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**PRESENTING EVIDENCE IN COURT: A TRIAL OF TWO TALES**

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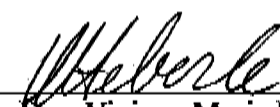
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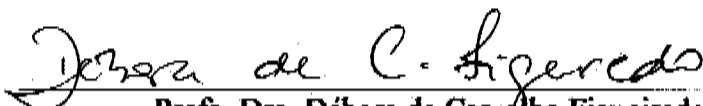
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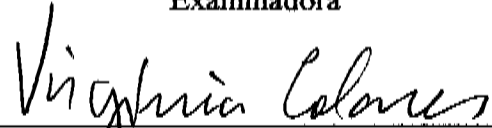
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We shall not cease from exploration  
And the end of all our exploring  
Will be to arrive where we started  
And know the place for the first time.  
(T.S. Eliot, Four Quartets, 1991[1959], p.48)

Words move, music moves  
Only in time; but that which is only living  
Can only die. Words, after speech, reach  
Into the silence. Only by the form, the pattern,  
Can words or music reach  
The stillness.  
(T.S. Eliot, Four Quartets, 1991[1959], p. 17)

Passou a diligência pela estrada, e foi-se  
E a estrada não ficou mais bela, nem sequer mais feia.  
Assim é a ação humana pelo mundo afora.  
Nada tiramos e nada pomos; passamos e esquecemos;  
E o sol é sempre pontual todos os dias.  
(Fernando Pessoa, Antologia Poética)

In loving memory of my parents,  
Oly Machado and Antonia Stringuini Machado

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## ABSTRACT

## PRESENTING EVIDENCE IN COURT: A TRIAL OF TWO TALES

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UNIVERSIDADE FEDERAL DE SANTA CATARINA  
2007

Supervisor: Viviane Maria Heberle

This thesis investigates the discourse of courtroom questioning of a defendant in a criminal case under the English legal system. This investigation is guided by three research questions. First I examine how defence and prosecution counsels manage to construct their case story by means of the question and answer interaction in examination-in-chief and cross-examination, respectively. Second, I describe some of the linguistic elements that presumably render their stories more appealing to the jury. Third, I analyse how the defendant is linguistically portrayed in the accounts provided by the defence and prosecution. The analysis indicates that during examination-in-chief a narrative of the defendant as an innocent man is constructed. Apart from being organised so as to counter-argue the prosecution case and anticipate cross-examination, the defence narrative emphasises the defendant's daily activities and good character. During examination-in-chief, a narrative of police abuse and improbity is also introduced, and a contrast is established between the defendant's life before and after his arrest. Cross-examination proved to be more of verifying the story put forward during examination-in-chief than constructing a narrative on its own. In order to probe into the defendant's story for inconsistencies so as to discredit it as well as reaffirm the prosecution case, the counsel makes use of a wide range of questioning strategies. During cross-examination, the prosecuting counsel also manages to emphasise the defendant's bad character and depict the defendant's activities as being suspicious rather than normal daily routine as presented by the defence. While examination-in-chief allows for the defendant's story to emerge, cross-examination can be characterised as a negotiating arena, where counsel and defendant try to maintain and discredit each other's story.

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## RESUMO

PRESENTING EVIDENCE IN COURT: A TRIAL OF TWO TALES

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Esta tese investiga o discurso do interrogatório de um acusado em um caso criminal no sistema judicial inglês. Esta investigação é guiada por três perguntas de pesquisa. Primeiramente, examino como os advogados de defesa e acusação conseguem construir suas histórias através da interação pergunta-resposta durante o interrogatório do acusado. Em um segundo momento, descrevo alguns dos elementos lingüísticos que supostamente colaboram para que a história se torne mais atraente para o júri. Posteriormente, analiso como o acusado é lingüisticamente retratado tanto na história da defesa quanto na da acusação. A análise indica que durante o interrogatório da defesa há uma narrativa construída, indicando a inocência do acusado. Além de estar organizada no sentido de contra argumentar o caso colocado pela acusação e prever o interrogatório do acusado pela promotoria, a narrativa proposta pela defesa enfatiza tanto as atividades diárias do acusado como seu bom caráter. Durante o interrogatório da defesa, também é apresentada uma narrativa de abuso policial e improbidade e é estabelecido um contraste entre a vida do acusado antes e depois de sua prisão. O interrogatório da acusação mostrou-se mais como a verificação da história apresentada pela defesa do que a construção de uma narrativa propriamente dita. Com o propósito de investigar a história do acusado a procura por inconsistências de maneira a desacreditá-la e, ao mesmo tempo, re-afirmar o caso da acusação, o promotor faz uso de uma enorme gama de estratégias. Durante o interrogatório da acusação, o promotor também consegue enfatizar o mau caráter do acusado e descrever as atividades do acusado como sendo suspeitas, e não como rotina normal como foi apresentado pela defesa. Enquanto o interrogatório da defesa permite que a história do acusado surja, o interrogatório da acusação pode ser definido como uma arena de negociação onde o advogado e o acusado tentam manter e desacreditar a história um do outro.

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## INTRODUCTION

“Where shall I begin, please your Majesty?” asked the White Rabbit. “Begin at the beginning,” the king said gravely, “and go on till you come to the end: then stop.”  
(Lewis Carroll: Alice’s Adventures in Wonderland)

Producing narrative involves choices [...] of where to start and where to finish, what to include and what to leave out, what to put next to what, and so on (Potter, 1996, p. 172).

Well just think about it like that. Now the things you hafta remember are the details. It’s the details that sell your story. Now your story takes place in a men’s room. So you gotta know the details about that men’s room. You gotta know if they got paper towels or a blower to dry your hands. You gotta know if the stalls got doors or not. You gotta know if [Holdaway continues...] Now what you gotta do is take all them details and make’em your own. This story’s gotta be about you, and how you perceived the events that took place. (Tarantino, 1994, p. 71, in Potter, 1996, p. 2).

Birmingham, 1987. That year, a series of robberies occurred. The police came, collected evidence, interrogated witnesses, arrested suspects and a crime story started. In custody, one of the suspects was further interrogated and then presented before the Magistrates’ Court. The magistrates decided he should be remanded in custody. Interrogations continued, now with the defendant’s solicitor present. Accused of involvement in the robberies, the defendant insisted he was innocent. Claims were made to the effect that interviews were fabricated and the defendant’s signature was forged.

A year later, the case is brought to trial at the Crown Court before a jury. It is time then for prosecution and defence to present the court (judge and jury) with their cases. And that is the story which will be told in this study.

For the past twenty years or so, legal discourse, especially courtroom interaction, has attracted the attention of researchers in a wide range of disciplines, from law to linguistics. These disciplines have made significant contributions to the contemporary research on language in the judicial process. The study of the language of the judicial process is essential to achieving a better understanding of that process, at the same time that we can use the legal system to increase our understanding of human language and language behaviour. Being central to all human affairs, language is of vital importance in the law (Danet, 1980).

According to Munkman (1991, p. 1), in its widest sense, “advocacy is the art of convincing others”, “the art of persuasion”. However, in its legal context, advocacy is the art of conducting cases in court, both by argument and by the manner of bringing out the evidence, so as to convince the court (judge and jury). That is to say, to persuade is the objective of advocacy, and this includes the presentation of evidence.

Courtroom questioning has been the focus of research worldwide (Newbury and Johnson, 2006; Tkachuk, 2006, Gibbons, 2003; Machado, 1998; Luchjenbroers, 1997; Smith, 1995; Rokosz, 1988; Harris, 2005, 2001; Woodbury, 1984) and has been considered one of the most important stages of a trial. It is during examination-in-chief and cross-examination that defence and prosecution can have their stories corroborated by witnesses’ testimony.

Apart from describing courtroom interaction in terms of questions employed by counsels, attention has also been given to the way narrative is constructed in court. The choice of question forms plays a vital role in the representation of events in court. However, question forms are not the only technique used by lawyers to construct and affirm their version of the events in litigation. Legal manuals (Napley, 2003; Evans, 1995a/b; Boon, 1999; Murphy, 1998; DuCann, 1993; Mauet, 1980; Munkman, 1991;

Stone, 1988; Wellman, 1979) abound in rules and techniques on how to conduct a case in a trial. One important point which is emphasised in these legal manuals is that counsels should present the case as a story, preferably one that conveys realism and reflects the human dimension.

The number of studies on narrative in the courtroom has increased considerably. In their pioneering work, Bennett and Feldman (1981), after examining what factors would lead the jury to their verdict, claimed that jurors made sense of courtroom interaction as stories and that they would weigh the plausibility of that story by resorting to their stock of social knowledge which is, according to them, organised in narrative terms. In the same line and also based on extensive empirical work, Pennington and Hastie (1993) created a theory in which they tried to describe the cognitive strategies that jurors use in order to make sense of courtroom interaction. They explained that “the central cognitive process in juror decision making is *story construction*” (p. 192).

Jackson (1988, 1995) elaborates on their work and proposes a view of courtroom interaction as being the display of two stories which intersect constantly: the story *of* the trial refers to the trial itself and the people present, and the story *in* the trial refers to the events in litigation. Hale and Gibbons (1999) and Gibbons (2003) refer to those terms as *primary reality* and *secondary reality* respectively.

The literature on the use of narrative is vast, and many are the linguistic studies which have approached data under the narrative perspective. I will, however, cite only a few so as to provide a quick overview of what has been done so far and in order to situate the present study. Cotterill (2003, 2000) makes use of the ‘trial as storytelling’ metaphor to describe some of the internal structures of the trial by jury narrative. She demonstrates that the opening statements and closing arguments serve as frames for the

counsels' conflicting narratives, which are then corroborated by witnesses' testimony. Cotterill (Ibid.) also describes examination-in-chief and cross-examination in terms of the questions employed by counsels in their eliciting of the witnesses' evidence.

Heffer's (2002) main concern was with the distinction between the 'paradigmatic' and the 'narrative' modes which constitute the language used by legal professionals and by 'lay' language users in trials by jury. Apart from providing an overview of the courtroom setting, he also provides us with a quantitative analysis of trials as narrative and describes briefly the examination-in-chief of a witness in a criminal case in Labovian terms.

Harris (2001, 2005), in her attempt to describe courtroom questioning, applied a slightly modified version of the narrative structure proposed by Labov and Waletzky (1967) to small portions of the questioning of witnesses during examination-in-chief and cross-examination. The portions which did not fit the criteria proposed were described as non-narrative.

Even though the studies mentioned above were concerned, in one way or the other, with the construction of narrative in the courtroom, each of them had as their main focus of analysis different stages of the trial other than examination-in-chief and cross-examination. Most of these studies have only briefly described how language is used by counsels and witnesses during examination-in-chief and cross-examination in their attempt to persuade the jury of their version of the case. However, none of them has focused attention on the evidence of defendants only (examination-in-chief and cross-examination), or has made any distinction between those two types of evidence, that is, the evidence of witnesses and the evidence of defendants.

According to the Evidence Act 1898, defendants may choose to give evidence in their own defence. When they do so, they "will be treated like any other witness and



[their] evidence will be evidence for all the purposes of the case” (Keane, 2006, p. 126). I understand, however, that their evidence is somehow different from the evidence of other witnesses in relation to the construction of the crime story. Defendants are the central character of their story and consequently, are the ones who could possibly present the court with a wider dimension of the case in terms of conduct, circumstances and intention, which are the legal components of an offence. As accurate as they could be, what witnesses in general disclose in court are partial views of the macro-narratives of guilt and innocence. I do not mean to say, however, that the defendant’s account is not also a partial view of the events.

### **1.1. Objectives**

A criminal case starts when a crime occurs. The case is then brought to court and two stories emerge: the case for the prosecution and the case for the defence. In order to construct their stories as plausible as possible, counsels have to provide the court with a story which is coherent and complete so as to fit the legal requirements of the offence. I understand, however, that it is not enough for counsels to tell a coherent, complete and legally adequate story in court. As widely advocated in manuals for lawyers, in order to persuade the jury, a story should also be vivid, filled with realistic and human interest.

The case story promised by counsels in their opening statements can only be assembled by means of witnesses’ testimony. Abiding by the law of evidence, however, counsels cannot just let their witnesses take the stand and tell their stories. Neither can they entertain the court with their own account of the facts. The means available for the story to be unfolded in court is by the questions/answers format.

Confined to the question and answer interaction, how do counsels manage to construct their stories so as to convince the jury? My assumption is that the telling of stories in court is characterised by a distinctive set of syntactic, semantic, lexical, pragmatic and discursive features (hereafter referred to as linguistic features). Therefore, the objective of this study is to verify how counsels construct their version of the crime story during the examination-in-chief and cross-examination of a defendant so as to influence the jury. I do not intend, however, to evaluate whether one side of the story might be more persuasive than the other. The aim of this study is purely descriptive.

The research questions which will guide my analysis are:

- How are courtroom narratives linguistically constructed by defence (examination-in-chief) and by prosecution (cross-examination)?
- What linguistic elements are there in their telling of the story that may render their version of the story more appealing to the audience?
- How is the defendant linguistically portrayed in the accounts provided by defence and by prosecution?

I propose to analyse the following:

- a) Narrative construction and its rhetoric strategies;
- b) The portrayal of a defendant as innocent and guilty by defence and prosecution respectively.

## **1.2. METHODOLOGY**

### **1.2.1. The data**

The data analysed consists of an official court transcript of the interview with a defendant in examination-in-chief and cross-examination in a criminal trial in the Crown Court in Great Britain. The case was held in the Queen Elizabeth II Law Courts, Crown Court in Birmingham, on Thursday 1<sup>st</sup> December and Friday 2<sup>nd</sup> December, 1988. The parties were the Crown versus two defendants. However, I analysed the evidence of just one of the defendants. The copy I have is from the transcript<sup>1</sup> of the shorthand notes of Nicholas Carter Simpson Ltd. (Official Court Reporters) and consists of 51 pages. From page 1 to 24 the defendant is examined by the defence counsel and from page 25 to 51 he is cross-examined by the prosecution counsel. An electronic version of the official transcript, consisting of 46 pages, is available in the appendix<sup>2</sup>. The transcript pages of the examples used in this study refer to the electronic copy of the transcript.

In the case analysed here, the defendant was accused of participating in a series of robberies, the last one being an attempted armed robbery in which a shopkeeper was shot. He was accused of co-participation together with another defendant in all the robberies. It seemed that every time a robbery took place he was not at work. The prosecution also alleged that he rented cars to use them in the robberies under false

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<sup>1</sup> The copy of the official transcript I analyse in this study was kindly made available by Sue Blackwell, from the University of Birmingham.

<sup>2</sup> All names cited in the body of this work as well as in the transcript available in the appendix have been anonymised, even though this would not be necessary since court cases are of public domain.

plates and that he possessed jewellery identical to the ones taken in one of the robberies. The defendant claimed that police interviews and documents were fabricated, and his signature was forged by the police when he was in custody. He was questioned about what happened while he was held in police custody, as well as about the facts connected with the robberies – the cars, the jewellery, his work shifts, etc.

Although it is not usually permitted for the defendant to have his/her previous convictions disclosed in court<sup>3</sup> or to have evidence of his/her bad character introduced in court (Hopkins, 2007; Keane, 2006; Murphy, 1998), the prosecution confronted the defendant with a long record of previous convictions, starting when he was about 16 years old. His character was also attacked. The defendant admitted having committed crimes before, but he claimed he had become an honest man and that he did not participate in those robberies. According to his own definition, he was a “white-black man”. In the cross-examination he was described as a West Indian with a light skin. He was born in 1966, and was about 22 years old at the time of the trial. He lived in the Perry Barr area, in Birmingham, England. He lived with a lady and had a son. Before being arrested, he used to work as a driver for Driving You, a company in Birmingham, England.

