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How U.S. Law Addresses Leading Questions Lessons for Survey Researchers

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ABSTRACT

Leading questions can be a significant contributor to a non-sampling error in survey research. Leading questions can be subtle, even inadvertent. How can social scientists remove such leading questions from their own questionnaires?

Tapping the wisdom of the legal profession may be part of the answer. Leading questions are often disallowed in US courtrooms. Therefore, US courts, jurists and legal scholars have devoted attention to exactly what makes a question a leading question, literally for centuries. Here, we explore what that legal debate has to teach modern-day social science researchers.

By cataloguing and categorizing over two dozen legal definitions of "leading question," dating back to the eighteen-hundreds, we find three dominant tactics, or pathways, which convert a question into a leading question. First, strategic use of facts may nudge the respondent towards a specific answer. Second, the very form of the question can suggest an answer. Last, the question's frame (context, or questioner intonation) may steer the respondent. These concepts are explained and examples are provided.

Many years of legal practice have demonstrated there are times when leading questions are allowable, when best avoided, and when there are particularly insidious. These are discussed, and guidance for social scientists is presented.

I. INTRODUCTION

Few would argue that leading questions can be a significant contributor to non-sampling error in survey research. (Burns & Bush 2010, p. 309) Many believe there is significant bias in the information stream available to managers, consumers, and public policy makers, often rooted in surveys containing biased, leading questions. Even if the bias is subtle, or unintentional, it skews information nonetheless. This is particularly important when dealing with topics for which opposing stakeholders have substantial monetary interests, i.e. global warming, pharmaceutical efficacy, food nutrition/safety, plus other topic central to societal functioning. Surprisingly, the literature on leading questions is largely superficial, relegated to "sub-topic" significance, at best.

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In US, and some other, courts it is not acceptable to call a witness, then "lead" that witness, i.e., to ask questions encouraging the witness to answer in a given way. (Federal Rules of Evidence, Rule 611) If the opposing side is leading their own witness, an attorney may shut down the line of questioning with a statement known to many fans of courtroom dramas: "Objection! Leading question."

Accordingly, a body of legal literature has grown up around this issue, attempting to offer guidance to attorneys, so they know when to object, and to jurists, so they know when to sustain the objection. The purpose of this article is to leverage that legal literature in a way to benefit authors of survey research questionnaires. This article will fulfill that purpose in three ways. First, by helping the reader understand how US courts, over centuries of practice, have come to define the term "leading question." Second, it will explore the three tactics which make a question "leading." Third, it will discuss the law's conclusions on when leading questions are most dangerous, i.e., most likely to distort the truth. The result should be survey researchers having a better understanding of 1) what, specifically, a leading question is, 2) how to spot the tell-tale signs of a leading question, then remove or remedy them, and 3) to know under what circumstances leading questions are the most damaging, and when they might be allowable, if ever.

II. WHAT ARE LEADING QUESTIONS IN THE LAW?

Since the legal concept of the "leading question" goes back to the 18th Century, and as courts have been ruling on the topic since that time, one would assume that a consensus operational definition exists (Walsh 1997). One might further assume this legal definition might be detailed and exacting. However, as we shall see, this is not the case. The phrase "leading question" has been defined in law review articles, treatises on evidence, courts of law, courtroom manuals and the most authoritative of legal dictionaries. While many of the definitions contain at least some overlap, a consensus definition in the US legal literature simply does not exist.

Several key U.S. legal sources, where one would expect to find a definition, offer none. The *Federal Rules of Evidence* discuss leading questions only once, in Rule 611(c), discussing "Mode and Order of Interrogation and Presentation." While the Rule sets guidelines for the use of leading questions, it makes no attempt at a definition.

The U.S. Supreme Court has never published a definition of leading questions. Based upon a search of the Lexis/Nexus Legal Research Database, there are exactly one dozen Supreme Court case mentioning the phrase "leading question" more than a single time over the last 232 years. (Retrieved on 2/12/2022) None of those cases offer a definition of the phrase "leading question."

