token frequently employed to signal disagreement (Schegloff and Lerner, 2009) and claims his institutional right to act in this way, presuming the question is answerable (t9). The defense's attorney does not just want a one-word answer about the fact that the word, analysis, occurred twice. Rather, he is working to show Wagner rarely used the word, or more aptly we could say he is working to *showcase* the information, to make jury members likely to infer that Wagner's job talk failed to give attention to a key demand of the position.

Throughout, Wagner attempts to resist the question, trying to complicate the matter at hand. The defense's attorney, though, does not allow this.

Excerpt 8: AD = Defense attorney and TW = Ms. Wagner.

1 AD So page five, does it appear?
2 TW No
3 AD Page six, does the word analysis appear?
4 TW Not there.
5 AD Page seven, does the word analysis appear?
6 TW Um, *well,* this is where I would say that the uh presentation begins to-
7 AD Ms. Wagner
8 TW discuss analysis without using the word.
9 AD That's fine. I'm asking does the word appear on your prepared outline?
10 TW Not- not the word.

The defense's attorney continued asking the same question about subsequent pages of the presentation outline. Typing the word “analysis” in the outline is treated by the attorney as an indicator of understanding the job requirements. The notable absence of the word is evidence that Wagner would do a poor job teaching a course in Legal *Analysis*, Writing, and Research, and hence implies her unsuitability for the job. After two responses in which Wagner states that she had not used the word "analysis," she challenges the attorney's question. Starting with the disagreement token “well,” she claims that her presentation discussed analysis without using the word (t6-t8). The attorney then qualifies this as “fine” but redirects Wagner to the question about its use on the outline (t9). In responding “not the word” (t10) rather than “no,” Wagner is able to keep open a weak implication that she did address analysis, as the formulation implies she did something relevant (i.e., not this, but that).

What we see in these exchanges is the attorney doing work to make his questions narrow and concrete by focusing on the written outline. When this is challenged by Wagner, the attorney is able to constrain her answer by focusing the question's scope on the displayed text. Because the questions are about such a concrete matter, they make alternative inferences difficult, albeit not entirely impossible. In sum, attorneys use the concreteness of question to direct and redirect answers given by witnesses; savvy witnesses may wiggle a bit, as Wagner did, but this type of question constraints tightly.

Consider the next excerpt, where the plaintiff's attorney is reformulating a polar question to overcome the implication set in motion by Professor AB.

Excerpt 9 AP=Plaintiff's attorney and AB=Professor AB.

1 AP And you were a Democrat back there, correct?
2 AB *Um, y- I did- I never voted when I was uh in Brooklyn.*
3 *AP Okay.*
4 AB *But I certainly have voted both for Democratic candidates and Republican Candidates.*
5 AP *You've never been registered Republican though, have you?*
6 B No.

In responding to the attorney's inquiry which asks for confirmation of the fact that he was a Democrat when in Brooklyn (t1), AB starts to agree (“um, y-“) but adds information that waters down the possible inference that he had antipathy toward Republicans. Not only did AB not bother to vote when he lived in Brooklyn, (t2), a state at odds with having strong political feelings, he notes that when he has voted, he voted for Republicans some of the time (t4). The attorney follows up these implications that counter what he wants the jury to infer by using an extreme case (never) negatively formatted YN-interrogative (“You've never been registered Republican”), a device ripe with hostility toward this lack (Aronsson, 2018), that implies there is something politically problematic about never having been a Republican. The attorney uses a concrete question to attempt to control the interaction.

Resisting YNI about concrete matters can be done, as we showed above, but the amount of resistance possible is constrained. When questions are less straightforwardly answerable, however, resistance becomes easier.

7. Challenging a question's answerability

Some questions demand straightforward answers; for others, straightforward answers are less likely or required. While witnesses, as noted previously, can be required by a judge to answer the question posed and not add other comments, not all questions are seen as straightforward ones. Questions about relatively abstract matters—personal beliefs about an issue, policies—can more easily be framed as not “yes-no” matters. Responses to YNIs, as Raymond (2006) described, may be type conforming or type dis-conforming. Of note in this trial investigating whether the law school was politically biased, attorney witnesses frequently did not give type-conforming yes or no answers. Consider an exchange between Professor S and the plaintiff attorney in which the attorney's formulation in turns 1, 3, 5 and 7 are framed to elicit a clear yes or no.