### **1.2.2. Analytical approach to the data**

The present working method was established by a process of trial and error. The starting point was to apply the narrative structure proposed by Labov and Waletzky

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<sup>3</sup> Only exceptionally can the prosecution disclose record of previous convictions of defendants. It seems that in this case defence and prosecution have agreed to allow the defendant to be questioned on his previous convictions, as the following excerpt from the data shows: “Q. Let us just question this please, let us all have clear the nature of the man who is making these allegations. You took this document in your hand. (Addressing the Judge): My learned friend has said he does not require me to make an application to your Honour. That is the record of your previous convictions, is it not? – A. Shamefully, it is, yes sir” (p. 42)

(1967) to both examination-in-chief and cross-examination so as to be able to describe them in terms of narrative construction. The analysis led me to the conclusion that the definition as well as the structure of narrative as proposed by Labov and Waletzky (Ibid.) did not allow me a fine picture of both examination-in-chief and cross-examination, despite the fact that it was possible to identify small portions of examination-in-chief as being a minimal narrative. Some of them could also be analysed in terms Orientation and Complicating Actions.

Having observed that the Labovian definition of minimal narrative was also too narrow to accommodate the complex structure of courtroom questioning, the second step was then to redefine the term narrative as the recapitulation of past events which are temporally related to each other, allowing for other forms of verbs other than past simple and historical present to be also considered. I approached the data by assuming that during examination-in-chief a narrative was being constructed in that events were being recapitulated and displayed in court for the sake of the jury. It was also my understanding that cross-examination was not so much the construction of a story, but was conducted around the fact that, complying with the law of evidence, the story put forward during examination-in-chief should be verified, and possibly, undermined or discredited.

The approach was then to depart from the data and see how examination-in-chief and cross-examination were organised so as to allow counsels to tell their version of the crime story. I then proceeded to topic analysis in order to determine the correspondence between examination-in-chief and cross-examination in their dealing with the main events of the case. After doing topic analysis, I focused my analysis on specific linguistic elements employed by counsels in their attempt to make their story

more appealing to the audience as well as how the defendant was linguistically portrayed by defence and prosecution in their respective accounts.

### **1.3. Organisation of the thesis**

This study is divided into four chapters. In this chapter, I presented the introduction to the field of language and the law, the purpose of this study and the methodological approach to the data.

In the second chapter I present an outline of the Language and the Law field, and describe the criminal process in the British Legal System, in order to contextualise my data. I also present a discussion of the literature on courtroom narrative.

In the third chapter I analyse and discuss the results. I describe examination-in-chief and cross-examination in terms of narrative structure. I analyse how the prosecution and the defence stories are linguistically constructed, and describe some of the linguistic elements contained in their stories that would render their version of the case more appealing to the jury. I also analyse how the defendant is linguistically portrayed by both defence and prosecution during the examination-in-chief and cross-examination, respectively.

In the fourth chapter I present the conclusion of the study and offer some suggestions for further research.

## **CHAPTER TWO**

### **LAW AND LANGUAGE: AN OVERVIEW**

We must not say that an action shocks the common conscience because it is criminal, but rather that it is criminal because it shocks the common conscience. We do not reprove it because it is a crime, but it is a crime because we reprove it (Durkheim, 1964).

Before the crime story can be told, I beg you to bear with me for a little while so that I can invite you to walk with me to the earlier events which led me to the present study. I do apologise for suspending it for a whole chapter, though. Being a linguist and not having any qualification in the law field, when I first chose legal texts as data for carrying out my Masters study I realised I was entering a dark room with no windows and no sense of direction. Little by little I started making myself familiar with this new field of expertise. The more I explored the darkness, the more things took shape, created form and made sense, and I realized that the challenge of making sense of this new world had gotten me spellbound. As time went by, I grew more confident being in this dark room and even ventured some deeper explorations. Years later I started my doctorate program and, once again, chose to carry on in the field of Language and Law.

In this study, as I did previously for my Masters course, I chose to analyse British legal texts. My understanding is that when one chooses to describe and analyse legal texts,

it is paramount that one understands the specialized field of the judicial process and what it entails. In order to contextualise my data, giving the reader an overview of the Language and Law field as well as pointing to specific aspects of the field that are germane to the analysis carried out in this study, I therefore, present in this chapter an outline of what Forensic Linguistics and Language and Law are about, describe how the criminal process works in the British Legal System and present a discussion of the literature which led me to setting off this study, being the foundation and starting point of my analysis.

### **2.1. A Word about Forensic Linguistics: why ‘Forensic Linguistics’ and what linguists have been doing**

The start of Forensic Linguistics can be traced back to 1968 when Svartvik (1968, in Coulthard, 1995) published the first book on disputed statements, a case in which Timothy Evans was incriminated in the murder of his wife and daughter. Svartvik, in his analysis, came to the conclusion that parts of the statement had a grammatical style different from that of uncontested parts. According to Coulthard (1995) a new discipline was then born. At first, there were sporadic articles dealing with contested statements or confessions but at that time there was no methodology in support of Forensic Linguistics or a discipline as such. However, in the 1990s it started a rapid growth and Courts have been calling on linguists as expert witnesses since then.

There is not a consensus on the meaning of the term “Forensic Linguistics”. Some people in the field would include in this term all the areas discussed in the second part of this study, that is, Forensic Linguistics is “the study of the intersection between language and the law” (Brennan, 2001, p. 1). Others would include only some of them, specifically



the ones concerned with “the field of the provision of linguistic evidence” (Gibbons, 1999, p. 164), that is, “the use of linguistic techniques to investigate crimes in which language data constitutes part of the evidence” (Brennan, 2001, p. 1). The description and definition of the term, however, is not restricted to expert testimony. Such evidence may be given in court, but it may also involve, for instance, helping the police, insurance companies, or companies on copyright issues.

We may say, therefore, that Forensic Linguistics is the science of analysing texts which interface with the law, that is, “[it] is the application of linguistics to legal issues” (Olsson, p. 2). The texts analysed may include anonymous letters, ransom demands, hate mail, forged letters, suicide notes, hoax, malicious mail, disputed statements made by an accused person, and plagiarism. Forensic Linguistics is a science which uses linguistic and statistical means to determine the issues cited above. In order to carry out an analysis of forensic texts, linguists may focus on specific linguistic items or their approach may be diverse, drawing knowledge from graphology, phonetics, lexis, syntax, semantics, pragmatics and discourse analysis (Coulthard, 1995).

As some of the professionals in the linguistics field prefer to refer to themselves as phoneticians, lexicographers, grammarians or discourse analysts, in the analysis of forensic language we have: forensic handwriting analysts, forensic phoneticians and forensic linguists.

At the beginning, Forensic Linguistics was concerned basically with two kinds of text: handwritten contemporaneous records made by police officers of interviews with witnesses and suspects, and statements dictated by witnesses and suspects to police officers (Coulthard, 1992). With the development of the area, we have nowadays a wide range of research interest, including language use in the judicial process. Some current research

areas of Forensic Linguistics are phonetics (voice identification), handwriting (or identification of typefaces, printers and programs), lexis, grammar (morphology, syntax), and discourse (Gibbons, 1999: 166), despite the fact that some scholars like Gibbons (1999) restrict the focus of current research to two main categories: 1) issues of authorship, and 2) problems of meaning and communication.

There is now the International Association of Forensic Linguists and their main aim is to inform legal professionals on language matters. The Association has also founded the journal *Forensic Linguistics: The International Journal of Speech, Language and the Law*, which includes lawyers as members of the editorial board (Coulthard, 1996). The journal has been published since 1995 offering the reader a wide range of research on the Language and Law.

The Birmingham School of English was until recently the leader in Forensic Linguistics, having Malcolm Coulthard as one of their leading exponents. Coulthard gave important evidence in several cases, including the judicial appeal of the Birmingham Six, in which he has shown, on the basis of the nature of the discourse, among a range of other features, that the police records of interviews contained fabrications (Gibbons, 1999). Nowadays, however, there are research groups on Forensic Linguistics in varied places such as Aston University and Cardiff University in Great Britain, as well as groups in Australia and in the US.

Considering the wide spread of the field in recent years, the distinction between the terms Forensic Linguistics and Law and Language is becoming less clear-cut and scholars are starting to consider both as part and parcel of analysis of forensic texts. This diversity of linguistic approaches can be seen in the detailed account of some of legal cases described below. Consolidating the merge of these two broad scholarships, in 2006 the

Second European IAFL Conference on Forensic Linguistics/Language and the Law held in Barcelona brought together researchers on Language and Law as well as forensic linguists in a rich and varied programme and had participants from all over the world, including Brazil. We also now have the International Summer School in Forensic Linguistic Analysis created by Professor Malcolm Coulthard in 2000. The course runs every year and “is concerned with the role, shape and evidential value of language in legal and forensic settings” (ISSFLA website).

Throughout the years, several police and legal cases have been brought to the public’s attention, which were analysed by forensic linguists, for instance:

A famous case analysed by forensic linguists is the one about The Guildford Four. The Guildford Four was a group of young people jailed for the bombing of the Guildford pub in London back in 1974. Many years later they were released due to linguistic evidence. The case of the Guildford Four was turned into a film called “*In the Name of the Father*”.

Other two famous cases are The Case of Ashley King and The Case of Patrick Molloy. King was accused and convicted of battering an old lady to death in 1985. The police presented as evidence typed versions of the handwritten statement and interview (Coulthard, 2002). In the case of Patrick Molloy, apart from the linguistic analysis carried out, forensic linguists also used ESDA test (Electro-Static Detection Apparatus). When we write on a piece of paper which was sitting on top of other papers, indentations are left up to seven layers. ESDA test is a technique which allows the reading of the indentations created on the paper under examination (Coulthard, 2002). The original version of Molloy’s statement was tested and traces of the alleged confession and forged signature were detected.

Another case worth mentioning is about a man named Mr Granderson who pleaded guilty to a charge of destroying mail. In this case, he would be sentenced to 6 months' imprisonment. He was under probation for 5 years when he was caught with cocaine. According to the law, the Court should 'revoke the sentence of probation and sentence the defendant to not less than one third of the original sentence.' He was then sentenced to 20 months in jail (three times greater than the original maximum). Kaplan (1995, in Coulthard, 1995, p. 3) argued that

this interpretation was inadmissible because the Court had treated the phrase 'original sentence' as if it could simultaneously have two different meanings: they had interpreted it as referring to imprisonment for the purpose of determining the *type* of punishment, but to the initial imposition of 5 years (of probation) for determining the *length* of the sentence.

Based on this argument, the sentence was changed.

A case in which linguists dealt with meanings of words was about a 58-year-old cement worker. He sued the insurance company for refusing to pay his disability pension. The company claimed that the man had lied about his disability in the proposal form, because he had failed to mention in the form that he was overweight, and had high cholesterol level together with backaches. The questions in the form were: "Have you any impairments?... Loss of sight or hearing?... Loss of arm or leg?... Are you crippled or deformed?... If so explain..." One of the arguments Prince (1981, in Coulthard, 1995) put forward was that the word 'impairments' is too vague and that it would be inferred that what he had was not a severe impairment as those implied in the form.

The Derek Bentley and Chris Craig case is perhaps one of the most famous cases back in the 1950s. The two young men were trying to break into a warehouse when the police were called. Bentley, who was already under arrest, was said to have shouted to Craig, who had a gun "Let him have it, Chris". Craig fired and killed a policeman. This utterance was considered ambiguous. However, the court decided that it meant "shoot

him”, rather than “give him the gun”, and they were found guilty. Craig was sentenced to life imprisonment, while Bentley was hanged. During the trial, Bentley denied having shouted “Let him have it” to Craig. He alleged that the police had invented it. The case came to Appeal in 1998 and guilty verdict was finally changed, based mainly on the linguistic analysis. (Coulthard, 2002). This case was also turned into a movie called “*Let him have it*”, directed by Peter Medak.

Together with the analysis of this utterance, other features were also considered in the analysis of the Bentley Case, including the use of certain negatives in the narrative, which is of particularly relevance for the present study. Coulthard (2002) observes that narratives are about what happened and thus people do not usually make use of negatives to report what did not happen. When negatives are used in narrative they need to have a reportability justification, that is, they need to be “an integral part of the ongoing narrative” (p. 31).

In the case of the Birmingham Six, six Irish men living in Birmingham were accused of being IRA-terrorists and sentenced to life imprisonment for a pub bombing in 1974. Mainly because of the linguistic analysis carried out, the evidence was admitted to be false. The group was released after 17 years in prison and paid compensation. The full story of the Birmingham Six can be found in the book “*Error of Judgement*” by Chris Mullin.

As a matter of exemplification, I now present some of the analytic approaches utilised by Coulthard (1995) in the identification of the fabricated texts in the Birmingham Six case:

1. *Differences in spoken and written language*

*Drawing on Halliday (1989), Coulthard argued that one of the differences between spoken and written language is that in spoken language clauses tend to be shorter*

*and contain fewer lexical words compared with grammatical ones. In his analysis, he found out that the sentences which the defendant admitted to having said were short co-ordinated clauses containing a very low lexical density. However, the sentences the defendant denied having said contained a high lexical density and subordination and nominalization were frequently used.*

## 2. Grice's conversational rules

*Drawing on Grice (1975), Coulthard discussed the quantity maxim and the use of explicitness and detail, pointing out that when we speak we usually do not say more than it is necessary. In the analysis, he observed the over-explicitness conveyed by nominal groups, such as the use of the sequence 'white plastic carrier bags', which was repeatedly used in the disputed statement. In the police interview, which was not disputed, this information was presented like that:*

*Power: He'd got a holdall and two bags*

*Watson: What kind of bags?*

*Power: They were white, I think they were carrier bags.*

Coulthard (1995) points out that in real conversations a sequence like that is rarely used and he emphasises that it is unusual for people to include details which are not relevant when they are telling a story.

The breaking of the maxim of quantity can be further exemplified in the following fabricated telephone conversation, sent to a police officer after a trial, in order to discredit one of the witnesses (Coulthard, 1995):

*A: Hello.*

*B: Hello, can I speak to Mr A please?*

*A: Speaking.*

*B: Are you surprised I've phoned you instead of coming down and seeing you as you asked in your message over the phone yesterday? (...)*

In this example we can see that the caller breaks the maxim of quantity by mentioning more than what is necessary, since it is considered shared knowledge.

Other analytic approaches carried out in several other cases are: register features and variation (e.g. the use of ‘then’ in the Derek Bentley case), word meaning (e.g. the meaning of the word ‘visa’) and Corpus Linguistics (appropriate for analysis of lexical density, word frequency and collocation, for example).

After 1989, the number of cases in which the accused claimed the police had invented texts increased tremendously. In consequence of this, and because of the linguistic evidence given in Court, the Birmingham-based West Midlands Serious Crime squad was disbanded and 51 detectives were suspended (Coulthard, 1996).

In Brazil there has been a growing number of studies in the area of Law and Language. For some of these studies see Fagundes (1986, 1995) on the judicial discourse in a jury trial; Bezerra (1996) on the language of the judicial process; Gago (1997) on the discourse of sentencing in criminal cases; Alves (1999) on the linguistic-discursive strategies of courtroom questioning; Romualdo (2002) on intertextuality in the criminal process.

At the graduate program in English language and literature (Programa de Pós-graduação em Letras/Inglês e Literatura Correspondente) at Universidade Federal de Santa Catarina, in particular, Machado (1998) analysed the evidence of a defendant in a criminal trial in the British legal system, in terms of the form and function of question-answer employed by defence and prosecution counsels to convince the jury of their side of the story. Figueiredo (2000), based on the theories of CDA, gender studies and feminist legal studies, analysed the judicial discourse used in 50 appellate decisions on rape cases. While Del Corona (2000) analysed the structural organization of criminal examining hearings in a Brazilian Court, based on ethnographic and interactional sociolinguistic perspective, Dornelles (2000), from the perspective of talk in interaction studies and microethnographic

methods, analysed the counselling interactions between a social worker and couples with marital problems at a women's police station in Brazil. Teixeira (2002), from the perspective of CDA, Genre Analysis and Forensic Linguistics, analysed 10 investigative reports of the Miami Beach Police Department.

## **2.2. Law and Language: a brief history**

The study of the language and law has only recently been recognized, resulting from a growing interest in the field. Starting with Mellinkoff (1963), Law and Language emerged as a field of scholarship in the 1960s, but it is in the 1990s that it really started as a distinctive field (Conley and O'Barr, 1998). In the past twenty years, many disciplines have made significant contributions to the research on language in the judicial process, namely, anthropology, psychology, sociology, ethnography, ethnomethodology and linguistics, including sociolinguistics and discourse analysis.

