

## Declaratives and Control in Nigerian Courtroom Discourse

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### Abstract

This paper attempts to provide an explanatory account of linguistic communication between legal professionals such as lawyers and prosecutors, and the witnesses, with a view to show the power and control prevalent in the courtroom discourse. Making use of 20-hours of audio-tape cases recorded at the High Court of Justice and Magistrate Court in Nigeria such as assault, theft and house breaking, the paper attempts to investigate intonation and pauses used in the declarative questions in the courtroom discourse. The analysis carried out in the paper suggests the fact that lawyers maintain tight control of courtroom discourse through their use of declarative questions with falling intonation that are always conducive during cross-examination. The key suggestion of the paper is that the use of falling intonation with declarative questions suggests the power and control of lawyers over the witnesses. By using declarative questions with falling intonation, the lawyers are able to put across their propositions convincingly to the witnesses. The use of falling intonation on declarative questions suggests coercion, control, cajoling and persuasiveness on the part of the lawyers in Nigerian courtroom discourse.

**Keywords:** Control, cross-examination, declaratives, power, questions, intonation, lawyers, witnesses.

### 1. Introduction

Declarative questions are the most powerful questions in the courtroom. They are very powerful, coercive and controlling because they already contain propositions which the listeners are invited to accept or refuse. In most cases, the witnesses accept these propositions because it will be difficult to refute the propositions embedded in these declarative questions. This is pointed out by Harris (1984, p. 16) “to challenge a complete proposition requires more interactive work than to support it, the greater amount of interactive work is required to reject a complete proposition”.

They can be formulated both positively and negatively. Rigney (1999, p. 89) is of the opinion that they are considered very coercive because the declarative form gives them the illocutionary force of statements more than that of questions. Furthermore, declarative questions are very powerful because they also limit the witnesses’ response. They afford the cross-examiner an opportunity to maintain the floor and present his/her own version of reality. This view is supported by Harris (1984, p. 15). Because so many of the questions contain completed propositions, it becomes very difficult for defendants to introduce new topics and, indeed such questions establish a high degree of control by the magistrate and clerk over what is discussed.

Most research on the classification of questions has also viewed declarative questions as the most powerful, coercive controlling and challenging. For example Danet 1980, Luchjenbroers 1993, 1990 range questions based on the extent to which the question constrain or limit the witnesses’ response. The most coercive in Danet’s classification of questions types are the declarative questions. This is because their form contains propositions thereby restricting possible answers. In likewise manner, Luchjenbroers (1993, 1997) also view declaratives and tags as the most coercive. For example:

#### 3. *You know the accused person?*

In example (3) above, the question is presented in a statement form thereby indicating the speaker’s belief in his/her statement. The proposition embedded in the declarative question is so powerful that it can convince the listener especially in the courtroom

To summarise all the arguments above, the main argument is that questioning form can be used to control the flow of discourse in the courtroom. Also, that some questions are more coercive, powerful and leading than

others. The powerful, coercive and leading questions are declarative questions. They are powerful and coercive because relatively, they contain some propositions which influence and convince the witnesses.

Because the courtroom rules and ethics favour the lawyers, they can use declarative questions that are conducive and also with falling intonation to restrict the answer of the witnesses, and also to put their own propositions across. This relates to the power and control that the lawyers have over the witnesses and even courtroom discourse in general.

The use of falling intonation with declarative questions suggests the power and control of lawyers over the witnesses. By using declarative questions with falling intonation, the lawyers are able to put across their propositions convincingly to the witnesses.

With the aid of WASP speech filling system (SFS) and Goldwave software version we are going to analyse declarative questions with falling intonation and pauses with a view to show the power and control prevalent in Nigerian courtroom discourse.