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A definition can be found in Black's Law Dictionary: a leading question is a "question put or framed in such a form as to suggest the answer sought to be obtained" (Black's 2000), But this definition, as many dictionary definitions are, is somewhat incomplete. By what method does it suggest the answer? How might one "frame" as question so as to lead? What are the ways in which this might happen?

Developing a more complete understanding requires a deeper dive into U.S. legal opinions, law review articles and treatises on evidence. As we can see by looking at just the columns of Table 1, the legal definitions may be sorted into three categories. The three are not mutually exclusive, as will be further detailed, but our point here is the legal literature sees three distinct pathways, or tactics, by which a question may lead.

It is possible to categorize the legal definitions by their relative emphasis on either the question's facts, the question's form, or the question's framing (context and spoken inflections). The reality of this triad is fleshed out in Table 1, where we see many attempts to define "leading question" culled from the legal literature.

This analysis shows the US legal system finds three distinct tactical paths for producing a leading question. The questioner my use *facts* to guide the respondent to the desired response. The very *form* of the question itself might suggest the response desired. Or, the questioner's delivery, the question *frame*, can nudge the respondent in one direction or another. Each tactical path will now be discussed.

USE OF FACTS

The factual content of the question is emphasized in one of the several definitions offered in Black's Law Dictionary, the first source for any US lawyer seeking a definition of a legal term: "A question is leading which puts into a witness' mouth the words that are to be echoed." Some other legal authorities follow a parallel approach. A leading US treatise on evidence states that a "leading question is one that contains or suggests its own answer" (Mauet & Wolfson 2004, p. 69). A second evidence treatise states that a question leads if "the cross examiner may make factual assertions on the record and force the witness to assent" (Broun, et. al. 2006, p. 123). All of these authorities agree that the facts within the question form the essence of "leading."

One use of this tactic is to include facts making it more likely that accused was the perpetrator, as per the definitions in the "Fact" column on Table 1. "Did Dan, the man you saw shred documents on May the 1st, May the 5th and May the 8th, also shred documents on May the 10th?" Here the "question introduces a string of facts" leading the witness to answer in the affirmative. (*Lott v. King* 1891) This same question may also be "assum(ing) the truth of a fact in dispute,"

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namely, that Dan had shredded documents in the past. *(Callahan v State* 1996) A slight change and one may "frame the question as a statement of fact," parallel to Hobbs' definition. "We have heard that Dan shredded documents in the past. Any reason to believe he did not shred these?" fits this mold, with Dan's history now presented as a statement of fact not even requiring the witness' comment. Moreover, all of these examples fulfill Easton's definition of the fact-based leading question: "All information the jury hears is contained in the question." The lawyer supplies facts and the witness simply affirms (*San Antonio v. Hammon* 1899, p. 514).

QUESTION FORM

Perhaps the most obvious tactic focuses upon question *form*: the very structure of the question makes it leading. Let's begin with a non-leading question form such as, "Were the documents shredded or unshredded?" In this form both possible answers receive equal emphasis, thereby avoiding any possibility of leading the respondent. We may now alter the form to, "Were the documents shredded?" If we look at the "Form" column on Table 1, this structure "suggests its own answer" in the words of Lubet (1997); it is "phrased so as to suggest the desired answer" as the *Callahan* Court states (*Callahan v State* 1996); it "projects the expected answer" in Hobbs' terms (2003). Placing emphasis on only a single answer rather than placing equal emphasis on both makes it leading, if only mildly so, by subtly suggesting the emphasized answer.

A classic example of the form-based leading tactic comes from *Scott Paper Co. v. Scott's Liquid Gold* (1977). There, Scott Paper had established national recognition of the "Scott" brand name via their long-term marketing practices. Scott Paper's complaint charged that Scott's Liquid Gold was free riding on this good name. As part of their case, Scott Paper sponsored a survey to determine if there was consumer confusion, that is, if some consumers were under the mistaken impression that Scott's Liquid Gold and Scott Paper were related firms. One question utilized a questionable "aided recall" form: the respondent selects an item from a list (the "aid"), rather than generating an answer on her own. Specifically, the respondent was asked, "As I read each of the following product categories, will you tell me please if you think the manufacturer of Scott's Liquid Gold also manufactures that product." The respondent then heard one product category, then a second and a third, up to a concluding sixth product category. The court concluded that this question format invited guessing: the combination of repeated probing combined with the lack of a "none of the above" category prepared respondents to believe they should pick at least a category or two. The very structure of the question – the form - appeared to require that the respondent give some answer, even if s/he had no specific recollection.