Those working in the area of Law and Language can be divided in several groups, depending on their focus of interest. One group has as its primary focus the law as a special context to carry out analysis of linguistic organization and use. For others, the primary focus is to understand the judicial process proper. In this case, the linguistic analysis is just an instrument to understand the legal system. Others have as their primary emphasis the society, culture or human psychology (Levi, 1990). However, whatever the focus of analysis, all the studies contribute to a better understanding of the processes of the legal system, since "law is language in that laws are coded in language, and the processes of the law are mediated through language" (Gibbons, 1999, p. 156).



In the same line, Levi (1990, p. 7) argues that the world of law is a “fruitful context for linguistic analysis”, since it involves various discourse types. Some of the possibilities for research is lawyer-client interactions, jury summations, plea bargaining conferences, courtroom questioning, and even law school discourse, to cite a few.

There has been an increase in the number of research carried out by linguists lately which contribute to the growth of the field. Some research areas within Law and Language are (Levi, 1990, p. 12):

### **1. Psycholinguistics**

- a) *effects of language of eyewitness testimony (memory acquisition, retention, retrieval; forms of questioning and their effects on memory)*
- b) *presentational style in courtroom testimony (effects of language variation in courtroom)*
- c) *psychology of language comprehension (comprehensibility of jury instructions, forms, regulations, laws, contracts, notices, warning labels)*

### **2. Sociolinguistics**

- a) *language variation and social evaluation*
- b) *language minorities and the law*
- c) *forensic dialectology*
- d) *the verbatim transcript: linguistic and legal issues*
- e) *problems of cross-cultural and cross-dialectal communication in legal settings*

### **3. Discourse Analysis**

- a) *speech act theory applied to legal discourse*
- b) *analysis of courtroom questioning*
- c) *verbal offences*
- d) *the language of lawyer-client interactions*
- e) *plain English studies*
- f) *language issues in consumer protection (regulations)*
- g) *contractual language*
- h) *storytelling as a model of courtroom discourse*
- i) *presuppositions and leading questions*
- j) *conversational analysis of language in legal settings (plea bargaining, courtroom discourse, conversations entered as evidence in criminal trials)*
- k) *semantics (lexical and sentential semantics issues: denotation, connotation, lexical presuppositions, ambiguity, vagueness)*

- l) *morphology and syntax (courtroom questioning: forms and functions; comprehensibility of jury instructions)*
- m) *standard police cautions or warnings*

#### **4. Phonetics and Phonology**

- a) *forensic technology (voice identification and voice lie detection)*
- b) *speech differences and social evaluation*
- c) *phonetic/phonological similarities in determining brand name/ copyright infringement*
- d) *forensic dialectology (voice identification by dialect)*

Some seminal work was carried out in the 1970s and 1980s, which determined and contributed to the development of the field. Some of this work will now be discussed so as to give the reader an outline of the field. The first study discussed concerns language and eyewitness testimony. In the adversary system, the giving of evidence in court is extremely important and juries tend to give considerable weight to these accounts, especially the ones by eyewitnesses. Loftus (1979) identified some psychological and psycholinguistic factors that may alter the memory of eyewitnesses between the time the event is observed and the time it is retrieved in court. According to her, the phenomenon of memory consists of a three-stage process: 1) the acquisition and storage of information; 2) the retention of that information for a period of time and 3) the retrieval of that information.

She showed subjects a film of a car accident and then asked them questions about it. The questions contained variation of words so that it would be possible to see their effect on content and accuracy. One of the questions was: “About how fast were the cars going when they smashed/hit into each other?” The subjects responding the question with the word “smashed” (it carries a presupposition of a much more violent impact) tended to report a higher speed, than the ones with the word “hit”.

In subsequent stages of the experiment, she asked “Did you see any broken glass?”. The ones who had heard the question with the word “smashed” in the first part of the

experiment, said “yes” more than twice as frequently as those who had the word “hit”. In fact, the video did not show any broken glass at all. The experiment demonstrates that language can affect memory while it is being stored and, consequently, the information recalled later on may emerge in a different way from that originally entered into memory.

This experiment supports the claim that what is brought to court in the form of testimony and what the jury hear during a trial is not exactly the facts per se. Rather, what is presented by witnesses are (mis-)representation/interpretation of those facts.

The second study concerns the language and the construction of reality in a manslaughter trial. Danet (1980) analysed a case where a doctor carried out a late abortion which led to his being convicted of manslaughter, and where vocabulary was an explicit concern in the trial itself. During the trial, the lawyers negotiated the different connotations of the terms “baby” and “fetus”. Such semantic choices, with their presuppositions, may be crucial to the outcome of the trial: “if no person existed, then no manslaughter could have occurred” (Stubbs, 1998, p. 353). However, even lexical choice being known as a powerful tool employed by counsels, it is impossible to discover what effect such lexical choices actually have on the jury.

Corroborating this study, in his analysis of a rape trial, Drew (1992) found out that the prosecution preferred to refer to the place where the initial meeting between the defendant and the plaintiff took place as a *bar* (which has potential connotations of promiscuity). The witness, however, preferred to refer to it as a *club*, as the example shows (O’Barr, 1992, p. 478):

<i>Prosecution:</i>	<i>And you went to a bar in the city, is that correct?</i>
<i>Witness:</i>	<i>It’s a club.</i>
<i>Prosecution:</i>	<i>It’s where girls and fellas meet, isn’t it?</i>
<i>Witness:</i>	<i>People go there.</i>
<i>Prosecution:</i>	<i>And during that evening, didn’t Mr C. come over to sit with you?</i>
<i>Witness:</i>	<i>Sat at our table</i>

According to Cotterill (2001), even though lawyers have control over the lexical content of their questions, they do not have the same control over the witness's response.

The third study discussed was carried out by the Duke University Law and Language Project. The study suggested that our judgement of whether a person is telling the truth (of obvious significance in a courtroom setting) is affected by distinctive linguistic features. At first, such features/styles were correlated with power versus powerless speech, and they related style either to sex (Lakoff, 1975 and Thorne & Henley, 1975, in Levi, 1990), or to status and social position (Erickson, Lind, Johnson & O'Barr, 1978, in Levi, 1990). However, they found later on that the two styles related more to the status and social position of the speaker. Their study focused on the speaking styles of American white men and American white women respectively. Some of the powerful attributes identified in their study are: fluency, coherence, repetition, interruptions, no use of expressions of agreement. The attributes which seem to relate to powerless speech are: hedges, hesitation, intensifiers, mitigation and uncertainty.

The Duke University team investigated the effects of the powerful and powerless speech in legal contexts (Coley, O'Barr and Lind, 1978, Lind and O'Barr, 1979 and O'Barr, 1982, in Gibbons, 2003). The men's style is the one that people would expect to be taken more seriously and to be more persuasive in court. Their study demonstrated that powerful speech is strongly connected to trustworthiness, convincingness and competence. O'Barr (1982) claims that the credibility of witnesses is directly affected by linguistic variables. He states that

this experiment demonstrates that the style in which testimony is delivered strongly affects how favourable the witness is perceived, and by implication suggests that these sort of differences may play a consequential role in the legal process itself (O'Barr, 1982, p. 75).

According to Gibbons (2003, p. 93), “it appears that people who are less powerful in society may reflect their status in their speech behaviour, and thereby be less convincing as witnesses”.

The Duke University team also classified the speaking styles in court in terms of narrative versus fragmented testimony (Lind & O’Barr, 1979 and O’Barr, 1982, in Levi, 1990). The aim was to establish a correlation between testimony style and powerful/powerless speech. They came to the conclusion that jurors tended to respond more favourably to the giving of evidence delivered as narrative rather than the fragmented mode of speech. ‘More loquacious’ testimony is referred to as ‘narrative’ and ‘brief, incisive and non-elaborate’ testimony was considered fragmented (Harris, 2001, p. 54).

However, Thompson (2002) and Harris (2001) contest those views. Thompson claims that, after 20 years, the Duke University study should be critically revised and its dissemination qualified. She says that studies about witness verbal behaviour should take into account language change, cultural and regional diversities as well as carry out ‘*in situ*’ approaches to provide more realistic results. In her words,

to perpetuate research that does not take account of language change, of regional and cultural diversity, methodological advances and the interplay of paralinguistic variables, and which does not acknowledge the counter-arguments put forward in new work, is actively damaging both to the acceptance of linguistic evidence and, above all, is potentially harmful to those such work purports to assist (p. 164).

Harris (2001) points out two main problems with this study. Firstly, since the study was carried out in a laboratory situation, comparison and replication in real settings is difficult. Secondly, O’Barr’s (1982) explains that

clear demarcation of ‘narrative’ and ‘fragmented’ styles substantially ignores the sense in which all courtroom testimony is necessarily fragmented by virtue of being conducted through question/answer sequence, and he imposes a distinction which it is often not possible to sustain (p. 55).

In relation to the Duke University studies, Conley and O'Barr (1998), have argued more recently that there are two different ways in which litigants structure their accounts: rule-oriented and relational. Rule-oriented accounts tend to “conform to the logic of the law and reflect an accurate understanding of the law’s sense of relevance” (p. 67), while relational accounts are “based on general rules of social conduct [...] with details that the law usually finds irrelevant” (p. 68). This leads us to an important distinction between language used to tell about the story brought to court and that of the case itself, that is, the courtroom procedure in telling the court that story.

Following a similar line of thought, Bruner (1986, 1990) claims that there are two modes of thought which order our experiences and construct reality – the narrative and the paradigmatic modes. The narrative mode refers to the ways we encode and interpret human reality, experiences, beliefs and emotions, and the paradigmatic mode refers to how things are in the world, that is, the physical reality, truth, observation, analysis, proof and rationality. The former relates to the lifelikeness, while the latter relates to the truth. According to Bruner (1986, p. 11), “one verifies by eventual appeal to procedures for establishing formal and empirical truth. The other establishes not truth but verisimilitude”, that is to say, the main function of narrative is verisimilitude while the paradigmatic mode is verifiability. Harris (2005) explains that Bruner highlights the importance of narrative not only as a means of storytelling but mainly as a mode of discourse, which structures human experience.

Harris (2005), in her analysis of the *Marv Albert Sexual Assault Trial*, points out that the judge characterizes the opening statements as ‘stories’ and the testimony of witnesses as ‘factual evidence’, emphasizing “evidence as verification rather than as verisimilitude” (p. 224). This means that the narratives presented during the opening

statements “can only be verified by means of witness accounts which are based on ‘fact’” (p. 224). Taking into consideration that what is brought to court is the representation of facts (and not the facts themselves), and taking into consideration our understanding of the narrative and paradigmatic modes of discourse, characterizing evidence as “factual and truth oriented” allows for some tension to be created between what is narrative and what belongs to the paradigmatic (or non-narrative) mode during the giving of evidence.

Even though constructing a coherent narrative is the most persuasive tool employed by counsels to convince the court, this tension between the narrative and non-narrative modes of discourse points to the fact that “legal coherence appears to take precedence over discourse coherence in trials” (Harris, 2005, p. 216). Thus, one can only expect any narrative structure analysis of testimonial evidence to be a daring venture.

The description proposed by Bruner is closely related to what Jackson (1988, 1995) defines as the story *in* the trial and the story *of* the trial. Based on the notion of trial as a story, Jackson (1988, 1995) has proposed that in a trial there is not only the story *in* the trial but also the story *of* the trial. He explains this as

the trial, in short, contains two types of story: “the story *in* the trial” (those events in the outside world which are to be adjudicated in the trial), and “the story *of* the trial” (those actions and events in the trial process, which make sense as meaningful acts of enunciation – and other forms of meaningful behaviour) (Jackson, 1995, p. 160).

Hale and Gibbons (1999) and Gibbons (1999, 2003) refer to these levels as primary and secondary realities in the courtroom while Bennett and Feldman (1981) refer to them as stories, and Clark’s (1996) terms them ‘layers of action’. These views allow us to have a clearer picture of the courtroom setting and will guide the present study.

Heffer (2002) argues that it is misleading to say that trials ‘contain’ stories since the stories are constructed by the participants in the trial, or talking about ‘the’ story in the

trial. According to Heffer (Ibid.), there are stories or ‘a’ story which is constructed by a participant. Drawing on Bruner’s (1986) definition of the two modes of thoughts – the narrative and the paradigmatic – as meaning making, Heffer (2002) claims that “legal-lay discourse involves a complex dialogic play between two broad ways of making sense of the world: one based on the subjective reconstruction of personal experience; the other on detached analysis following logical principles”: the former is closely related to the narrative mode and the latter to the paradigmatic mode (p. 45).

In the same line, Hale and Gibbons (1999) argue that, at the discourse level, there are two levels of reality which are manifested in the courtroom questioning: “the primary courtroom reality and the secondary reality of the events under litigation” (p. 203). The primary layer refers to the here and now reality of the courtroom whereas the secondary layer refers to the outside world which is then projected through and filtered by the courtroom reality. They state that the outside world is not physically present, rather, it is represented in the courtroom by various ways, one of them being through testimonial evidence, that is, “versions of the second reality presented through language” (Hale and Gibbons, 1999, p. 203).

Hale and Gibbons (1999) also discuss the fact that in the legal setting of the courtroom, the secondary layer of reality is checked in two forms: they are examined for relevance as well as for accuracy. Constrained by the rules of evidence, the presentation of evidence is limited to evidence relevant to the case. Therefore, what is legally relevant does not always coincide with everyday relevance. According to Lilly (1978, p. 17, in Hale and Gibbons, 1999, p. 204):

Relevance is the basic and unifying principle underlying the evidentiary rules. First, it connotes the probative relationship between the testimonial or real evidence proffered by a party and the factual proposition to which the evidence is addressed.



It means that any information introduced in court during the testimonial evidence of witnesses/defendant must comply with the legal notion of relevance (Hale and Gibbons, 1999).

Since a trial starts with an indictment presented by the prosecution, the selection of the evidence “is often tied to the initial plausibility of the story. The process, on this account, is circular: first the evidence is selected because it fits what is judged to be a plausible narrative, then the narrative is held to be true because there is evidence to support it” (Wagenaar, 1993, p. 211, in Jackson, 1995, p. 181).

As for accuracy, based on the Common Law system, in criminal trials, the role of defence and prosecution is to “construct different representations of the same secondary reality” (Hale and Gibbons, 1999, p. 204). Therefore, the giving of evidence does not mean the representation of events themselves, but, rather, it is an individual construction of these events. According to Maley and Fahey (1991, p. 5, in Hale and Gibbons, 1999, p. 205):

Language will be used strategically by counsel to convince or persuade judge or jury or magistrate to believe their version of the facts: ‘Truth or reality becomes the story which is accepted by the jury. Obviously, it may or may not correspond to the events in the extra-court context’.

In direct examination many of the questions posed by the counsel are structured in the line of ‘what happened’, contrasting with questions posed by cross-examiners which are mostly designed in the line of ‘what *you think* happened’.

### **2.2.1. The Jury and the Story Model**

Many are the studies describing a trial as storytelling (Bruner, 1986, 1990; Bennett and Feldman, 1981; Jackson, 1988, 1995; Clark, 1996; Hale and Gibbons, 1999, Harris, 2001, 2005). The general claim is that jurors make sense of what is going on during a trial by

constructing stories, being that the main cognitive process used by jurors when deciding a case. The notion of trial as storytelling is the basis on which I built the present study and this is what I discuss next.

### **2.3. Stories in the Courtroom: some theoretical background**

Many are the strategies used by lawyers to construct their version of the events of the case in litigation. What we know about the strategies employed by counsels in terms of persuasive language comes mainly from Legal Handbooks for inexperienced lawyers (Napley, 2003; Evans, 1995a/b; Boon, 1999; Murphy, 1998; DuCann, 1993; Mauet, 1980; Munkman, 1991; Stone, 1988; Wellman, 1979). These manuals bring extensive lists of rules/techniques to be applied during the examination and cross-examination of witnesses/defendants so that counsel can improve not only their questioning techniques in the courtroom but also their overall strategies in the different stages of the trial, including opening statements and closing arguments. Their aim is to instruct lawyers so as to successfully conduct the cases in court.