## 2. Literature Review

### 2.1 Intonation and Pause in Declarative Questions

Declaratives questions can be defined as a statement functioning as a question. Many scholars including Guy et al (1986) Schiffrin (1987) and Stenstrom (1984), believe that what differentiates declarative questions from declarative statements is the final rise in intonation. Many writers have also given their reasons for asserting that final rise in intonation mark declarative statements as questions. For example Bolinger (1982) argues that final rises convey incompleteness; Guy et al (1986) affirms that it denotes uncertainty. Also Brown (1980) suggests that a final rise demands a response.

Geluykens (1987) argues that apart from the rising intonation, pragmatic factors can also contribute to the identification of declarative statements as questions. This assertion is particularly based on Searle's felicity conditions. Seale (1969) gives four conditions for identifying questions which are:

<i>Propositional content</i>	<i>Any proposition or propositional function</i>
<i>Preparatory</i>	<i>(a) S does not know the answer</i> <i>(b) It is not obvious to both S and H that H will provide the information at that time without being asked</i>
<i>Sincerity</i>	<i>S wants this information.</i>
<i>Essential</i>	<i>Counts as an attempt to elicit this information from H.</i>

But declarative questions in courtroom discourse and also in the data used for this study are quite different, and cannot be accounted for by the two lines of arguments identified above. What is most striking in the data used for this analysis is that most of the declarative questions used are not inflected with rising intonation, but with falling intonation. The two reasons that I will give for this are that, since courtroom discourse is based on question/answer adjacency pairs, once the lawyers ask their declarative questions, the witnesses know that it is their turn to answer whether they are uttered with rising intonation or not. This also shows the asymmetrical nature of the courtroom system. The witnesses are to respond to lawyers' declarative questions whether they are uttered with falling or rising tone which also shows the power that the lawyers have over the witnesses.

Furthermore, declarative questions in courtroom discourse and also in the data used for this study do not follow Searle's felicity conditions. This is because lawyers already know the answers of the propositions contained in their declarative questions, and they simply expect the witnesses to corroborate them. Also, lawyers are not eliciting information from the witnesses but merely seeking for the witnesses to buttress and support the propositions contained in their declarative questions.

In addition, the use of falling intonation with declarative questions also suggests the power and control of lawyers over the witnesses. By using declarative questions with falling intonation, the lawyers are able to put across their propositions convincingly to the witnesses. The use of falling intonation on declarative questions suggests coercion, control, cajoling and persuasiveness on the part of the lawyers.

### 2.2 The Intricacies of Declarative Questions in Court

While the above is true of declarative questions used in court, the intricacies embedded in it go beyond that. Another way of marking declarative statements as question is by the addition of tags which emphatically ask questions based on the preceding statements before it. But there are many declarative statements that are counted as questions even without the addition of tags. In most of the data used for this study, the declaratives there are

counted as questions, yet they are without tags.

Dunstan (1980), in his reaction to Danet and Bogosh's classification of declarative statements as questions argues that declarative does not have a question format, which is to say that there are no linguistic features that specify that an answer is a required next activity, for instance, there is no tag such as 'didn't you'. Danet and Bogosh (1980) on their own part assert that the presence or absence of a tag is not a criteria feature in determining declarative questions. Dunstan (1980) afterwards gives three suggestions of determining declarative statements as questions. The first one is that the readers of English can use their own native competence to deduce that a declarative statement is a question. The second one is to take the response as an answer. Dunstan however argues against this in that it involves a procedure of looking to a next turn to provide a characterization of the first. He further gives repetition as the third solution. By the time the lawyer is repeating a statement, the witness would know that it is a question that requires answer.

Let us assume that all the reasons given above mark statements as questions, what is then the clue for the witness to know that it is his turn to answer and that the lawyer or prosecutor has finished speaking since there is no tag and the statement is not rendered with rising intonation? The answer to this is the pause that occurs at the end of the statement. Atkinson and Drew (1979) assert that pauses in cross-examination can be recognised as interactional strategies employed by counsel, directed particularly at the jury, to display his disbelief or scepticism of the validity of an answer, to stress the particular significance of an answer and so on. The final pause after a statement could then be recognised as a possibly completed question.