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A stronger form of leading question not only places the emphasis on a particular answer, it instructs the witness to select that answer. This stronger form would be similar to, "The documents were shredded, weren't they?" Here the attorney "puts the answer into the mouth of the witness" in Montz's terms (2002), or "tells the witness the answer" as McCurdy would phrase it (2001). There are many other variations on this theme including adding "wouldn't you say" to the beginning or end of a question, such as "wouldn't you say that Dan probably shredded the documents?" Adding "right?" or "correct?" to the end of almost any declarative statement transforms it, structurally, into a leading question.

"The light was green when you went through the intersection, wasn't it?" is an archetypal example of this question form (Simpson and Seldon 1998, p. 1126). Almost any question including, "isn't it true," or "wouldn't you agree," or "isn't it possible that" or ending with, "correct?" fits this mold. The Jackson Court pinpoints the "form" of the question as the key, stating that a leading question "instructs the witness how to answer" (*Jackson v. Bradshaw,* p. 764). The Cephus Court also places the emphasis on the structure of the question, finding that a leading question "is a question phrased in such a way as to hint at the answer the witness should give" (*USA v Cephus* 2012, p. 707).

QUESTION FRAME

The third tactical approach for leading the respondent deals with qualities of the questioner, not just the question. It highlights the distinction between the meaning of the question and the meaning of the questioner. The questioner may alter the meaning of the question via the way s/he delivers the question, what is emphasized verbally or by the use of specific inflection. (Simpson and Selden 1998, n11) Most simply, any declarative statement may be converted to a question by the addition of an upward inflection at the end of the sentence, thus placing an intonational question mark at the end of the sentence. (McCurdy 2001, n5)

Additional behavior by the questioner, none of it changing the text of the question, may embellish the leading character of the question. If the lawyer takes a step closer, nods his head and says "Dan shredded the documents?" with a questioning intonation, the overall act of questioning is delivering cues indicating that the witness is expected to answer in the affirmative.

Question Frame emphasizes the speaker's intent and concomitant delivery of the message. Rather than focusing on the meaning of the question, Frame focuses on the meaning of the questioner. Frame looks at communication in context (Fotion 1995, p.706). Thus, the archetypal "frame-less" listener would know only the words, but not the intent of the speaker or the

occasion of the communication. The archetypal "frame" listener is aware of, and focused upon, the speech of the communicator (Stalnaker 1972, p.383).

TACTICS MAY BE COMBINED

These three tactics do not represent mutually exclusive categories of leading questions. They will often be used in conjunction with one another. Indeed, it is difficult to *form* a question that contains no *facts*, and a skilled questioner will use *frame* to good advantage on every question. But the qualities do represent three distinct tactics the questioner may employ when forming a leading question. The question may be formed to suggest that a particular answer is the "right" answer. The questioner may pile up facts supporting the desired conclusion. Intonation may be used to imply that any answer save the desired one is wildly unreasonable. All three tactics may be included in any given question.

As many readers have likely noticed, there is a particularly strong overlap between "form" and "fact." Making use of one often involves making use of the other. One way a question "suggests the answer," to use the Black's "form" definition, is by including selected facts in the question (2000). Let's return to our earlier example of a non-leading question, "Were the documents shredded or unshredded?" Even this question contains a factual assumption: there were documents. It is most difficult to form a fact-free question, and in that sense, every question is leading in that it focuses attention on specific facts or events. (Simpson and Selden 1998, n10)

Some observers will take issue with the current categorization of definitions, feeling that what we have categorized as "fact" is more properly "form" and vice versa. A perfect example is Hobbs' definition: a leading question is one that "frame(s) the question as a statement of fact." This single sentence captures perfectly the interplay of form and fact in the leading question. In Hobbs' view, it is the question's form that converts the question into a statement of fact. Thus, question structure leverages question content, forming a question that is leading on two levels.