Studies also show that courtroom questioning is one of the most important stages during a trial. It is especially during examination-in-chief and cross-examination that defence and prosecution counsel can have their version of the events affirmed and corroborated through the evidence of witnesses and defendants (Newbury and Johnson, 2006; Tkachuk, 2006; Gibbons, 2003; Machado, 1998; Luchjenbroers, 1997; Smith, 1995; Rokosz, 1988; Woodbury, 1984; Harris, 1984). A detailed description of the form and function of courtroom questioning is available in Machado (1998).

Apart from the investigations into the forms and functions of courtroom questioning and their influence in the representation of events in court, more recently, attention has been given to the use of narrative in the courtroom.

Even though many legal texts researchers consider narrative under a general view of stories told in court and are not exactly interested in how these stories are linguistically constructed in terms of narrative (e.g. White, 1981; Brooks and Gewirtz, 1996), the literature on the use of narrative in the courtroom is vast (Harris, 2005; Gibbons, 2003; Harris, 2001; De Fina, 2000; Cotterill, 2003, 2000; Stygall, 1994; Philips, 1993; Pennington and Hastie, 1993; O' Barr, 1982). Most of these studies have briefly described how language is managed persuasively in court, that is, how language is used by counsels and witnesses/defendants during examination-in-chief and cross-examination in their attempt to persuade the jury of their version of the case. However, none of them has focused attention on the examination-in-chief and cross-examination of defendants only, as the present study attempts.

When we use the storytelling metaphor to describe what happens in a trial, it is usually assumed that counsels provide conflicting accounts of a macro story and those accounts are corroborated by the multiple stories provided by witnesses called to give evidence during the trial. That is to say, the questioning of witnesses allows for multiple stories (or multiple versions of the same story) to be introduced in the courtroom to corroborate one or the other accounts put forward by the opposing counsels.

However, my assumption is that the evidence given by a defendant falls into a different category in the construction of the crime narrative. Defendants, together with the plaintiffs, are the ones who experienced the events as they occurred (the elements in the

common law definition of the offence which correspond to *actus reus*<sup>1</sup>). Defendants are also the only ones to have access to their state of mind (legally referred to as *mens rea*, that is, the defendant's required state of mind, such as 'knowingly', 'intentionally' and/or 'dishonestly'), both being essential elements of the nature of a crime which will have to be proved in court.

The defendant is the subject of the story *in* the trial. However, he/she is usually considered "an object [...] confined to the dock, speaking only through others" in the story *of* the trial (Jackson, 1995, p. 448). When the defendant decides to give evidence in his/her defence, he/she claims voice in the story *of* the trial and, consequently, his/her characteristics and personality are also subjected to the evaluation of the jury.

I am not denying that the evidential testimony of witnesses plays a crucial role in the construction of the crime story in court. However, a witness' story is just a partial view of the events. I do understand that when a defendant is giving evidence he/she is constructing a narrative of personal experience which may differ from narratives of vicarious experience, and his/her account is more in alignment with the case. Besides, according to research/experiments mentioned previously, witnesses may have eye-witnessed an incident but later accounts will probably differ or will be distorted for people's individual perceptions may impose different relevance to the facts observed. Obviously, the defendant's testimony is also partial and may be distorted for any reasons. However, what I want to emphasise is that studies to the present date do not make any distinction between those two types of evidence, that is, the evidence of witnesses and the evidence of defendants, and that they may differ significantly.

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<sup>1</sup> The nature of the crime will then be further analysed in terms of "the central conduct of the offence, the surrounding circumstances in which it [took] place and any consequences if required by the offence" (Cavendish Lawcards Series – Criminal Law, 2004, p. 3).

Even though the literature on the use of narrative is well established and research published to date is also vast, I will limit my discussion to the studies of narrative which are concerned with the use of narrative in the courtroom.

The importance of the narrative as a “generic type of discourse for making sense of the world/experience for a wide range of tellers in many different contexts” has been attracting the attention of many scholars lately (Harris, 2001, p. 53). In the line of trials as storytelling metaphor, many are the studies describing a trial as the venue for the telling of stories (Harris, 2005, 2001; Gibbons, 2003; Hale and Gibbons, 1999; Clark, 1996; Pennington and Hastie, 1993; Bruner, 1990, 1986; Bennett and Feldman, 1981). The courtroom is one of the many possible contexts which can be researched in terms of narrative structure. This is due to the fact that the storytelling model may be a way to describe courtroom, and “how the different structures of examination create different interactional contexts in which the stories can be told” (Maley, 1994, p. 39).

Some studies in the area of psychology have been carried out on how jurors make sense of evidence presented by witnesses. Bennett and Feldman (1981), for example, argue that jurors reconstruct the evidence as “stories” and make decisions about the truthfulness of these stories on the basis of their structural characteristics.

In the same line, Cotterill (2001) claims that it is during the questioning of witnesses that counsels are able to establish the ground on which their version of the crime story will emerge. She explains:

Through questions and answers, counsels construct a framework, the semantic environment, into which the witnesses and physical evidence will be placed as the trial progresses. The aim for the trial lawyer is to establish a framework that fulfils two criteria critical to the successful contextualization of the subsequent evidence. First, each side must set out the individuals who constitute the cast of the piece. Drawing on the pre-existing schematic world-knowledge of the jurors, lawyers need to present the victim, the perpetrator and supporting actors in a way which makes sense to jurors; second, they must construct a narrative of the events of the crime which is plausible and convincing to the jury (Cotterill, 2001, 294).

Thus, Cotterill presents us with several important points which are relevant for the present study and should be further elaborated. First of all, she points out that the main aim of questioning witnesses and defendant is that of constructing a semantic environment (a framework) in which evidence can be placed. She further explains that that framework must fulfil two criteria. First, counsels have to present the individuals (and I would say their role as well) in the story in a way that it would fit the ‘pre-existing schematic world-knowledge’ of the jury. Secondly, through that semantic environment a narrative of the story should be constructed in a way that it would be ‘plausible and convincing’ to the jury.

This is precisely what the present study is aiming to do, that is, to determine, explain and exemplify how counsels construct their narrative through the questioning of a defendant in particular and how this defendant is portrayed by both counsels.

During a trial, a witness/defendant cannot just come in and present their account of the facts as they please, even though the term “giving evidence” is misleadingly used. Rather, evidence given in court is constrained by the rules of evidence as well as strategically controlled by both examiner and cross-examiner. Instead of letting the witnesses/defendants account for the facts on their own terms, counsels establish what will be accounted for and in what order. By doing so, counsels are not only able to control the evidence given, and consequently, construct a narrative out of it, but also, by the very means of the narrative constructed, they are able to portray the defendant either as someone ordinary or as a dishonest person, which is, I assume, the case in this study.

Pennington and Hastie (1993, p. 194) claim that “jurors impose a narrative story organization on trial information”. When jurors are deciding a case the central cognitive process is that of *story construction*. The story model theory they propose consists of three

processes. First, jurors evaluate the evidence according to their story construction cognitive process. Second, they consider the alternatives by matching them to verdict categories (identity, mental state, actions, circumstances) and third, they reach a verdict based on the story which best fits those categories.

This can be summarized in the following figure from Pennington and Hastie (1993, p. 193):

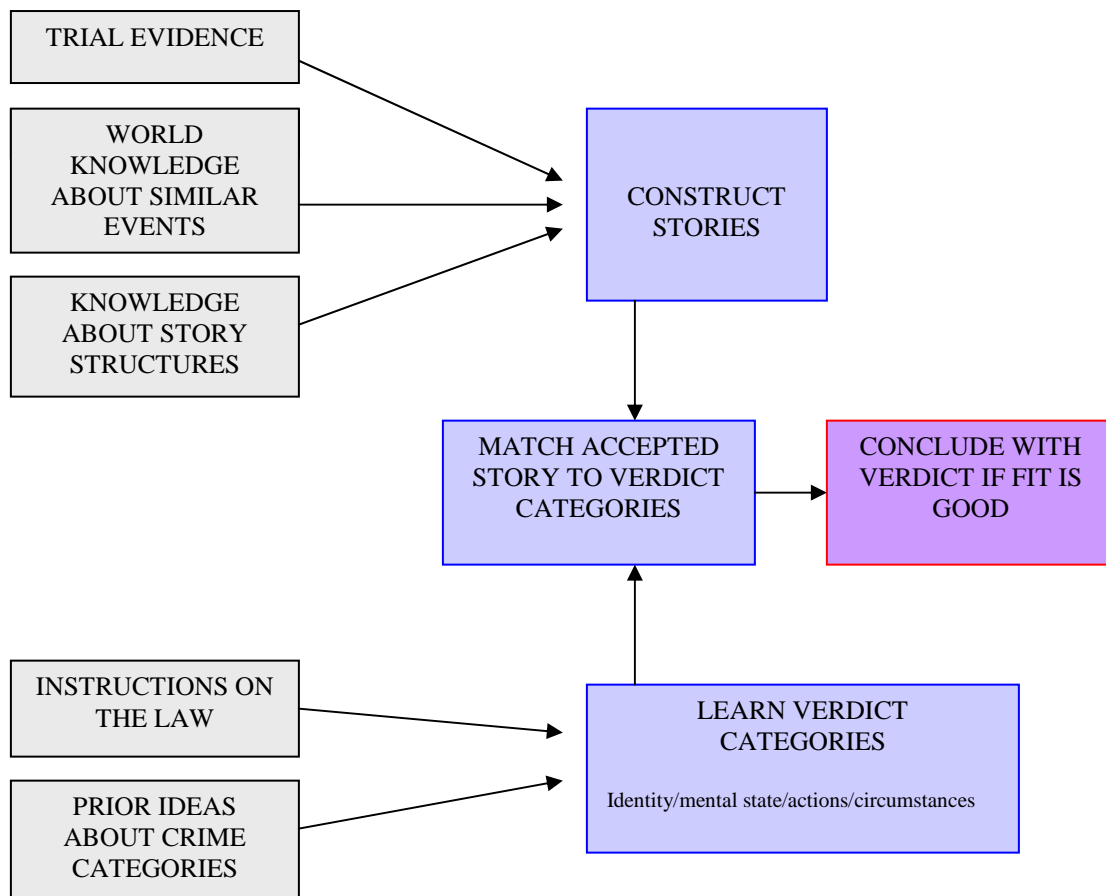


Figure 2.1. Pennington and Hastie's story model.

As we can see in the figure above, in order to construct the crime story, jurors draw on three types of knowledge, that of the evidence given in court, knowledge of the world, that is, about events similar in content to that of the trial, and knowledge about story structures, that is, their expectations of what makes a story complete.

Pennington and Hastie (Ibid.) explain that

this constructive mental activity results in one or more interpretations of the evidence that have a narrative story form. One of these interpretations (stories) will be accepted by the juror as the best explanation of the evidence. The story that is accepted is the one that provides the greatest coverage of the evidence and is the most coherent, as determined by the particular juror (p. 194).

In their process of constructing the story, “jurors engage in an active, constructive comprehension process in which evidence is organized, elaborated, and interpreted by them during the course of the trial” (p. 194). The story is then matched to verdict categories, based on the instructions on the law and crime categories, and if the fit is good a verdict is reached. This decision will be based on the certainty principles of coverage, coherence, uniqueness and goodness-of-fit.

Bennett and Feldman (1981), in their account of cognitive story construction by the jury, claim that what makes a story convincing is its coherence and not so much facts such as truth, evidence and how it is told. In their understanding, jurors weigh the elements in the story in terms of “the fit of the symbolized element into the larger structure” (p. 113). A story should contain: setting, concern and resolution, which would roughly correspond to Labov’s (1972) structure of the narrative of orientation, complicating action and resolution. Jackson (1995) adds that during a trial what the jury observes is the speech behaviour of the participants in the courtroom, especially of witnesses and counsel. He observes that the jury have then to make sense of this speech behaviour and that “in so doing, they will inevitably make use of narrative typifications not only of who speaks how, but also of who speaks truly, and when” (p. 160).

In De Fina’s (2000, p. 134) view, the model of storytelling is important because it can establish, negotiate and modify social roles, what social psychologists, anthropologists and linguists related to “the expression of identity”. The storytelling model makes it



possible for people to present themselves in certain roles as characters in “storyworlds”.

By doing so, it is possible for them to negotiate social relationships and images, as well as to express and transmit social values.

Even though Bell’s (2002) findings are applied to the study of the media, his observations are of relevance here. He argues that “we as human beings make sense of random experience by the imposition of story structures” (p. 207). According to him, the notion of story is common to every society and that it is through story structures that we make sense of the world, which is shaped by the stories we hear throughout our lives.

### **2.3.1. Narrative conceptualisation: an analytical approach**

In order to be able to carry out the analysis proposed in this study, a brief discussion on the definitions of narrative is in order. Labov and Waletzky (1967) and Labov (1972, 1997), in their well known study, defined minimal narrative as “a sequence of two clauses which are temporally ordered and contain a single temporal juncture” (Labov, 1972, p. 361). Their detailed analysis of narratives of personal experience indicated that narrative clauses are confined to the recapitulation of past events by means of simple past and historical present only. In other words, narrative will be the recapitulation of past experiences which are in accordance with the temporal sequence of the events themselves. They do not consider modals, future, negatives and hypothetical structures as head of verbal phrases that indicate temporal juncture; neither is subordination an indication of narrative construction of past events in their terms, even though it may be a recapitulation of past experience.

Although their study provides a comprehensive analysis of clause types and their disposition in the overall narrative structure, the narrative clauses description refers

basically to the events represented as the Complicating Action. The clauses surrounding the Complicating Action, in their analysis, could take many forms and verb tenses and would be considered as Abstract, Orientation or Evaluation. This view would raise the issue of what constitutes narrative and what is to be considered as non-narrative at all.

In face of the narrow approach to narrative proposed by Labov and Waletzky (1967) and Labov (1972, 1997), I have decided to adopt a wider view on narrative in order to accommodate the complex structure of courtroom questioning. Among several approaches to narrative structure, I chose to align with Abbott's description of narrative.

Abbott (2002) describes narrative as the representation of past events, consisting of story and narrative discourse. This can be visualised as follows:

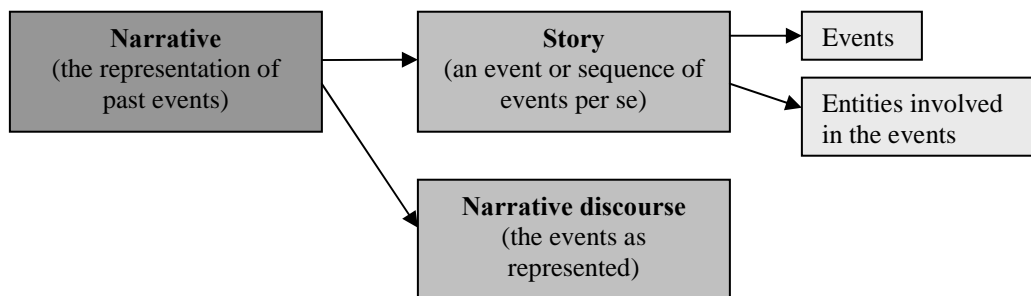


Figure 2.2. Layout of narrative elements as proposed by Abbott.

Abbott (Ibid.) describes story as the event or sequence of events per se. The story has two components: the events and the entities involved in the events. He adds that another common component in stories is the setting. In his description of the components of narrative, he defines narrative discourse as the story events as actually represented.

In my view, the definition proposed by Abbott (Ibid.) seems to be more adequate to the description of courtroom questioning, since a trial implies that some events happened

in the past (story), and that that story is assembled during examination-in-chief and cross-examination (narrative discourse), which, in turn, constitute the case narrative.

## **2.4. Understanding the Criminal Process in the Adversarial Legal System**

In order to be able to provide a more comprehensive discussion of the Criminal Law process in England, I first present a brief introduction to the two legal systems used worldwide, so as to situate the British judicial proceedings. I carry on then to the discussion of the British Criminal Process proper.