Atkinson and Drew (1979) even argue that the final pause after the statement can be heard as being the witness's turn. When he/she does not start immediately, it becomes a possibly noticeable absence, which can be heard to occasion counsel's use of a tag to mark the questions completion and prompt the recipient to start. They further give two implications of the above assertion. The first one is that if the pause is heard as the witness turn, and the tag as orienting to his/her failure to start early enough/ then the witness may appear to be reluctant to answer or evasive. The second implication is that if it appears ambiguous as to whether or not the question is complete or reasonable to take such length of time before answering, the counsel's addition of the tag question may be heard as impatience or bullying tactics on the part of the counsel. Many scholars have asserted that tag questions can be leading, combative and argumentative.

### 3. The Data

The analysis of the courtroom discourse which will be shown in this paper is derived from 20 hours of audio-taped cases recorded at the High Court of Nigeria and the Magistrate Court of Nigeria over a period of 4 months. The cases collected include initial appearances, examinations, cross examinations, postponements, and full trials. Among the cases covered were cases of assault, assault and battery, rape, theft, house breaking, land mutiny, rental, and law breaking.

### 4. Analysis

With the aid of WASP speech filling system (SFS) and Goldwave software version, I have been able to measure the length of pauses that occur at the end of declarative questions which act as a clue for the witness to answer back in my data. This is done to justify all our arguments above. Below are examples of this (our interpretation in brackets and bold):

**4. Lawyer:** *The cocoa you are talking about, your own cocoa was not found with the second accused? (3)*

**Interpreter:** *Baba o, koko ti e soro e yii, won ko rii ni ile odaran keji?*

**Witness:** *en-hen. oun gan so wipe oun ni o ji ko. Ko si se.*

**(Yes, the third accused person confessed that he stole it. He didn't even deny it.)**

**5. Lawyer:** *So, it would be wrong for the police to say that thesecond accused person stole your cocoa?(2)*

**Interpreter:** *Baba, won n sope ko le je ooto ni won so wipe odaran keji ji koko yin?*

**Witness:** *Bee ni.*

**(Yes)**

**6. Lawyer:** *Baba, at any time, nobody, nobody, nobody including you saw any cocoa with the second accused person? (3)*

**Interpreter:** *Baba o, ko si eni kankan ti o so pe oun ri koko pelu odaran keji?*

**Witness:** *Iro o. Ni ojo yen, onikaluku lo n so tire.*

*(That is a lie, that day in question, everybody was giving his/her own interpretation of it)*

**7. Lawyer:** *The landlord of the second accused person is well known to you? (3)*

**Interpreter:** *E mo landlord odaran keji yii daradara?*

**Witness:** *Mo mo.*

*(Yes, I know him)*

**8. Lawyer:** *The community use the landlord to threaten the accused person to make a confessional statement on the cocoa?(3)*

**Interpreter:** *Awon ara adugbo ni o lo landlord yii lati jeki okunrin yii soro tipatipa?*

**Witness:** *Rara o.*

*(No)*

**9. Lawyer:** *The community wrote a letter to the accused person asking for whatever assistance and that he should leave the community? (3)*

**Interpreter:** *Igba kan wa ti awon adugbo yii ko leta si odaran keji ki o ko jade nilu?*

**Witness:** *Rara o.*

*(No)*

**10. Lawyer:** *Baba, I put it to you that the cocoa that you see with the second accused person is not your own cocoa? (2)*

**Interpreter:** *Baba, won ni koko ti e so wipe won ri lowo odaran keji ki ise koko yin?*

**Witness:** *Kii se koko temi ni.*

*(It is not my cocoa)*

Table 1. Intonation and pause in declarative question examination cross-examination

	No	R%	C%	PL	RI	FI	No	R%	C%	PL	RI	FI
PDC	3	1.5	1.6	.5	√	-	36.2	98.5	36.2	3.0	-	√
NDC	-	-	-	-	-	-	17	100	3.1	3.0	-	√

Key:

PL= Average pause length

RI= Rising intonation

FI= Falling intonation

PDC= Positive declarative question

NDC= Negative declarative Question

In the examples above, the pause at the end of each of the declarative questions signals the end of the lawyer's turn and that it is the turn of the next speaker. The average pause length of the declarative questions in cross-examination is 3 seconds while it is .5 seconds in the direct examination stages.