The point here is that "form," "facts" and "frame" are not three mutually exclusive approaches. They can, and often are, used in conjunction, one strengthening the others. But they can be used independently. For example, adding "isn't that true" to an otherwise neutral statement is a "form only" way of creating a leading question. Or facts only, as in preceding an otherwise neutral question with facts making a "yes" response more likely, as in asking about the man who had shredded documents so many times before. Probably most common is the voice inflection that adds a question mark to a simple statement. But blending two or three of these tactics into a single question will be the most effective way to lead.

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III. THE SPECIAL ISSUE OF THE YES/NO QUESTION

The question's form and the question's fact content interact to make "yes / no" questions especially controversial within the courtroom. It is this combination that allows the examining attorney to, in the words of McCormick, "make factual assertions on the record and force the witness to assent" (Broun et. al. 2006). This is the polar opposite of open-ended questions which allow the jury to hear the witness's statements with a minimum of filtering. Yes / no questions allow the lawyer to tell a story, with the witness merely assenting, leading the witness through a series of lawyer-selected facts.

The yes / no form alone does not make a question leading. (Grimm, 1994, p110) For example, "Is there anything else you might like to add?" is normally a very innocuous question. But the yes / no form is especially ripe for the attorney who wishes to lead. It can lead by suggesting its own answer. (Montz 2002, p. 27) "Isn't it true that Dan shredded the documents?" It can lead by introducing a fact not in evidence. (*Callahan v. State* 1996) "Dan, the well-known con-artist, shredded the documents, isn't that true?" It is the yes / no form that allows an attorney to deliver a monologue, seeking only assent, placing testimony on the record as though s/he was a witness.

IV. LEADING QUESTIONS AND THEIR ROLE IN THE COURTROOM

It may appear unusual to the reader to even address the issue of the appropriate use of leading questions in a court of law. It would seem obvious that leading questions should never be used by those seeking truth whether in survey research or in a court of law. Interestingly, as we shall demonstrate, there is both a "proper use of" and an "improper use of" leading questions in both areas of endeavor.

"For" the Use of Leading Questions

Experienced social science researchers would likely say that there is "no place for leading questions in survey research." For example, in their discussion of the issues involved in the *FTC v Kraft* (1991) case, Jacoby and Szybillo note that while there are areas in which academic researchers can be expected to disagree, the danger posed by the use of leading questions is not one of these areas (1995, p. 11).

However, Sudman and Bradburn (1982) suggest there *are* situations where leading questions are appropriate. First, in the case of asking threatening questions about behavior, these widely recognized experts actually recommend the use of leading questions. This may "…reduce both overstatements of socially desirable behavior and understatements of socially undesirable behavior" (Sudman and Bradburn 1982, p. 56). A savvy researcher might reduce such an

understatement by phrasing a question as follows:

"It is widely known that a large percentage of the population has a moving traffic violation prior to the age of 25. How many moving traffic violations have you had in the last 5 years?"

Here, we see how a leading question would create a positive result. It would elicit a more honest answer by mitigating the respondent's concern about discussing an undesirable behavior.

Sudman and Bradburn (1982) suggest circumstances where leading questions are necessary to *reduce understatement* of socially *undesirable* behavior, or to *reduce overstatement* of socially *desirable* behavior. The following leading questions formats are suggested: 1) the questioner might employ a "casual approach," beginning the question with "did you happen to…", or, 2) preface a question with the reasons why a responsible might *not* engage in a socially responsible behavior, such as voting or wearing seat belts (Sudman and Bradburn 1982, pp. 75-6).