Excerpt 10: AP=Plaintiff attorney and S=Professor S.

1 AP: And *you are in support of same-sex marriage?*
2 S: Yes.
3 AP: *And pro-abortion rights, correct?*

4 S: Uh that's a complicated question.
5 AP: Well, you- *you support a woman's right to choice?*
6 S: That's a complicated question.
7 AP: Are you saying you d- you don't?
8 S: I'm saying it's a complicated question, and you're trying to paint me into one position or another, and I don't appreciate that, because it's a complicated question, and I'm not going to answer it in the black and white way that you're presenting it to me.

The attorney's questions in Turns 1 and 5 by virtue of their assertion formation, and also in Turn 3, albeit slightly weaker by virtue of its appended tag "correct" convey that the attorney knows that the witness thinks (Heritage, 2010). Of note is what his questions frame as the expected response is a liberal position. After eliciting a straightforward "yes" to the question about support of same-sex marriage, the attorney moves on to abortion, another right that liberals often favor. Prof-S's answers in Turns 4, 6, and 8 are that the issue is "complicated," it is not a "black and white" matter, and she reprimands him for presenting the issue that way. Prof-S goes on to declare that she is Catholic and while she supports a woman's right to choose, she does not believe that right should extend to any point in a pregnancy. In complicating her answer Prof-S presents herself as not a conservatives-hater.

Asking the plaintiff if she had used the word "analysis" on page 3 of her outline, as we saw in the defense attorney's questioning of Wagner, is a much more concrete YNI than asking someone if they believe in a policy or political platform. When abstract policy YNI were asked, attorney witnesses employed a range of discourse techniques, rather than announcing it was complicated, to resist and show that the question was not simple. Consider the exchange between the plaintiff's attorney and Professor RB, whose legal specialty was constitutional law.

At the start of excerpt 11a (t1) the attorney asks what would seem to be a straightforward YNI—if Prof-RB was a registered Democrat. Prof-RB answers "yes" while appending the phrase "at present," which makes relevant, and allows him to elaborate, that he has been affiliated with a different party at other times. This appended phrase casts doubt that the professor is categorically anti-Republican. It also reveals a sense that the respondent is assessing questions for their likely end-goal, as his answer begins to undermine a portrait of himself as hostile to Republicans and likely to engage in political discrimination against them. Thus, Prof-RB shows that the question posed by the attorney is not as straightforward as it may seem.

Excerpt 11a: AP=Plaintiff's attorney and B=Professor RB.

1 AP: Are you a registered Democrat, is that correct?
2 B: Yes, *at present*.
3 AP: Okay.
4 B: I have been a Republican for many years, too.
5 AP: Do you contribute money to the Democratic party?
6 B: I don't think I have contributed to the Democratic party.
7 AP: Did you contribute money to the Obama campaign?
8 B: I did, because I became a Democrat then. I had been a Republican for years, or an Independent.

Excerpt 11b: 21 turns later.

1 AP: You would agree that the First Amendment guarantees the right for persons to associate and express themselves on matters of public concern without fear or reprisal from their government.
2 B: Yes.
3 AP: And- okay, and you would agree that-
4 B: Right- okay, go ahead. *You're talking about a right, understanding that no right is absolute*.
5 AP: Correct, I understand that, *but I'm saying the general proposition*.
6 B: *That's fine, as long as I'm answering a general proposition.*
7 AP: And this guarantee prohibits the government, when acting as an employer, from firing, refusing to promote, or refusing to hire citizens because of their political views or affiliations.
8 B: State employer, right?
9 AP: Correct.
10 B: Yes, I think that's right.

Following the discussion of Prof-RB's political party affiliation, the attorney for the plaintiff changes his questioning direction to focus on a right guaranteed by the First Amendment. The attorney's question (t1) offers a modernized summary of the First Amendment right "to peaceably assembly, and to petition the Government for a redress of grievances," which Prof-RB agrees is the case. In Turn 3 the attorney seems headed toward drawing out an implication of the First Amendment right; Prof-RB interrupts him to highlight that a right is always circumscribed. When the attorney asserts that he's pointing to the right as a general proposition, Prof-RB underscores that his "yes" answer remains if they are only discussing "the general proposition" (t6), showing the ascribed complexity of the question posed. Professor RB's answer makes apparent he would make a distinction between a general proposition and what specific things are entailed by that proposition. Professor RB's response brings to mind the political science study conducted more than half a century ago that found that almost all Americans believe in the freedom of speech, but agreement evaporated when survey items turned to possible entailments such as whether books could be banned (McClosky, 1964). In his next question (t7), the attorney draws out that a citizen should not be denied a job because of their political views. Professor RB's question of the question (t8, "state employer, right?") points to a boundary of the right to not be discriminated against for a political view, focusing on clarifying the question asked by the attorney.