From the table above, it is obvious that declarative questions number few during the direct examination stage. Positive declarative questions make up just 1.6 percent while negative declarative questions do not occur at all. The reason for this is the fact that declarative questions are powerful and controlling questions. They are powerful and controlling in nature in the sense that they restrict the response of the witnesses. Also, they contain propositions of the lawyers that witnesses are to agree or disagree with. And in most cases, they always agree as exemplified in my data. Since the direct examination stage is a friendly stage, the prosecutors in my data refrain from using declarative questions with their witnesses. Instead, they use questions like WH-questions, which generate maximal and narrative responses from their witnesses.

It is not even the scarcity of declarative questions used during the direct examination period that is striking in itself, but the fact that those that are used end with rising intonation. This suggests that the prosecutors want the witnesses to supply an answer that they are hitherto oblivious to. All the declarative questions used during examination period in my data are questions used to clarify some points that are not clear to the prosecutors. For example:

12. *That Abuja is part of Ondo /here?*
13. *The accused persons no 1 and no 2 minus /no 3?*
14. *You mean the main /entrance?*

Examples 9-11 above exemplify the argument that declarative questions during examination stages are always uttered with rising intonation. All the three above are uttered with rising intonation, which means that the prosecutors are genuinely asking for the information that they did not know and which they want to know. They seek for clarification of some doubts that will help them to get the witnesses' answer clearly. The rising tone at the end of the statements already mark them as questions that the witnesses must respond to and, in the split of a second, witnesses always respond. This is why the average length of a pause after declarative questions during direct examination is .5 seconds.

This is quite unlike during cross-examination where the reverse is the case. Declarative questions have the highest frequency during cross-examination in my data, with positive declarative question having 36.2% while negative declarative questions number 3.1%. Declarative questions are frequent during the cross-examination stage because it is a hostile stage. The defence lawyers at this point always want to maximise their turns and minimise the contributions of the witnesses. They therefore use this type of questions, which will restrict the witnesses' answer and at the same time put their own propositions convincingly to both the witnesses and the court.

Also from the look of the table above, we will discover that it is not the number difference that stands out at this stage but the fact that all the declarative questions used end with falling intonation and also the fact that the average pause length is 3.0. When compared to the declarative questions used during the direct examination period, we will see that there is a sharp difference. During the direct examination stage, all the declarative questions end with rising intonation, and with just the slightest pause of .5 seconds. But during cross-examination stages now, the entire declarative questions end with falling intonation and the average pause length is 3.0 seconds. This sharp difference speaks volumes on the dichotomy between the direct examination and cross-examination stages.

During cross-examination, the lawyers are the all powerful. It is they that control the discourse between them and witnesses. They dictate the turns and the length of witnesses' contributions. The fact that declarative questions are asked with falling intonation ending suggests and indicates their power and control over the witnesses. It also shows the asymmetry between them. It is even the marked difference between leading and non-leading declarative questions. Many scholars have written about declarative questions being leading questions, but they have not been able to separate between declarative questions that are leading and declarative questions that are not leading. The two prosodic differences between examination and cross-examination differentiate between these. Declarative questions used during examination in my data are non leading in the sense that they are uttered with rising intonation ending with slightest pause. Also, they are genuinely asking for answers and clarification that the prosecutors are not aware of. But the declarative questions used during cross-examination in my data are leading questions with the fact that they are uttered with falling intonation ending. In this regard they are like statements but uttered during cross-examination, they are very powerful, leading and coercive. This connotes knowledge, authority, power and control. The declarative questions asked during cross-examination with falling intonation are not asking for questions that lawyers did not know already. Rather, they are asking of the witnesses corroboration and agreement of the propositions embedded in them. Falling intonation has been associated with knowledge, power and dominance while rising intonation is associated with lack of knowledge (Tench, 1996, p. 88).