As an example, the pioneering sex researcher Alfred Kinsey demonstrated how the leading question could be used to good effect. When interviewing a subject, Kinsey never asked, "Do you ever (engage in behavior X)?" The question was always phrased thusly, "How old were you when you first began (engaging in behavior X)?" Kinsey was sensitive to the social concerns prevalent in the US during the 1950s. He knew his respondents would be uncomfortable discussing sexual behaviors, and designed his questions to reduce that bias. His leading phrasing, assuming the truth of an unestablished, potentially embarrassing fact, reduced the level of pressure on his subjects and allowed a more honest discussion. It is broadly assumed that Kinsey's leading created more, not less, accurate results (Dohrenwend and Richardson 1963, p. 476).

Likewise, there is a case, in fact a very strong case, supporting the use of leading questions in the courtroom. Even though "Objection! Leading question" has been burned into the brain of every fan of courtroom dramas, many do not realize that the use of leading questions is often both acceptable and encouraged. The most basic rule of *cross* examination is "lead the witness!"(Hobbs 2003, p. 445; Pratt 2003, p.263; Easton 2006, p. 294; Mauet 2004, p. 254; McCurdy 2001, p.143). Thus, when questioning the opposing side's witness, the examining attorney not only may, but *should* lead. In national mock trial competitions one will be penalized for asking a question on cross examination that is not leading (American Association for Justice 2007).

Consider the situation of the cross-examining attorney. A witness called by opposing counsel just delivered damaging testimony on direct examination. The crossing attorney must now reveal those fact omitted on direct. The crossing attorney wants to systematically illuminate the

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other side of the story. S/he wants the jury to hear focused information, in a predictable sequence, with a predictable format, leading to a predictable outcome: the damaging testimony loses its impact (Hobbs 2003, p. 477).

The entire idea of cross examination is to allow the jury visibility to the opposing version of testimony – provided there is one. Cross allows the apposing side to reveal facts the witness did not reveal on direct examination, and may not wish to reveal.

Simply put, the crossing attorney wants to deliver a scripted monologue while the witness simply confirms each statement. S/he works to establish a rhythm of "yes" answers from the witness, who, ideally, says little else. The idea is to lull the witness into answering without thinking, simply affirming the attorney's statements (McCurdy 2001, p. 143).

There are other situations where a U.S. court will allow the use of leading questions. Leading is permissible in Grand Jury testimony. (*USA vs. Cessa*, 2017) In US legal procedure, it is common for a Grand Jury proceeding to be the initial phase of the criminal process, where a prosecutor would present his case to a jury of citizens, asking the jury to return an indictment, allowing the case to proceed to trial while rendering no final verdict (Georgetown Law Journal 2017, pp.291-2).

The lawyer may lead a cognitively impaired witness. (*USA vs Cephus* 2015) The notes to the Federal Rules themselves list other acceptable uses: if the witness is disoriented and may not understand the questions (*United States v. McGovern* 1974); if the witness speaks little English (*United States v. Ajmal* 1995); often leading is allowed in the case of a minor, or if the witness exhibits communication problems (*United States v. Nabors* 1985).

"Against the Use of Leading Questions"

While an attorney should lead cross-examination, attorneys are prohibited from leading their own witnesses – that is, any witness s/he calls to testify. This is a foundation rule of the U.S. system of justice, dating back to seventeenth century English courts. Lord Chief Justice Ellenborough explained that when a witness is called by one side, the court may assume the witness favors that side. Therefore, the court prohibits the calling side from "putting such interrogatories as may operate as an instruction to the witness how he is to reply…"(Walsh 1997, p. 411).

The same basic reasoning applies today, albeit in a more nuanced fashion. Above, we referred to *The Federal Rules of Evidence* which discuss leading questions only once, in Rule 611(c), discussing "Mode and Order of Interrogation and Presentation." The rule states, in its entirety: *Leading questions should not be used on the direct examination of a witness except as may be*

necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions (U.S. House of Representatives 2004). In summary, lawyers must be acutely aware of leading questions. They *should use* them during cross-examination and *should not use* them on direct examination of the witness.