### **2.4.1. The Adversarial and Inquisitorial Legal Systems**

There are two secular legal systems which have evolved into many variants around the world: 1) Roman Law, also known as the Inquisitorial system, which is found in much of continental Europe, East and South East Asia, Latin America, and parts of Africa and the Middle East; and 2) Common Law, also known as the Adversarial system, originated in England and Wales and can be found in England and Wales, North America (Canada and USA), much of Australasia (Australia and New Zealand) and Oceania, South Asia, Singapore and Malaysia, and parts of Africa and the Middle East (Gibbons, 1999). Judicial decisions, collected in reports, make up what is known in the common law system as case law (Maley, 1994). It “adheres to the principle of *stare decisis* (the decision stands), meaning that judges are bound to follow the decisions made by other judges in similar cases.” (Mikkelsen, 2000, p. 26).

In both the adversarial and inquisitorial systems, the opposing counsels are charged with fighting for their clients. The institutional role of the judge in each system is different, though. In the inquisitorial system, the judge is in charge of the enquiry from the beginning, saying what he/she wants to know, and a dossier is compiled. Only the information contained in this dossier is allowed to be disclosed in court and no new information can be added as the trial proceeds. Counsels present the facts of the case in the most favourable light to their clients, but they are not permitted to withhold facts that are material to a case (Machado, 1998). Questions posed by defending and prosecuting counsels to witnesses/defendant are usually mediated by the judge, and he/she may inquire into the presentation of the case and its underlying facts. This gives the judge the ability to control the case. In both systems defendants, plaintiffs and witnesses are not allowed to volunteer information and are constrained to answer questions only.

Since the British Court system follows the Adversarial system, I will now concentrate my discussion on the characteristics of this system. According to Devlin (1979, p. 54, in Maley 1994), “the oral trial is the centrepiece of the adversary system”. In the adversarial system “the judge and jury are arbiters: they do not pose questions and seek answers; they weigh such material as is put before them, but they have no responsibility for seeing that it is complete” (Devlin , 1979, p. 54, in Maley, 1994, p. 33). This difference is crucial to understand what happens in adversarial trials. The adversarial system concentrates very much on the trial itself. It means that the verdict will depend very much on the evidence given by witnesses, on the skill and persuasive abilities of lawyers and on how witnesses perform in the witness box. According to Stone (1988, p. 4):

The adversarial system of court procedure consists of a conflict between the prosecution and the defence, unlike a state-directed enquiry into facts. The parties decide what evidence to collect, present, agree or dispute. The court’s role is limited to judgement. The advocate’s partiality contributes to impartial justice. The Bar and Bench cooperate to this end.

In the adversarial system, the opposing counsels have primary responsibility for controlling the development and presentation of the lawsuit. The counsels have no duty to volunteer facts that do not support their client's case. The judge acts as a referee, seeing that the rules of civil procedures are followed.

The British system of justice depends very much on finding what happened through the courtroom testimony of witnesses. Facts are elicited by counsels during the questioning of witnesses/defendant/plaintiff. Witnesses are asked to present either facts or opinions. Most witnesses are fact witnesses. Any person can testify as to facts; only an expert may present opinions. One of the rules of evidence in the adversarial system (which will be discussed later on) is that the presentation of any evidence should be done orally; otherwise it is not admissible. The only evidence that is admissible is that which can be orally attested in court. Furthermore, these rules regulate the oral proceedings, in that they "stipulate what must be said, what may be said and by whom and in what order" (Maley and Fahey, 1991, in Machado, 1998).

In the course of courtroom questioning, counsels and witnesses/defendant/plaintiff speak directly to each other. However, they do not speak exclusively to each other. As Drew (1985, in Machado, 1998) states "the jury is the non-interactive participant, the indirect but crucially important target of the exchange of meanings". In sum, in the adversarial system, "the trial is a contest between two equal sides who try to persuade a neutral referee (consisting of the judge, who enforces the rules of procedure, and the jury, which decides on the facts)" of their case (Mikkelsen, 2000, p. 26). The jury's sympathy for one or for the other side of the story is an important determinant of their verdict (Machado, 1998).

### 2.4.2. The Criminal Law in England and Wales

In a simplified way, the diagram shows the possible events following an arrest (Longman Dictionary of English Language and Culture, 1993):

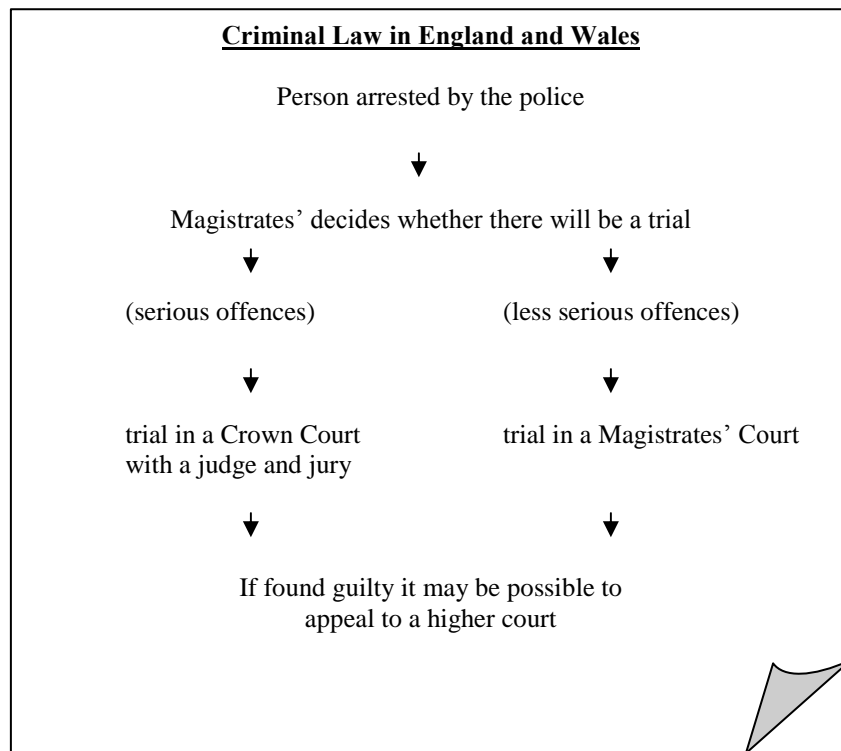


Figure 2.3. Criminal Law in England and Wales.

In order to understand the case brought to court and what is being talked about, it is important for the ones unfamiliar with criminal procedure to have an overview of what happens since a suspect is being detained. The criminal procedure presented briefly above, is now described in more detail by Fafinski and Finch (2007, p. 75), as follows (with slight adaptations):

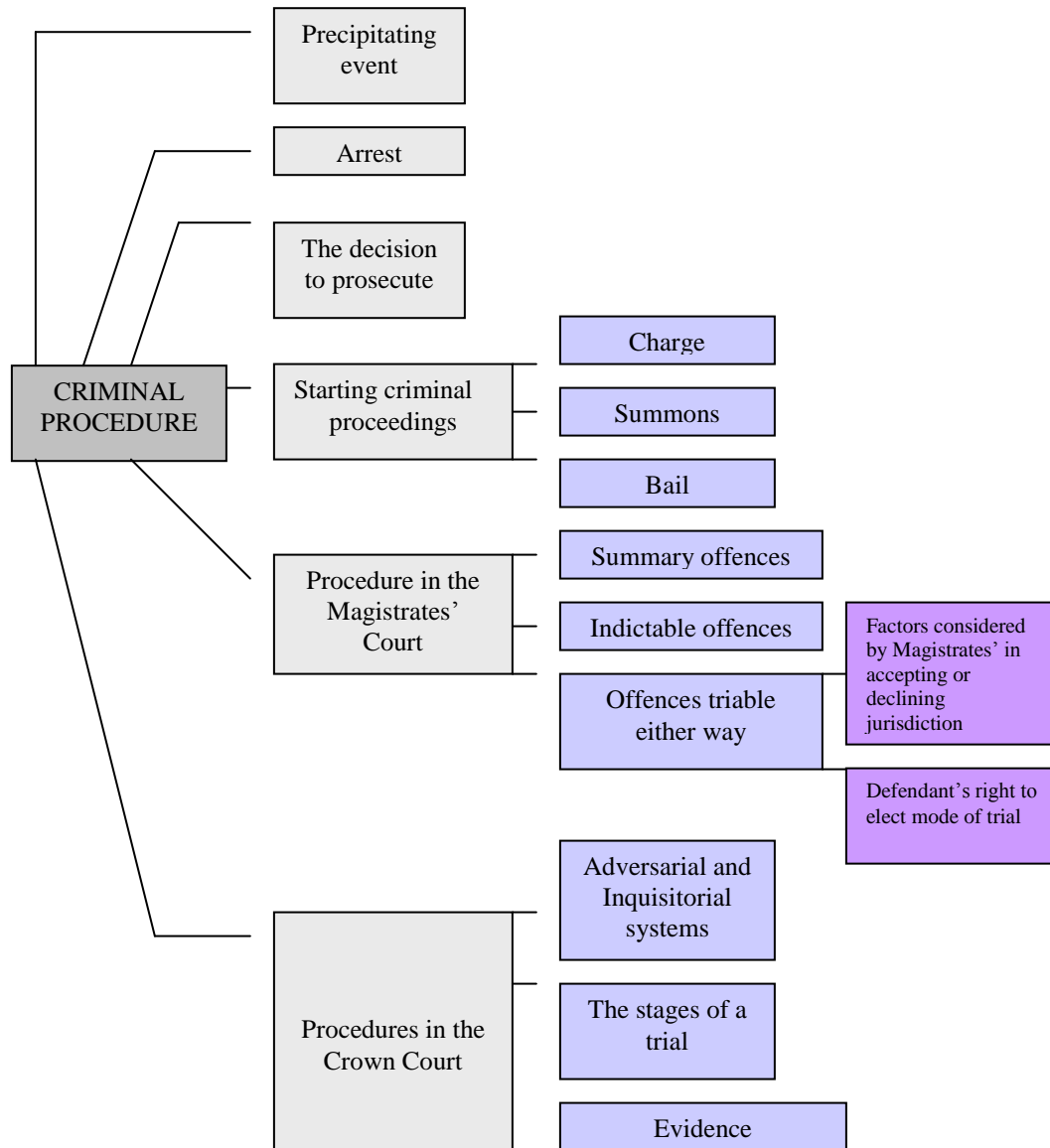


Figure 2.4. Criminal Procedure.

Everything between an arrest and a possible conviction or acquittal is regulated by criminal procedure. After an event happens (reported by the victim or the public), the police can decide either to take or not to take action. The arrest can be carried out with or without a warrant. The statutory power of arrest in England is provided by the Police and Criminal Evidence Act 1984 – PACE. Following the arrest, the suspect is taken to a police station, charged and can be either released on bail or taken to the Magistrates' Court.

Criminal offences reaching the Magistrates' court are classified into three categories. *Summary offences*, which can only be tried in the magistrate's court. However, the defendant has the right to appeal to the Crown Court against conviction or sentencing. Summary offences are, for example, petty motoring offences and common assault. Summary offences are defined by statute. If the statute does not state a penalty for conviction on indictment, then the offence is taken to be a summary one. (Fafinski and Finch, 2007; Martin, 2001; and Cavendish Lawcards Series – English Legal System, 2004).

*Indictable offences* are of the most serious nature and can only be tried at the Crown Court, on indictment. According to Darbyshire (2001), “the word ‘indictment’ means a document which sets out in writing the charges against the accused person. Each separate charge in the indictment is called ‘count’” (p. 127). Indictable offences are, for instance, rape, robbery and murder, and the case analysed in this study falls into this category.

The third category is *offences triable either way*. Statutory offences (indictable offences) are tried on indictment only but are usually tried either way, that is, the case can be heard either in the Magistrates' Court or at Crown Court. Offences triable either way are listed in s. 17 of Schedule 1 of the Magistrates' Courts Act 1980 (Fafinski and Finch, 2007), but some of them are: handling stolen goods, obtaining property by deception, theft, burglary and indecent assault.

This can be summarized as follows (Fafinski and Finch, 2007, p. 90):



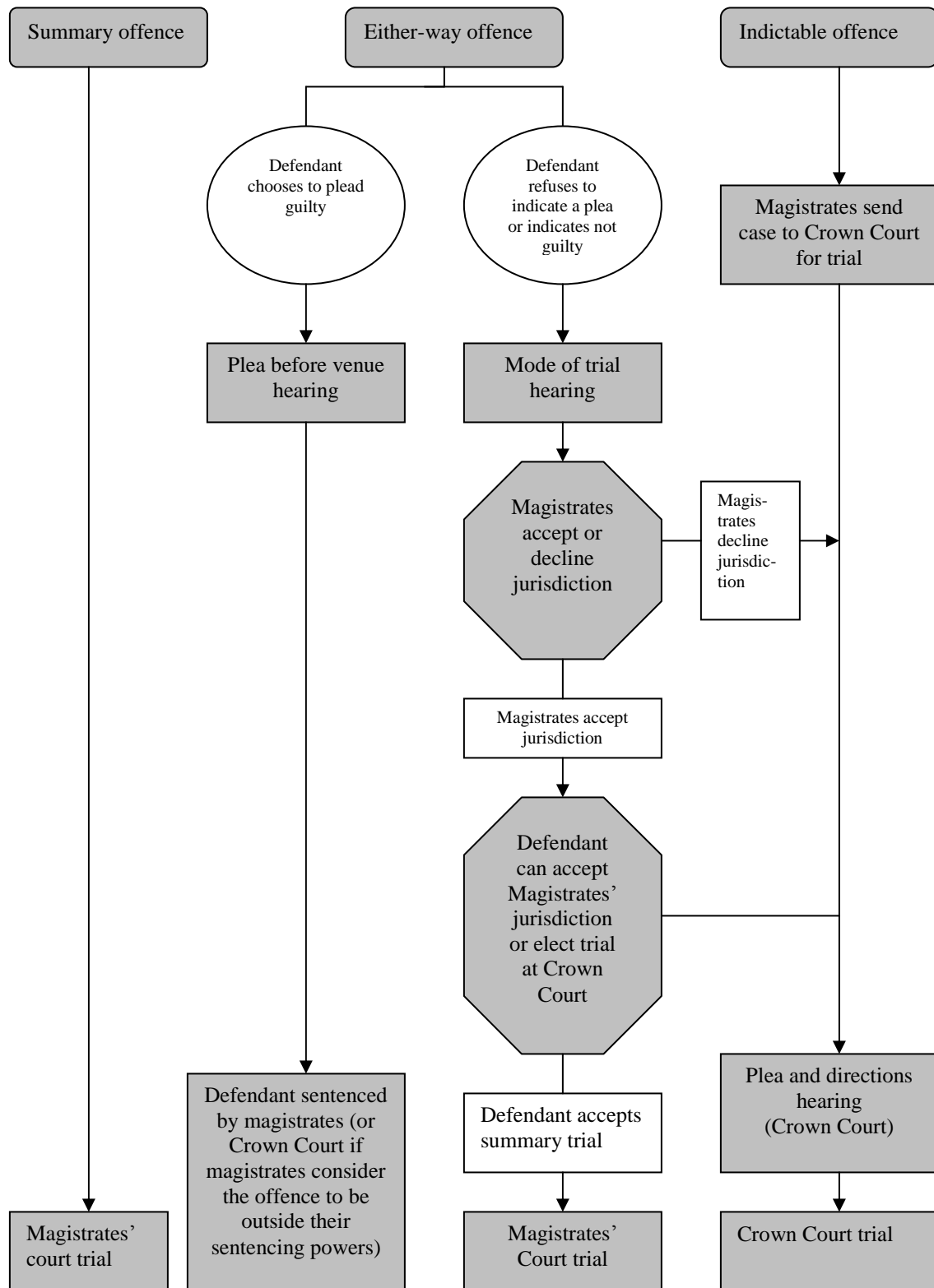


Figure 2.5. Types of offences.