Of note, the Q&A sequences in excerpts 11a and 11b sound more argumentative than we usually see in a trial, more like a debate between equals or what Sidnell (2010) found in the testimony given by an official during a public inquiry about his

possible corruption. These sequences show that the meaning of a question can be negotiated by the witness, as witnesses have the right to be asked answerable questions. Hence, clarifying terminology of the question is used by these witnesses as a resource to resist the argumentative project of the cross-examining attorney.

8. Conclusion

In this paper, we analyzed the Q&A sequences in a civil trial about political bias in an employment case. In this multi-day trial, plaintiff and defense attorneys worked to pursue their argumentative projects with particularly sophisticated witnesses: (1) showing the law school and its Dean were politically discriminatory toward Ms. Wagner because of her conservative views (the plaintiff); and (2) showing the law school decision not to hire Ms. Wagner arose from legitimate reasons (the defense). Unlike most criminal trials where the crux of disputed facts involves relatively concrete actions, this assessment of political discrimination in a faculty hiring decision in a law school, involved highly subtle matters, ones that focused attention on witnesses' comments, feelings, and thoughts. These "facts" about what people thought, felt, or said, were used to build each side's project and undermine the opposition's view of the facts.

Studying this civil rights trial about political discrimination with its skilled question-and-answer arguers makes visible features of courtroom questioning not previously given much attention. First, respondents in a number of these Q&A sequences displayed that they were able to infer the argumentative project behind particular questions and do verbal work to resist that project. If the claim by the attorney could not be directly resisted, witnesses accomplished resistance by adding prefaces or appending afterthoughts to core answers which negotiated the question, making a complex issue answerable for them.

Second, an important feature of questions given little attention in prior court research concerns the content of the question. We have referred to this dimension of Y-N questions as "answerability." In other words, how abstract or concrete is the matter is that the question asks about? Y-N questions about policies and issues, we showed, are different animals than Y-N questions about the presence of a word in a text or whether a person belongs to a specific political party. Relatedly, questions about feelings, or, more accurately the relation between sayings/do-ings and accompanying feelings or motivations, are likely to be loose. While any YNI can be responded to with a non-conforming response, the ability to do so is particularly strong when the YN question is not an easily answerable one. With skilled respondents, the loose link can be exposed, and the cross-examining attorney's project resisted. Put simply, the matter that is asked about matters.

Third, we have applied the idea of co-reasoning (see, e.g., Akatsuko, 1997) to Q&A sequences in direct examination where attorneys work with their witnesses to craft and interpret the facts that will advance their argumentative project. To be sure, while Q&A co-reasoning in a trial has similarities with co-reasoning practices identified elsewhere as it establishes a co-constructed conclusion, trial co-reasoning differs given the unequal relationship between attorney and witness. Most noticeable is the end goal, what we have characterized as the argumentative project that is shared by an attorney and certain witnesses and that shapes what parties say. That is, in contrast to other sites of co-reasoning in which reasoning-together talk is what produces the final formulation, in trial co-reasoning, it is the opposite: The final claim, known from the start, shapes what gets accepted in the co-reasoning talk created through questions and answers.

In sum, courtroom discourse is defined through attorneys' argumentative projects and can be actualized through co-reasoning or it can be resisted. Sometimes, it can be resisted as the claim of the attorney can be outright negated. Often, however, these interactions take place in a discussion space which is less clear cut. Then, pursuing a favorable answer is of interest to both the attorney and the witness. We have shown that both sides can do this by focusing on the answerability of the question. If a question is answerable, an attorney can demand an answer. If a question is not straightforwardly answerable, a witness can demand or propose clarifications that set in motion quite different inferences than a questioning attorney is seeking to promote. Through the question format selected and the descriptive details built into both questions and responses, attorneys and witnesses either cooperate or battle to implicate the rightness of their side's argumentative project.

Declaration of competing interest

None.

Data availability

I have shared the link to the video data and I will provide transcript excerpts upon request.

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