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Negative interrogatives and adversarial uptake: Building hostility in child custody examinations

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ABSTRACT

This study documents the adversarial role of *negative interrogatives* in courtroom talk. It involves a large set of audio-recordings of child custody proceedings. The focus is on sequences where different attorneys examined conflicting parents in two contexts: their own client versus the other side parent. Overwhelmingly, negative interrogatives were located, *not* in the first round of questions (same side), but during the cross-examination of the other side.

The analytical focus is on parents' uptake to the attorneys' questions (in a collection of 289 negative interrogatives; from 156 examinations). All negative interrogatives, such as 'So the children won't see their grandma?', were cast in a polar format, projecting minimal yes-/no-responses. Yet, the parents' uptake featured expanded responses – defensive accounts and counter-blame – beyond minimal responses. Hostility was built up sequentially through the parents' uptake in the form of counter-blame and other re-allocations of blame. The blame-accounts were highlighted through extreme case formulations, rhetorical comments and other discursive devices. In this courtroom context, the parents were to answer, not to ask questions. Yet, they at times confronted the court, through metapragmatic questions, disrupting the interaction order of the courtroom. In numerous ways, negative interrogatives were related to adversarial features and escalation.

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1. Negative interrogatives and hostility

Research on courtroom talk has often neglected aggravated aspects of social interaction (for a related critique, see [Archer, 2011](#); [Culpeper, 2010](#); [Tracy, 2008](#)). This study contributes to work on adversarial talk in documenting a number of ways in which speakers in a courtroom context, orient to hostility in the negative interrogatives of the other side attorneys, but at large not to the questions by the same side attorney. It thereby extends work on negative interrogatives from news interviews and political life to another arena of public talk, courtroom talk. More specifically, it examines the interaction order ([Goffman, 1983](#)) of courtroom proceedings about child custody disputes, an authentic high-conflict and *high stakes context* where two parents struggle over who is to be the child's guardian. The social context is, per definition, marked by severe conflicts in that mediation has failed. The analytical focus of this paper is on aggravation aspects of attorneys' questions and on how hostility is built in social interaction.

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Goffman (1967, 1970, 1971) has discussed ways of engaging in open or hidden attacks in social life. His work is replete with warfare metaphors that invoke fighting or hostile actions (e.g. ‘ritual affronts’ and ‘ripostes’). Goffman’s ways of analyzing how to mitigate attacks or affront someone’s face have become quite influential, above all through the work of Brown and Levinson (1987). On the whole, though, research has often concerned mitigation, rather than aggravation. In the legal arena, Archer (2011) and Culpeper (2010) have commented on this bias and on the need for more work related to aggravation and the causing of offence. Relatedly, Haugh (2015) has commented on the need to also study how participants engage in *taking offence*. In analyses of political discourse, Tracy (2008) has similarly argued for more work on ‘reasonable hostility’ and ways of expressing aggravated criticism. Moreover, as pointed out by Ehrlich and Sidnell (2006), work on courtroom discourse has often primarily focused on the coerciveness of question formats, not on *the litigants’ uptake*.

This paper examines a specific discursive format – the negative interrogative. This interrogative format epitomizes aggravated talk in that it can be seen to criticize or evaluate the interviewee’s conduct or opinions.

The negative interrogative involves propositions that evaluate the interviewee’s conduct, or that of superiors, allies or friends in critical, negative or problematic terms....

This critical propositional content is embedded in the negative interrogative with a polarity that invites the interviewee to assent to the criticism, or to endorse criticism of the conduct of allies (Heritage, 2002: 1439)

Ultimately, the negative interrogative is argumentative or challenging in that it is designed to highlight inconsistencies in the addressee’s actions or prior responses (Heritage, 2002: 1439). In a paper on presidential debates, Clayman and Heritage (2002) have shown that negative interrogatives are situated in time, documenting a shift from a somewhat deferential style in broadcasted interviews in the 1950s toward a more adversarial style in the 1980s. Whereas negative interrogatives in a polar format were quite rare in talk to President Eisenhower, this somewhat coercive format was more than six times as common in journalists’ ways of addressing President Reagan about thirty years later, in another type of media climate. Heritage (2002) has pointed out that the potentially hostile format of the negative interrogative is not something exclusive for news journalism. In any institutional context that involves asymmetrical questioning, negative interrogatives might *per se* build up toward more hostile environments in that they can be seen to hold the recipient of the question as *accountable* (Clayman and Heritage, 2002) for untoward events. Accountability is a key issue in any discussion of blame and blame-attacks on someone’s *persona* (Buttny, 1990; Edwards, 1995), and “an account is an explanation offered to an accuser which aims to change the potentially pejorative meanings of action” (Buttny, 1990:219).

In his analyses of news interviews, Heritage (2002) discusses hostility as an elusive phenomenon in that it is not associated with any single format or formal feature. Within proceedings, negative interrogatives similarly seem to constitute one of several formats that might play a role for moving in an aggravated direction during courtroom talk. For instance, in other contexts, *extreme case formulations* (Buttny, 1993; Edwards, 2000; Pomerantz, 1986) have been shown to play a role in increasing aggravation in sequences such as ‘Did you *always*...?’ or ‘Did you *ever* try to talk to her?’ (extreme formulations, italicized). In their analyses of broadcasted press conferences, Clayman and Heritage (2002) also analyzed the role of directness, tilted questions and overt criticism as other ways of increasing hostility.

As discussed by Heritage (2002), a news interview provides a virtual laboratory of question design. Courtroom talk constitutes an environment that is similarly known to be rich in hostile talk (e.g. Drew, 1992; Ingrids and Aronsson, 2014), and that constitutes something of a goldmine for exploring aggravation. This study contributes to work on questioning in institutional contexts (for reviews, see Freed and Ehrlich, 2010; Raymond, 2010). More specifically, it is related to a body of literature on questions in justice contexts (e.g. Cerović, 2016; Tracy and Parks, 2012).

In line with the participant perspective of conversation analysis, this paper primarily focuses on the role of negative interrogatives in courtroom talk, as reflected in the individual parent’s uptake, particularly when interacting with the attorney of the other side, when responding to negative interrogatives like ‘You didn’t inform the children’s mother?’. Much like the comparative temporal design of Clayman and Heritage (2002), this paper thus draws on authentic data that can be seen to present something of a natural “experiment” where it is reasonable to expect more aggravated interaction in a distinct legal and temporal context (here: the cross-examination, that is, the examination by the opponent side attorney, that follows after examination by the same side attorney).

In the courtroom, negative interrogatives were deployed by attorneys as conversational resources. Two research questions are examined in this study:

- (i) In what phase of the courtroom examinations do negative interrogatives tend to occur: in the direct examination by the same side attorneys or in the examination by the other side?
- (ii) What types of adversarial or hostile resources – if any – are deployed by the parents in their uptake to the attorneys of the other side?

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