In sum, a magistrate decides whether there is enough evidence for the case to go to court. If it is a serious case, the person is then sent to the Crown Court, where there will usually be a trial with a judge and jury. If the crime is not so serious, the person is heard in the Magistrates' Court. If the person is found guilty, s/he may appeal to a higher court.

The case analysed in this study was at first sent to Crown Court, as an indictable offence. Later on it went to appeal. The British Appeal System will be discussed next.

In the American courts, trial by jury is still the norm for civil and criminal cases. In Britain, however, civil and even criminal cases are rarely tried by jury nowadays (Heffer, 2002). Most cases are decided in the Magistrates' Court, and the ones which do go to the Crown Court, very few stand trial by jury. In the Crown Court defendants either plead guilty or not guilty at a hearing called the 'Plea and Directions'. If the defendant pleads guilty he/she is then sentenced by the judge or the case can be discontinued and the defendant discharged because the judge decides there is no sufficient evidence for a trial to take place. If the defendant pleads not guilty, a trial takes place.

#### **2.4.3. The British Criminal Appeals System**

A defendant normally retains the right to appeal against the decision in criminal as well as in civil cases. He/She can appeal once on issues of fact and several times on issues of law. There is, however, only one chance of appeal as of right and further rights of appeal will be determined by the statutory rules of appeal (Fafinski and Finch, 2007). As the case analysed here went to appeal from the Crown Court, as it seems, on grounds of law, I now present a diagram showing the courts in order of importance, with arrows representing the Appeals system (Longman Dictionary of English Language and Culture, 1993):

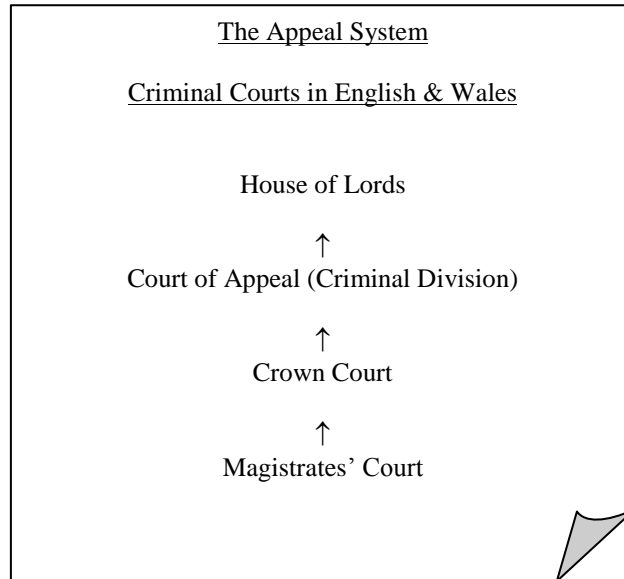


Figure 2.6. The Appeal System.

As we can see, the Magistrates' Court is the lowest Court in England and Wales, where less serious criminal cases are heard and decided. More serious ones as well as appeals from the Magistrates' Court are heard in the Crown Court. The Court of Appeal, also known as Appeal Court, together with the House of Lords, comprise the highest courts to which someone may take a criminal/civil case.

#### **2.4.4. Pre-Trial and Trial Processes**

Before discussing courtroom interaction, I briefly present Maley's (1994, p. 16) model of the structural and discourse situations in the processes of pre-trial, trial, and recording and law-making, so as to give the reader a clearer picture of the whole process:

DISCOURSE SITUATION			
Sources of law; originating points of legal process	Pre-trial processes	Trial processes	Recording and law-making
legislature/ (legislature/ subject)	police/video interview (authority/ subject, witness)	court proceedings examination, cross-exam., re-exam. (counsel/ witness)	case reports (judge/defendant, judge/other judges)
→	→	→	→
regulations, by- laws (authority/subject)	pleadings (lawyer/lawyer)	intervention, rules and procedures (judge/counsel) (judge/official)	
→	→	→	→
precedents (judges/defendants)	consultation (lawyer/lawyer) (lawyer/client)	jury summation (judge/jury)	
wills, contracts, etc (two parties)	subpoena, jury summons, (authority/ subject/witness)	decision (judge/defendant)	
↓	↓	↓	↓
WRITTEN TEXTS	SPOKEN AND WRITTEN TEXTS	SPOKEN TEXTS	WRITTEN TEXTS
	LEGAL DISCOURSES		

Table 2.1. Structural and discourse situations in trials and lawmaking.

We can see in Table 2.1 that before the trial proper, several discourse situations take place, for instance, police interviews and plea bargaining, contributing to the intertextuality which occurs during the trials, that is to say, the pre-trial and the trial processes are integral parts of the whole process as such. The pre-trial process is the basis for the trial proper. It is during the pre-trial process that police interviews and statements

are produced and they will then be used as part of evidence in court. It is also during the pre-trial process that pleadings take place, which will determine what will be taken into court by the parts, that is, defence and prosecution. At the end of the trial, after all evidence has been given, the judge presents his/her summation to jury, before they can present the verdict. A clear understanding of the process of pre-trial and trial in particular is paramount for the understanding of the evidential phase of the trial, which is of importance here since the present study will focus on the trial proceedings of examination and cross-examination of a defendant.

#### **2.4.5. The Courtroom**

As mentioned before, in the adversarial system, before a case can be decided, it must be argued in court. The courtroom role is to decide on issues concerning the legality of social behaviour. For most people, the courtroom is a strange setting. Many observers have seen trials as battles where two opponents fight each other. Maley (1994) claims that this observation about trials is possible because of the institutional structure of the adversarial system of common-law trial proceedings.

Various aspects of courtroom discourse and procedure have shown this discourse type to be like a highly constrained play, where the jury is the audience. In contrast to other discourse situations where the giver of information generally holds power, in this setting a witness does not (Lakoff, 1985, in Machado, 1998). Counsels are in control of topic management and turn-taking allocation (Maley, 1994) and witnesses are allowed to answer the questions only and cannot provide information which was not elicited by counsels.

#### **2.4.6. The Trial**

In this study I analyse the examination-in-chief and cross-examination of a defendant charged with having participated in a series of robberies. In order for us to understand the narrative put forward by both counsels during his examination, I proceed now to present the procedures followed during a trial.

Court cases in the English Legal System are adversarial and if a case goes to Crown Court, the stages of the trial<sup>2</sup> are as follows (Fafinski and Finch, 2007, p. 97):

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<sup>2</sup> Opening Speeches are also known as Opening Statements; Examination-in-chief is also known as Direct-examination; Closing Speeches are also known as Closing or Final Arguments.

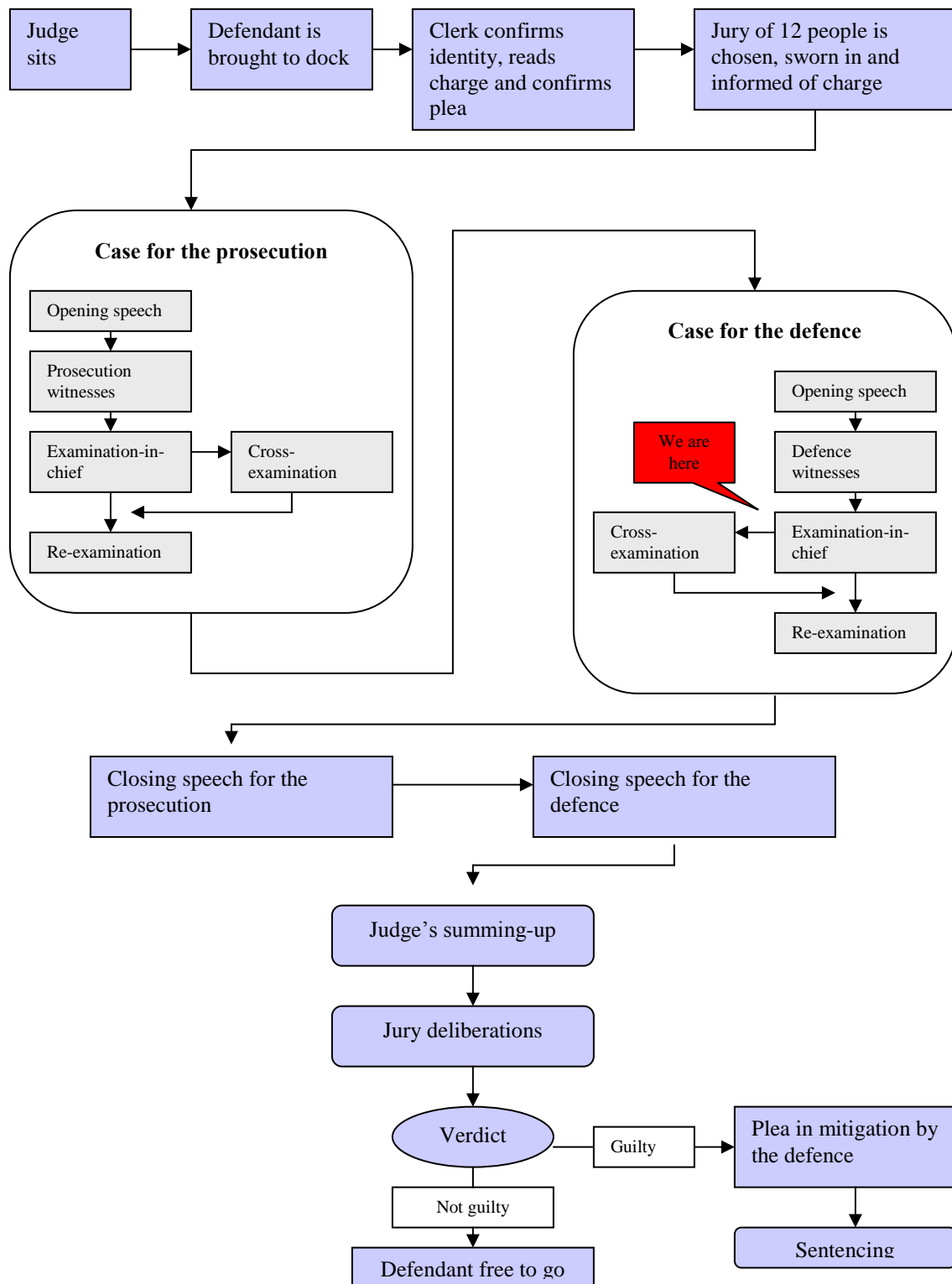


Figure 2.7. Procedure in the Crown Court.

Even though the figure above is self-explanatory, some further comments on the peculiarities of the legal procedure in the British Crown Court are in order. Unlike in most US jurisdictions, where lawyers can amply challenge potential jurors and consequently “design” their audience, in the English legal system, according to Juries Act 1974, both prosecution and defence can challenge up to three individual jurors without disclosing any reason. If they want to object to more than three jurors then reasons have to be stated. However, in the English legal system, either prosecution or defence rarely do challenge jurors. Names are randomly chosen from the electoral register for the area. The Juries Act 1974 regulates that a person to serve as a juror must be aged between 18 and 70, registered as an elector and must have been a UK resident for at least five years since the age of 13. Until recently some people used to have the right to be excused from the service. However, jury ineligibility was abolished by the Criminal Justice Act 2003, except for those people who have been convicted or served any custodial sentence (Martin, 2005).

Another difference between the English and the US practice is that the defence do not always make an opening speech and if they do, it usually comes right before the defence call their witnesses (Heffer, 2002). Moreover, if the defence decide to call the defendant to give evidence, it is done before calling all the other witnesses.

Especially important in this study is the understanding of the trial procedure order. The case is first introduced by the prosecution. The prosecution present the case in the opening speech and then call their witnesses to give testimony. The prosecution witnesses are subsequently cross-examined by the defence. When the prosecution finish presenting their case, the defence present theirs by giving an opening speech or by calling their witnesses directly. They are examined by the defence counsel and cross-examined by the prosecution. The defence aims are to either present an alternative version to the case



offered by the prosecution or to cast doubt on it, by challenging some of the evidence presented previously.

Thus, if we consider only the examination-in-chief and cross-examination of a defendant, which is the case in this study, the role of defence and prosecution is reversed. In the data analysed here, examination-in-chief is conducted by the defence and cross-examination is conducted by the prosecution. To understand this specific stage of the trial, we have to bear in mind that the prosecution have already presented their case in court. As said before, it is not always that the defence decide to call the defendant to give testimony, but when they decide to do so, the defendant is the first one to be called (before all other witnesses for the defence). In this way, the defence give the defendant the opportunity to “tell” his/her story.

When the defence call and examine the defendant there are several factors at play at that moment. First, the defence are answering the prosecution case, that is, the defence establish a dialogical relation between prosecution and defence cases, working on a very interesting type of intertextuality. Second, at the same time that the defence respond to the prosecution case, they are, by this very means, trying to either present the court with an alternative story or to deconstruct the story presented by the prosecution. Third, when the defence, in this case, examine the defendant, they are also anticipating possible facts on which the defendant will be cross-examined by the prosecution. In sum, in the data analysed in this study, while examining the defendant, the defence are responding to the prosecution case, presenting their own case and anticipating cross-examination (in order to minimise possible damage emerged from it or downplay possible confrontation by the prosecution). On the other hand, the prosecution, in the cross-examination, will try to deconstruct the defence version of the story presented in the examination-in-chief.

In the summing up, at the end of the trial, the judge instructs the jury on issues of the law, explaining to them that questions of law are to be decided by the judge and questions of fact are to be decided by the jury (Keane, 2006; Fafinski and Finch, 2007).

Since the case I analyse took place in the Queen Elizabeth II Crown Courts in Birmingham, England, where I also carried out some ethnographic research, I now present an illustration of their typical courts. The model I present here is taken from a leaflet (Visitors Information Pack, 2006) provided by the Birmingham Crown Court:

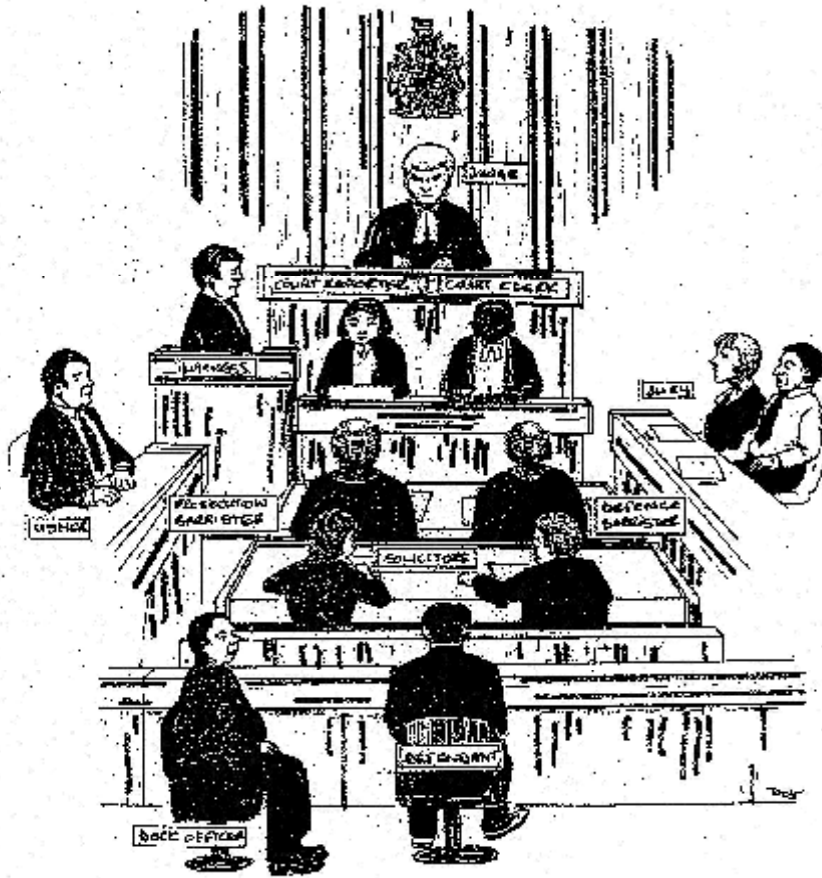


Figure 2.8. A Typical Crown Court in England.