This shows the power and control that the defence lawyers have over the witnesses. They uttered their declarative questions with falling intonation which sounds like statements, to connote the facts that they are already armed with their facts and knowledge. They also do this to suppress and control the witnesses. Apart from this falling intonation ending, their declarative questions are also followed by the average pause length of 3.0 seconds which signal the end of their turns and for the witnesses to respond.

Another reason for the distinction between the declarative questions used during examination and those used during cross-examination in my data is conduciveness. All the declarative questions used during cross-examination with falling intonation ending are always conducive. By conduciveness, we mean those declarative questions that are embedded with the propositions of the lawyers which the witnesses are expected to corroborate and agreed with.

Before coming to the court, the defence lawyers are already armed with their facts and knowledge of the case. It

is these facts that they want the witnesses to agreed with and also the court to uphold. In this, regard, during cross-examination, they will always ask the type of questions that will contain these facts and knowledge. Conducive declarative questions with falling intonation are the most ideal questions to be used that will sell their facts and knowledge to the court and also the witnesses.

So, this means that the declarative questions used during cross-examination are always conducive and if they are conducive, they will end with falling intonation. The defence lawyers during cross-examination are already armed with their facts and knowledge of the case. So, by asking these conducive declarative questions, they are not asking because they don't know the answer. They already know the answer, but they want the witnesses to confirm and agree with their own propositions embedded in the questions.

The declarative questions asked during examination on the other hand are not conducive, and therefore, they are always ending with rising intonation. The prosecutors in my data are genuinely asking their declarative questions for answers they are hitherto not aware of. They are seeking for clarifications or some facts that the witnesses will provide. In this regard, they always use the declarative questions that are not conducive and with rising intonation.

This is not to say that the findings of this study can be applicable to ordinary discourses. Courtroom discourse is completely different from everyday speech. There are rules and regulations that are applicable to courtroom discourse alone. For example, in courtroom discourse, only the lawyers, prosecutors and the judge that can ask questions from the witnesses, while the witnesses' role is just to answer them.

Because, the courtroom rules and ethics favour the lawyers, they can use declarative questions that are conducive and also with falling intonation to restrict the answer of the witnesses, and also to put their own propositions across. This relates to the power and control that the lawyers have over the witnesses and even courtroom discourse in general.

In everyday speech, declarative questions are uttered with rising intonation. Many scholars have written to support this argument. It is the unmarked order when declarative questions are uttered with the final rising intonation. Declarative questions are thus affirmed to end typically with a rising pitch movement. For example, it is reported that complete statements said with the high bounce (a high rising contour) have the effect of questions in most cases (O'Connor & Arnold, 1961). This claim is also supported by kingdom (1958), Halliday (1968), Schiffirin (1978; 1994).

The claim by these authors appears to be so because declarative questions asked in everyday speech are not meant to restrict the answer of the listener, neither are they intended to suppress them. But in courtroom discourse, especially cross-examination, because of its asymmetrical nature of it, declarative questions are uttered with falling intonation to restrict the answers of the witnesses and also to suppress them. Furthermore, the declarative questions in cross-examination are always conducive because the lawyers will always embed them with their own propositions.

It can even be suggested here that declarative question in my data with the falling intonation have the force of tag questions. In the literature on this subject, tag questions have been considered as the most coercive because of their challenging and forceful nature. But declarative questions in cross-examination in my data have this same challenging and forceful nature, since they are uttered with falling intonation. For example:

**14. Lawyer:** *It was not in your presence, madam, when the accused persons allegedly threw stones at your mother, you were not \there?*

**Witness:** *I was not there.*

**15. Lawyer:** *And you believe that statement because she is your \brother?*

**Witness:** *Yes, because I saw how her body looks and how the whole house was turned upside down together with the police*