V. WHEN LEADING QUESTIONS ARE PARTICULARLY DANGEROUS

The Bramley Court (*United States v Bramley* 2015 p. 48) provides a useful summary of the law's wisdom on the factors making a leading question particularly troublesome. One is sensitive topic matter. If the topic is one that could cause discomfort for the respondent, s/he may be all too willing to take the easy way out, and, rather than formulate his/her own thoughts, simply agree with the question and move on. This idea is echoed by the notes of the advisory committee to Fed Rule 611, noting particular caution if the line of questioning would cause the witness "embarrassment."

The court explains that the real concern is not a respondent giving knowingly false testimony. It is that a "leading question will lull a witness — especially one who is predisposed to be cooperative — into testifying beyond the limits of his actual knowledge." (*United States v Bramley* 2015, p. 45) This sentence sets the stage for the court's most serious concerns. First is when the focus of the question is not directly observable. In such an instance, even a mild suggestion may fill out, or even create a solidified memory where none existed before. Other courts have noted that a leading question may "supply a false memory." (*USA vs. William F. McGovern,* 1974)

Equally concerning is the related issue of information not "objectively verifiable." In a similar vein to above, once a suggestion has been made to the respondent, it may take on a mental life of its own. If there is no objective way for the witness to refute the idea, the odds that the witness will acquiesce increase.

The court then discusses a final element that is, simultaneously, an important risk factor of its own, and a compounding factor for all that came before: time. Memory deteriorates drastically over periods even as short as a week. (Andermane and Bowers 2015). This factor is, again, discussed in the notes to Rule 611, referring to a witness whose "recollection is exhausted." Therefore, time is clearly an independent risk factor. The less a respondent may rely on her own memory, the greater the opportunity for other, outside factors to fill in the gaps. So a memory weakened by time is more susceptible than an fresh one. But the danger of a leading question

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rises further when the muddle of elapsed time is layered over sensitive topic matter, a desire to cooperate, non-observable subjective matter, or no objective verification pathway.

VI. WHERE SURVEY QUESTIONS MEET THE LAW

There is an instance where the concerns of the market researcher and the concerns of the law come together in one place. This is where a piece of survey research is introduced as evidence within a trademark infringement case. Surveys may become powerful evidence in the trademark arena. The definition of "infringement" hinges on "consumer confusion." That is, if enough consumer's believe that McSushi is backed by McDonalds, and it is not, then McSushi is likely guilty of infringement. Such "confusion" is normally demonstrated via a market survey.

A court is free to reject a TM survey outright if the survey fails to conform to standards of evidence. (Rivera 2002, p661) In actual practice this is not often done: courts will often admit even a flawed survey into evidence, stating that the flaws go only to the weight accorded the survey evidence, not its admissibility. (*Wendt v. Host* 1997, p. 814) However, this is not always the case. Federal courts have rejected outright evidence from flawed surveys, going so far as to examine specific questions, declaring them leading, and, therefore, inadmissible. (*Novartis v. Johnson & Johnson* 2002, p592)

Consistent with the pattern we have seen, it is not uncommon for courts to determine that a question leads without offering a definition of "leading question." (e.g., *Scotts v. United Industries* 2002; *Johnson & Johnson v. Rhone* 1994; *Novartis v. Johnson* 2002) This is also true of law review articles discussing leading questions specifically within the context of trademark surveys. (e.g., Manta 2007, Jacoby 2006, Bible 1998, Rivera 2002) Further, some courts will declare a survey question "leading" and never explain why it is leading. (Manta 2007, p1058)

VII. CONCLUSIONS

Fortunately, as we have seen, jurists and legal scholars other than those in trademark law have applied their experience to defining the "leading question," and done so in a way to offer guidance to authors of survey research questionnaires. Centuries of practice may be distilled to several specifics we should focus on when attempting to eliminate leading, biasing questions.

Where have we inserted facts into the questions? If it is possible while still maintaining the question's meaning, they should be minimized or eliminated. While they often may not be completely eliminated, they may always be balanced.

How might the very form of a question lead? As the *Scott Paper* (1977) example demonstrates, it is very easy for form to create a biasing effect, even if no such impact is intended. Researchers

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should scrutinize questions for unintended emphasis on a given choice. Often, this may happen not just within a single question, but may occur by an emphasis within a preceding question. Such effects, while unnoticed by the researcher, may nonetheless influence the respondent.