### 2.4.7. Giving Evidence in Court

The Evidentiary Rules, which will be discussed later on, divide trials into two major sections. The table below is an adaptation from Maley (1994, p. 39):

	<b>PROSECUTION COUNSEL</b>	<b>DEFENCE COUNSEL</b>
<b>PROSECUTION WITNESS</b>	EXAMINATION-IN-CHIEF → (SUPPORTIVE)	CROSS-EXAMINATION (ADVERSARIAL)
<b>DEFENCE WITNESS</b>	CROSS-EXAMINATION ← (ADVERSARIAL)	EXAMINATION-IN-CHIEF (SUPPORTIVE)
	<b>PROSECUTION STORY</b>	<b>DEFENCE STORY</b>

Table 2.2. Examination-in-chief and Cross-examination.

Maley (1994, p. 39) explains that

the discourse structure of the trial comprises two distinct dialogic modes. There is a cooperative and supportive mode in examination in chief, and a combative and adversarial mode in cross-examination. The opposing versions of the story emerge from the different interactional contexts. Because the supportive cooperative mode offsets the adversarial, combative one, it follows that witnesses do have opportunities in direct examination to give their own version of events.

Broadly speaking, what happens in court is that during a trial witnesses and defendants are called to give evidence (testimony), that is, they are questioned by the prosecution and by the defence counsels. First, they are examined (direct examination/examination-in-chief) by the counsel who called them. Then they are cross-examined (cross-examination) by the opposing counsel. Should misunderstandings arise under cross-examination, the examining counsel may then choose to ‘redirect’ his/her own witness (re-examination). The processes of direct and re-examination are performed by the

same counsel and must adhere to the same rules of questioning (e.g. leading questions are allowed during cross-examination but not in direct and re-examination). As mentioned previously, after the prosecution have presented their case, then the defence may call their own witnesses to present an alternative interpretation of the facts.

The adversarial system of court procedure consists of a conflict between the and the defence. The parties decide what evidence to collect, present, argue or dispute. This system concentrates greatly on the trial itself. It means that the verdict will depend very much on the evidence given by witnesses, and on the skill and persuasive abilities of lawyers (Machado, 1998). The court's role is limited to judgement, and the verdict expresses a preference for one version of the facts over the other.

Before going on to further discussions, I would like to qualify the last part of Maley's (1994) quotation above, that is, when she claims that "because the supportive cooperative mode offsets the adversarial, combative one, it follows that witnesses do have opportunities in direct examination to give their own version of events" (p.39). Studies have shown that during the evidential stage of a trial, counsels maintain a tight control over the witnesses, even when direct examining them. This means that witnesses are very rarely allowed to tell their story on their own account.

By maintaining control over the witnesses, counsels (examiner and cross-examiner) are able to restrict what witnesses say, so that what they say is not only confined to what is legally relevant (adhering to one of the rules of evidence) but also corroborate the counsel's version of the story. For that reason, witnesses very often leave the courtroom feeling that they failed in giving evidence since they were not able to tell their story. This feeling of disappointment comes in part from the fact that what witnesses usually find

relevant when telling stories in everyday settings does not coincide with what is relevant in a legal case.

In a criminal case the burden of proof rests with the prosecution and the standard of proof is *beyond reasonable doubt* (Fafinski and Finch, 2007; Darbyshire, 2001). It is thus the prosecution's task to present the jury with a "most plausible" scenario, that is,

a narrative in which all the known facts ideally fit together to form a seamless whole in which the jury can believe, and which identifies the defendant as the only person who could have committed the crime, the prosecution story as the only way in which the crime could have taken place 'beyond a reasonable doubt' (Lakoff, 1997, p. 554).

The role of the defence, however, is "either to subvert the narratives of the prosecution or to establish credible alternative versions" (Harris, 2005: p. 237), that is to say, it is not up to the defence to replace the prosecution's story with another version; instead they only need to create doubt about its truth (Luchjenbroers, 1997).

The procedures in the examination-in-chief and cross-examination are regulated by legal rules which determine what to ask and how to put questions to the witnesses. Moreover, several lawyer-trainee manuals bring comprehensive instructions on how to carry out the questioning of witnesses in court (Napley, 2003; Evans, 1995a/b; Boon, 1999; Murphy, 1998; DuCann, 1993; Mauet, 1980; Munkman, 1991; Stone, 1988; Wellman, 1979).

#### **2.4.7.1. Examination-in-chief and Cross-Examination**

Even though examination-in-chief is also regulated by the rules of evidence and counsels keep control of what is being said by means of questioning strategies, the aim is for the story to be told naturally and spontaneously, so that the event which is being reconstructed by the evidence can be imagined vividly by the court. Counsels are advised in legal

manuals that they should use controlled questioning to guide the witness in the right direction without appearing to lead him/her. Stone (1988) observes that too much control in questioning may diminish a court's confidence in the forms of testimony, because they may lack realistic factual detail, colouring or personal involvement.

Those observations underline the fact that the court (especially the judge and jury) expect to hear a story or "the story" when sitting in a trial. Therefore, the more appealing, the more realistic, the more consistent to what we expect of a story to be, the more it corresponds to our world knowledge, the more acceptable it becomes.

Munkman (1991, pp. 41-43) suggests that the examining counsel follow some basic techniques<sup>3</sup> when questioning his/her own witnesses:

- a) *Guiding without leading*: One of the rules of evidence is that a counsel must not lead his/her own witness. The suggestion is then to guide the witness without leading him/her, that is to say, counsels are not to explicitly express which answer they expect from the witness, but should give clear indication of the point of evidence required.
- b) *Retaining control*: the testimony should be kept in the right direction, avoiding irrelevancies. Witnesses should not be allowed to give all the evidence in their own words, running the risk of missing important and relevant parts of it. However, questions such as "what happened?" and "tell us in your own words..." are very convenient in some phases of the questioning.
- c) *The right order and Thoroughness*: the advice here is to tell the story in the right order, preferably in a chronological order, so that the judge and jury can

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<sup>3</sup> The term *technique* is used in this study to maintain the terminology used by Munkman (1991), and many others in Legal Handbooks for inexperienced lawyers.

follow the evidence. He also suggests that every material detail must be brought out and each incident should be finished with before moving on to the next one.

- d) *Toning down weak points*: weak points in the evidence should be brought out in the examination-in-chief, “without undue emphasis, and toning it down as far as the facts allow” (p.44) to avoid more damaging effect if it is brought out during the cross-examination.

In sum, during examination-in-chief witnesses should be guided and controlled so as to provide the account required. The examination should be conducted preferably in a chronological order, and anticipate, and, as far as possible, play down damaging effects during cross-examination.

During **cross-examination** the keynote is to test the evidence given in the examination-in-chief. In greater detail, the aims of cross-examination are these (Munkman, 1991, p. 50):

- 1) *to destroy the material parts of the evidence-in-chief;*
- 2) *to weaken the evidence, where it cannot be destroyed;*
- 3) *to elicit new evidence, helpful to the party cross-examining; and*
- 4) *to undermine the witness or shake his/her credit.*

According to Munkman (1991) four are the main techniques of a successful cross-examination, namely, *confrontation*, *probing*, *insinuation* and *undermining* which can be used on their own or in combination. *Confrontation*, as the name says, consists of confronting the witness with damaging facts; *probing* consists of looking into facts in great detail in order to find flaws or inconsistencies. *Insinuation* is the building up of a different version of the evidence given in direct examination by bringing out new facts or



possibilities, and *undermining* is the technique of taking away the foundations of the evidence given previously by discrediting the witness.

#### 2.4.8. Rules of Evidence

The legal system has specific rules that govern language behaviour in the judicial system. These rules constrain the oral proceedings, in that they “stipulate what must be said, what may be said and by whom and in what order (Maley and Fahey, 1991, p. 3, in Maley, 1994, p. 33). The Rules of Evidence are fully listed in Appendix 2 of this study<sup>4</sup>.

Before discussing some of these rules, definitions of some legal terms are in order. Evidence is “the means, exclusive of mere argument, which tend to prove or disprove any matter of fact” (Rutherford and Bone, 1993) It is used by the prosecution to prove their case and used by defence to cast doubt on the prosecution’s presentation. Judicial evidence may be divided into three types: oral evidence (testimony), documentary evidence and real evidence. However, judicial evidence is normally classified as to the form they are presented in court as well as to their content. They can then be classified as *testimony*, *hearsay evidence*, *documentary evidence*, *real evidence* and *circumstantial evidence* (Keane, 2006; Hopkins, 2007).

*Testimony* is the oral presentation of witnesses; *hearsay evidence* is any statement other than one made by a witness in the course of giving his/her evidence in court, that is, statements that the witness heard but does not know to be true; *documentary evidence* is

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<sup>4</sup> The Rules of Evidence provided in appendix 2 were retrieved from an American Website. However, since the British and the US legal procedure are both under the adversarial legal system, the Rules of Evidence are fairly similar and the list serves as both an illustration and a general view of those rules. A good reference for

any document produced in court; *real evidence* is any material objects produced for inspection during a trial. Objects are usually accompanied by testimony so that identification, connections and significance of the object can be explained; and *circumstantial evidence* is the evidence of relevant facts, that is, evidence of facts relevant to the fact in issue or from which a fact in issue may be inferred. *Direct evidence* in criminal case is not very often available. It is the testimony that relates to the direct perception of a fact in issue (for example: ‘I saw him stab his wife with a knife’), and in this case the witness is called eyewitness.

One of the aspects to be considered in court is Relevance and Admissibility. According to Hopkins (2007, p. 3), “relevant evidence is that which makes the fact requiring proof more or less probable”. Three types of evidence are admissible (Hopkins, 2007, p. 3-4):

1. Facts in issue: these are the facts which the prosecution have to prove in the course of the trial.
2. Circumstantial evidence: these are facts relevant to a fact in issue and from which inference is drawn as to prove a fact in issue.
3. Collateral facts: they usually relate to the witness rather than to the facts in issue, for example, questioning on the witness’ good or poor vision.

Evidence not classified into one of these three categories is considered to be *irrelevant* and *inadmissible*, that is, only evidence relevant to the case can be presented.

The Rules of Evidence, for example, stipulate the Mode and Order of Interrogation and Presentation. They clearly state that “the court shall exercise control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth [...]” (Rule 611, appendix 2).

They also determine the scope of cross-examination, stating that “a witness may be cross-examined on any matter relevant to any issue in the case, including credibility” (Rules of Evidence, appendix 2). According to this rule, cross-examination is usually limited to matters which were testified to during examination-in-chief only. However, leading questions<sup>5</sup> are permitted during cross-examination.

Due to the constraints imposed by the Rules of Evidence, Lay Witnesses and Expert Witnesses, for example, have different participation roles, which can be summarised as follows (Stygall: 1994, p. 194):

<b>Category</b>	<b>Primary Role</b>	<b>Secondary Role</b>	<b>Constraints/Limits</b>
<b>Lay Witnesses</b>	Answering Q's	Listening to Q's	No hearsay No conclusions No speculation Repetition barred Required to answer Answering the exact Q
<b>Expert Witness</b>	Answering Q's Giving 'expert' opinion	Listening to Q's	Hearsay if in expertise Conclusions if in area Required to answer Repetition barred Answering the exact Q

Table 2.3. Participation roles of Lay Witnesses and Expert Witnesses in court.

Table 2.3 illustrates the constraints and limits imposed on Lay and Expert Witnesses, and as Maley (1994, p. 33) puts it, “if the common law trial is a trial of strength like a joust or a battle, it is a battle fought not with swords but with words.” He adds, “the oral trial is the centrepiece of the adversary system and the rules which regulate

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present study was mostly based.

<sup>5</sup> Leading questions are defined by Boon (1999, p. 91) as “questions which either, by their form, suggest the answer (for example: ‘You were in the shop that day, weren’t you?’) or which take certain facts for granted which the witness has not actually sworn to (for example, asking: ‘What did the accused do in the shop?’- when the witness has not said that the accused was in the shop).

the oral proceedings are essentially oral: they are the rules of evidence and other exclusionary rules which constrain the semiotics of the situation.”

The analysis carried out in the present study has as its foundation and point of departure comprehensive understanding of the courtroom as a specialized setting which is mainly regulated by the Rules of Evidence, briefly discussed in this section. I now proceed, as a matter of exemplification, to provide the reader with a summary of the oral interaction during a trial between counsels, judge, witnesses/defendant and jury.

## **2.5. Context of Situation: The Courtroom**

We can say that the ideational, interpersonal and textual meanings of this discourse type are strictly constrained. The situation is essentially hierarchical. Even though the judge intervenes minimally through the examination process, he/she has the greatest power (Maley, 1994).

### **2.5.1. Definition of context of situation**

Halliday and Hasan (1989) see a text as an interactive event, a social exchange of meanings. For them,

the text is an instance of the process and product of social meaning in a particular context of situation and the context in which the text unfolds is encapsulated in the text through a systematic relationship between the social environment on the one hand, and the functional organisation of language on the other (p. 12).

They propose two questions: 1) how can we characterise a text in its relation to its context of situation?, and 2) how do we get from the situation to the text? According to

Halliday and Hasan (Ibid.), there are three features in the context of situation: field, tenor and mode. These features serve to interpret the social context of a text:

1. **Field** refers to the social activity in which the language is being used and what is being talked about;
2. **Tenor** concerns the roles and relationships of interlocutors; and
3. **Mode** refers to the channel of communication and how language is organised.

Maley (1994, p. 15) explains that in the following manner:

What is claimed is that the nature and purpose of the ongoing activity (field), the nature and speech roles of the participants (tenor) and the type of channel for communication (mode) are related to the meanings typical of the discourse type. That is to say, in all social situation-types, certain categories of meaning are functional, serving to express matters of content, the field; the dynamics of social interaction and point of view, the tenor; and the processes of text production and organisation, the mode. These related meanings or functions of language are the *ideational*, the *interpersonal* and the *textual* respectively.

*Field*, *tenor* and *mode* are very broad, general categories of context which affect our language choices because they reflect the three main functions of language: the *ideational*, the *interpersonal* and the *textual*.

### **2.5.2. Context of Situation: Field, Tenor and Mode in the Data**

Since the three features of the context of situation proposed by Halliday and Hasan (1989) will enable us to give a fine characterization of the nature of this social event, I now present a description of the courtroom questioning of a defendant under this perspective, as a general picture. The analysis is as follows:

Examination-in-chief	Cross-examination
<p><b>Field:</b> highly institutionalised event; the questioning of a defendant in a criminal trial in the Crown Court, consisting of the counter-presentation of the case (defence version of the story) so as to persuade the audience (judge and jury) of their side of the story; participants (questioner-responder) share a convergent aim: to establish their position as the defence of their own version of the case.</p>	<p><b>Field:</b> highly institutionalised event; the questioning of a defendant in a criminal trial in the Crown Court, consisting of the reaffirmation of the presentation of the case (prosecution version of the story) by discrediting the opposing presentation during examination-in-chief aiming at persuading the audience (judge and jury) of their side of the story; participants (questioner-responder) do not share a convergent aim: the questioner's aim is to discredit the opponent's position, the responder's aim is to try and maintain his yet established position.</p>
<p><b>Tenor:</b> <u>Participants:</u> questioner/responder; court (judge/jury); opposing counsel. <u>Relationship between participants:</u> <i>questioner/responder:</i> hierarchical and cooperative interaction; <i>judge/questioner:</i> hierarchical; <i>judge/responder:</i> hierarchical (occasional interventions of judge in the questioning for clarification of some points); <i>jury/judge:</i> share responsibility for judgement – verdict and sentencing respectively, jury as silent participant; <i>opposing counsel:</i> not hierarchical, adversarial.</p>	<p><b>Tenor:</b> <u>Participants:</u> questioner/responder; court (judge/jury); opposing counsel. <u>Relationship between participants:</u> <i>questioner/responder:</i> hierarchical and uncooperative interaction; <i>judge/questioner:</i> hierarchical; <i>judge/responder:</i> hierarchical (occasional interventions of judge in the questioning for clarification of some points); <i>jury/judge:</i> share responsibility for judgement – verdict and sentencing respectively; jury as silent participant; <i>opposing counsel:</i> not hierarchical, adversarial.</p>
<p><b>Mode:</b> constitutive language role: oral interaction between questioner/responder in question/answer format; <u>medium:</u> spoken, formal language; dialogue; public act.</p>	<p><b>Mode:</b> constitutive language role: oral interaction between questioner/responder in question/answer format; <u>medium:</u> spoken, formal language; dialogue; public act.</p>

Table 2.4. Field, Tenor and Mode in the data.