**16. Lawyer:** *Since the house is beside the road, anybody passing will pass near the \house?*

**Witness:** *They can pass through the main road. But not beside our house.*

**17. Lawyer:** *So momo, immediately Kate beat you, you fainted, you don't know, you are \unconscious?*

**Court clerk:** *Ni igba ti Kate n lu yin, se e subu lule, e daku?*

**Witness:** *Bee ni. Mi o mo nkankan mo*

*(Yes I fainted and I didn't know what was going on.)*

**18. Lawyer:** *So, when the police came Kate was not at home, and the police had to arrest this man, because he was the one at home?*

**Court clerk:** *Ni igba ti awon olopa wa, Kate gan ko si nile, se nitori eyi ni olopa se mu okunrin yii nigba ti o je pe oun ni o wa nile?*

**Witness Bee ni**

**(Yes)**

The examples above are declarative questions used during cross-examination in my data. All of them are uttered by the defence lawyers with falling intonation, which makes them more coercive, forceful and powerful in nature. Also, all of them are conducive, that is, they all have embedded propositions which make them persuasive and convincing to the witnesses.

In Example 12, the defence lawyer is trying to disprove the allegation made by the plaintiff that the accused person assaulted her mother. With this declarative question, the lawyer is impressing on to the witness the idea that since she was not there at the scene of assault, all that she alleges is merely hear say. Unwittingly, the witness agrees with the lawyer. The declarative questions with falling intonation used by the lawyer makes the statement sound casual and as a matter of fact. In this regard the lawyer takes the truth of the declarative question as a foregone conclusion.

Likewise, in example 13, the defence lawyer is also trying to disprove the allegation made by the plaintiff that the accused person assaulted her mother. The defence lawyer is stressing the fact that the witness was able to believe the statement conjure by other people, because the victim is her mother. The declarative statement with falling intonation used makes the witness agree with the lawyer, although she offers excuse for her agreement. The proposition embedded in the declarative question is so strong and forceful that the witness has no other option but to agree and later find an excuse for doing so.

In example 14, the defence lawyer is trying to dispute the allegation of the plaintiff that the accused person steals from his house. Although the declarative question used is also forceful, coercive, conducive and uttered with falling intonation, the witness here is very smart and he modifies his agreement. The lawyer is stressing that since the house in question is beside the road, anybody passing can easily steal the money. But the witness sees through the proposition of the lawyer and he modifies his agreement by saying that ‘they can pass through the road, but not beside our house’

Furthermore, in example 15, the lawyer is trying to disprove the allegation of the plaintiff that the accused person together with his girlfriend assaulted her. The lawyer poses a trapping declarative question to her by suggesting that immediately the second accused person beat her, she fainted and became unconscious. The witness took the proposition embedded in that declarative question to be sympathetic towards her case and she agreed that she fainted and became unconscious. But the coercive declarative question uttered with falling tone is a trapping one because the lawyer further asked her another challenging question based on her agreement that “How did you know that the accused person lock the door then?”. This catches her unawares, and she starts floundering. The lawyer is able to achieve this because of the declarative question used. Because the proposition embedded in the declarative questions are so powerful, coercive, cajoling and persuasive, and also uttered with falling intonation, the witness agrees with it unwittingly, not knowing that it is a trapping question.

The final example 16 is a continuation of the case of example 15. The lawyer here is trying to prove that the accused person is innocent and it is just because he was the only one at home that the police arrested him. Because the propositions embedded are also convincing and cajoling, the witness agrees with the lawyer.

## 5. Conclusion

From the above discussion, we can see how intonation and pauses are used with declarative questions to further compound their powerful and coercive nature. We have also seen how they are used by the lawyers, especially during cross-examination, to convince the witnesses of their lines of arguments. Also, we have seen how declarative questions are used in everyday conversation, and that it contrasts sharply with their use in courtroom discourse. The reason is that courtroom discourse is different from everyday discourse. In this data, some of all these declarative questions are delivered from the lawyer to the interpreter before the witnesses can understand them. What is the effect of this third party on the coercion and power embedded in the declarative questions? This can generate further research in the nearest future.

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