Framing issues will always be an issue in personal interview situations. There, they can have the greatest impact, but leave no trace on the interview record. These will be the most difficult of all to eliminate.

There are specific question categories calling for a heightened level of scrutiny. If a correct answer is not objectively verifiable, even a mild suggestion may create a false memory. Clearly, this is a day-to-day concern in survey research, where many questions hinge on personal preferences, and little more. It is entirely possible the question itself causes the respondent to crystalize an opinion from what was previously disorganized eddies of thought. It is easy to see how the slightest suggestion, even in a prior question, could slant the final results.

Similar comments may be made when a respondent is asked to reach back in time in order to construct an answer. When human beings recall the past, they all bring their own lamps, and their luminance diminishes with time. As a general rule, the shorter the time frame of the question, the better. For example, it is not uncommon to see a marketing survey ask a consumer about their consumption of some product category during a "typical week," or "average month." This is asking too much of most respondents. Asking about the most recent week or month will normally yield more realistic data.

The highest level of professional skill and judgement is required when one decides to intentionally lead the respondent, so as to reduce the impact of embarrassing question. Certainly, judiciously applied, such a tactic can be used to good effect, as we say in the case of Kinsey's research. A committee approach is called for here, as only the very most objective of researchers could limit themselves to exclusively appropriate situations, and resist any temptation to over-lead.

The combined wisdom of the legal system, and academic legal scholarship, has much to teach us about the nature of leading questions. Applying this wisdom can lead to clearer, cleaner survey instruments, and less biased, more useful survey results.

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TABLE 1

US LEGAL DEFINITIONS OF "LEADING QUESTION" CATEGORIZED

Source of Def	**Form**	**Fact**	**Frame**
Black's	Suggests the answer to the person being interrogated		
Broun et al		Make factual assertions on the record and force the witness to assent	
Diamond		May suggest an idea that otherwise would not occur to respondent	
Easton	All information the jury hears is contained in the question	All information the jury hears is contained in the question	
Grimm	Desired answer is suggested by the attorney		[Suggestion] may be accomplished by…tone of voice [or] body language
Hobbs	LQ's project their expected answers	Frame the question as a statement of fact	
Jackson v. Bradshaw	Instructs the witness how to answer.		

Jacoby	Asking if "permission was obtained" carries an implicit implication that permission was needed.		
Jacoby	Avoid yes / no. Ask, "Was the water hot or cold?," not "Was the water hot?"		
Jacoby / Szybillo	Give unfair advantage [emphasis] to one plausible response option	By assuming facts not in evidence, [a question] can place thoughts and words into the respondent's head	
Lott v King	Invites the witness to echo back the examiner's words	Contains a series of facts, asking only affirmation	
Lubet	Contains or suggests its own answer		
Manta	Structure question to avoid suggesting ANY company is involved: "Who makes this?", not "What firm makes this?"	Questions should not name the plaintiff or the defending firm	
Manta 2	A single question containing both the name of a product and a potential sponsor is leading due to structure		
Mauet & Wolfson	Contains or suggests the answer sought		
McCormick		Make factual assertions on the record and force the witness to assent	
McCurdy n5	Tells the witness the answer		Assertion made with an inflection that puts a question mark at the end
Montz	Suggests or puts the answer into the mouth of the witness		
Objection n11			Examiner's tone, emphasis or other non-verbal behavior

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Objection SC of Texas		Question introduces a string of facts	
San Antonio v Hammon	All information the jury hears is contained in the question	All information the jury hears is contained in the question	
Scott Paper Co. v. Scott's Liquid Gold	Repeated probing, plus lack of "none of the above"		
State v Weese	Way question is delivered: what is emphasized verbally or by the use of specific inflection		
Texarkana Court of Appeals [Objection!]	Phrased so as to suggest the desired answer	Assume the truth of a fact in dispute	
USA v Callahan	Asume the truth of a fact in dispute. Phrase to suggest desired answer.	Introduce facts not in evidence.	
USA v Cephus	Phrased in such a way as to hint at the answer the witness should give		

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