The ideational, interpersonal and textual meanings of the courtroom questioning discourse are highly constrained by the rules of evidence. Even though both examination-in-chief and cross-examination in the data analysed are concerned with the same *Field*, that is, the questioning of a defendant in a criminal trial, their aims are divergent. While during examination-in-chief the defence counter-present the case putting forward an alternative version of the story so as to convince the court, during cross-examination the prosecution try to discredit the evidence given in examination-in-chief in an attempt to reaffirm their case presented at the beginning of the trial. The prosecution aim is also to

convince the court of their version of the story. Moreover, defence counsel and defendant share the same objective and work cooperatively, whereas the conflict between the prosecution's and the defendant's objectives leads to a very uncooperative interaction.

Regarding *Tenor*, the situation is essentially hierarchical. Even though the judge intervenes minimally throughout the examination process, he holds the greatest power. The oral interaction is basically carried out by the questioner and responder, being that occasionally interrupted by the judge so as to clarify certain aspects of the evidence. In the questioning situation (examination-in-chief and cross-examination), counsel and defendant speak directly, but not exclusively, to each other. Although the jury are the non-interactive participant, they are the indirect target of the exchange (Drew, 1985). It is this interaction that makes it possible for the defence and prosecution counsels to tell their version of the story for the sake of the jury. In addition to this, since the British legal system follows the Adversarial System, the interaction between counsel and defendant is also an indirect interaction between the two counsels.

Concerning *Mode*, the relevant facts are elicited by the questioning of the defendant. By using the question/answer adjacency pairs, both counsels are also in control of topic management. The whole interaction is done orally, since the rules of evidence require that all evidence (testimony) should be oral so that it can be tested. The interaction is carried out in formal language and it is a public act.

## 2.6. Summary

My attempt in this chapter was to describe the criminal legal process so that one can have a fine picture of what happens in the courtroom, as well as to introduce the theoretical background for this study. In my view, only by understanding the criminal legal process can we fully describe the variables on which a trial is depended. In a dialogical way, the same variables that define the courtroom setting are highly affected by the legal process proper.

Because of the confrontational nature of the courtroom interaction, the trial has been frequently described as a battle. However, the discursal nature of court proceedings has led to another metaphor, that of trial as storytelling. The pioneering work in this area dates back to 1981 and was led by Bennett and Feldman. They claimed that in a criminal trial a jury interprets the evidence presented to them by the prosecution and defence and constructs a story. The story presented by each side through witnesses and defendants can only be understood if it reflects or opposes previous proceedings of the trial.

According to Maley (1994, p. 34) “the jury accepts from the opposing versions or stories of the event placed before them a single story which fits with their everyday knowledge or what people are likely to do and should do.” The trial as storytelling has proved to be a very valuable metaphor and has served as a framework which has been used in several analyses of courtroom language. In Maley’s (1994, pp. 34-35) words:

It has the value of focusing attention on the discursal strategies of all participants, but particularly those of counsel and witness; the ways in which both counsel and witness exploit the discursal resources available, given the discursal constraints laid upon them, and the inequalities of power that these represent.

As presented in this chapter, the aim of a trial is to resolve a dispute between two versions of reality presented and argued through language. In the British adversarial legal



system, truth is expected to emerge from opposing representations of reality. However, what the jury, judge and lawyers have access to is not the facts themselves. Rather, they are presented, through language, with multiple representations of those facts. However, it is not possible, especially for the jury, to separate what happens from the way it is put in words before them (Stubbs, 1998). According to Gibbons (1999, p. 158), “the legal system construes external reality in a unique way and legal practice is a distinct micro-culture.”

The storytelling metaphor is of vital importance to the description of courtroom discourse since the different structures for giving evidence create interactional contexts in which the stories can be told (Maley, 1994). Examination-in-chief differs considerably from cross-examination, in that the patterns of question and answer have different functions. In examination-in-chief the exchanges are cooperative and the lawyer and witness/defendant work together in building up the story they are presenting. In this mode of questioning leading questions are not permitted and evidence is usually elicited in a chronological order.

In cross-examination, however, the exchange is very uncooperative. Leading questions are allowed and since the aim of cross-examination is to discredit the evidence given during examination-in-chief, the counsel controls the sequence of evidence given to a great extent. The questions during cross-examination are rarely about intentions and thoughts. Rather, they are concerned mostly about verifiable matters. Especially in this mode of interrogation, hearsay is inadmissible.

According to Maley (1994), while during cross-examination the counsel may focus attention on the actions of the defendant/witness, during examination-in-chief the story may focus on establishing motivations, and exploring the circumstances and reasons of actions. Besides, during these two modes of questioning, brevity and relevance are

institutional requirements, which are established and reinforced by the rules of evidence which, consequently, constrain the versions of the stories presented in court.

To sum up, it is mainly through the strategic use of questions and answers that stories are constructed in the courtroom. To understand this process of discursive construction, it is essential that we understand the context in which questions and answers take place.

## CHAPTER THREE

### ANALYSIS AND DISCUSSION OF FINDINGS

Almost every criminal trial is essentially a conflict between two stories about a human event, not a legal debate. The story should seem vivid and real and should not resemble a business or police report. For an advocate, her/his witnesses are the principal medium by which s/he tells her/his story. (Stone, 1988, p. 120)

Language will be used strategically by counsel to convince or persuade judge or jury or magistrate to believe their version of the facts: 'Truth or reality becomes the story which is accepted by the jury. Obviously, it may or may not correspond to the events in the extra-court context' (Maley and Fahey, 1991, p. 5, in Hale and Gibbons, 1999, p. 205).

The final stage of preparation [of a case] is to turn the theory of the case into a story; to build it up [...] from the bare legal bones to a fully dressed narrative. (Boon, 1999, p. 64)

In 1988 two defendants were charged with robbery and the case was brought to the Queen Elizabeth II Law Courts in Birmingham, England. A year later, on the 1<sup>st</sup> and 2<sup>nd</sup> December, 1987, one of the defendants is questioned by the defence and cross-examined by the prosecution. The case I analyse in this study is the story of a defendant charged with participating, together with another man, in a series of robberies, the last one being of an attempted armed robbery where a man was shot. This is the story in his trial, but is this his story?

In order to refresh our memory it is important to remember that in criminal law, a case is brought to Court by the prosecution by means of an indictment. The prosecution outline the case during the opening speech and summarise the evidence that will be used. It

is at this stage that the prosecution inform the court of the *burden* and *standard* of proof, that is, in criminal cases the *burden of proof* lies on the prosecution and the *standard of proof* is *beyond reasonable doubt* (Fafinski and Finch, 2007).

This established order of trial procedure, which counsels cannot vary, impose that the first version of the case story is that the defendant is guilty, even though, in criminal law, defendants are to be presumed innocent until proven guilty by confession, plea bargain or trial by jury. Wagenaar (1993, p. 57 in Jackson, 1995, pp. 394) argues that

[t]his order of presentation of the hypotheses of guilt and innocence has an impact upon the formation of the court's conviction, because the evaluation of a first hypothesis renders the acceptance of alternative hypotheses less likely (cf. Koehler, 1991)".

According to Jackson (1995, p. 398), the story told in the opening statement of the prosecution "frames the entire trial", in that it is hard for a first impression to be changed. Wagenaar (Ibid.) emphasises that "once a hypothesis has taken root it becomes difficult to change it [...] In other words, one needs more evidence to change a conviction than to form it". Loftus (cited in Wagenaar, 1993, p. 57, in Jackson, 1995, p. 395), calls that the 'belief perseverance' effect, that is, "after a first opinion has been established by eyewitness testimony, subsequent discrediting information has little or no effect".

The order of presentation of the case stories also impose what evidence is to be selected. According to Wagenaar (1993, p. 51f, in Jackson, 1995, p. 181), the selection of the evidence is "indictment-driven", that is to say, the court decide whether the indictment (the prosecution story) is plausible or not, and in case it is, the evidence is then selected to corroborate it. In fact, one could say that a trial is not the search for the truth but the search for admissible evidence.

The stages of the trial up to the moment of examination-in-chief and cross-examination which were presumably followed in the defendant's case analysed in this study can be depicted in the following figure.

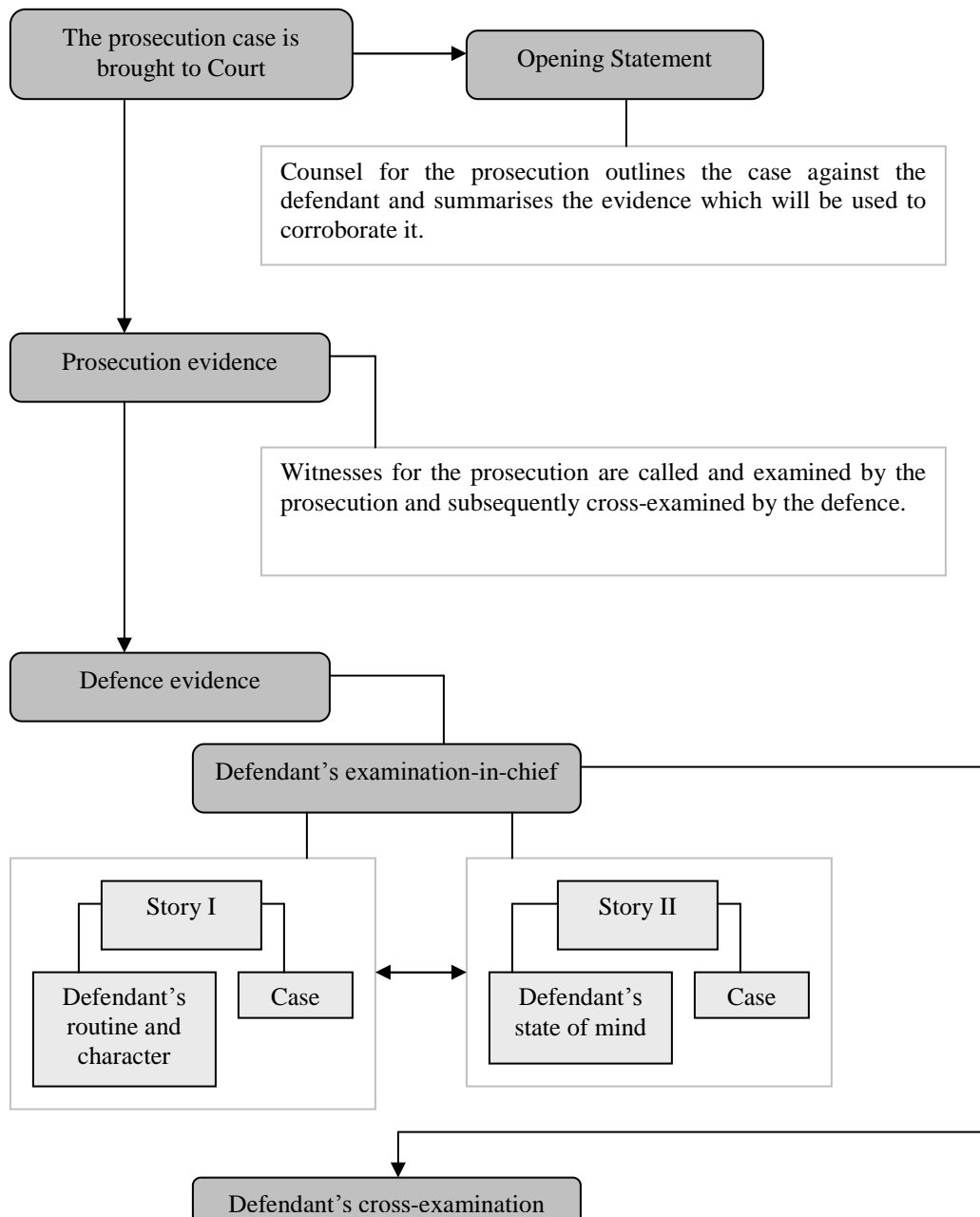


Figure 3.1. Stages of the trial.

After presenting the case in the opening statement, the prosecution presumably called their witnesses and took their evidence. The witnesses for the prosecution were then presumably cross-examined by the defence. It is only after the prosecution present their case that the defence case can be put forward. The defence can start by making an opening statement in the same way as the prosecution, even though I have no information that may confirm it was done in this case. Witnesses for the defence are then called. As mentioned previously, when the defence decide to call the defendant to give evidence on his/her behalf, he/she is called first. The defendant was examined by the defence, allowing for the defence's alternative version of the case to emerge. The structure and content of the defence examination-in-chief will be explained and analysed shortly. The defendant is subsequently cross-examined by the prosecution and those two modes – examination-in-chief and cross-examination of the defendant – comprise the data for this study. The other stages of the trial will not be considered in the present analysis.

I proceed now to present the case. In order to have a general view of the trial case, I outline below the main dates of the trial case, the presumed indictment and the facts which were being disputed. Since the data collected comprises the giving of evidence of a defendant during examination-in-chief and cross-examination and no other contextualising information was made available, the information displayed here was gathered from the transcripts I have of those two modes of questioning. It is also important to make it clear that the analysis carried out in this study is totally based on the transcripts. As previously stated, my approach is to let the data tell me what to analyse and in what manner. Firstly I present the dates of examination-in-chief and cross-examination in the trial and the dates of the crime facts as follows:

<b>Dates</b>	
<b>Examination-in-chief and cross-examination of defendant (trial):</b>	1 <sup>st</sup> December, Thursday and 2 <sup>nd</sup> December, Friday, 1988.
<b>Day of arrest:</b>	27 <sup>th</sup> November, Friday, 1987.
<b>Robbery 1:</b>	12 <sup>th</sup> November, 1987 (Thursday).
<b>Robbery 2:</b>	Crime committed at about 5.05 in the evening, two days before Robbery 3.
<b>Robbery 3:</b>	25 <sup>th</sup> November, 1987 (Wednesday). Crime committed at about 12 o' clock (lunchtime).

Table 3.1. Dates cited in the trial transcript.

When telling a story, we do tend to recapitulate the past events in an orderly manner, being that of either following chronological sequence or presenting the events in flashbacks. Either way, whatever the techniques we choose to make use of when telling a story, reference to time is what makes us to reconstruct the events in a way that makes sense to us. We will see along the present analysis that events in a trial are not always depicted as they happened. Rather, they are elicited by counsels according to their relevance to the case. Thus, keeping a clear record of time reference helps us make sense of the case as a story. In more details, the case brought to court can be summarized as:

<b>Facts</b>	
<b>Robbery 1:</b>	At Golden Sun, on Old Street in <u>Hockley Jewellery Quarter</u> . 12 <sup>th</sup> November (Thursday). Co-defendant told a Rover car was used in the robbery. Rings stolen from Golden Sun.
<b>Robbery 2:</b>	At Park Drive in the <u>Wirley Birch</u> estate. Robbery took place at about 5.05 in the evening.
<b>Robbery 3:</b>	<u>Post Office</u> attempted armed robbery at <u>Windmill precinct</u> (Smethwick). 25 <sup>th</sup> November, Wednesday. Lunch time, 12 o' clock. A couple of days after Wirley Birch robbery. A Ford Cortina car was used in the attempted robbery (plate no. HSS 171V). Elderly Indian gentleman shot.

Table 3.2. Presumed Indictment

As access to the indictment was not possible, I infer from the data that the facts of the case mentioned above may correspond to the indictment and counts. Considering that they may not correspond exactly to the indictment and counts, at least Table 3.2 gives us relevant detailed information so that we can have a clear picture of the events in place and time.

I display next the main facts which I assume are the facts which are disputed by the parties, that is, by prosecution and defence. They are:

	<b>Facts disputed</b>
<p><b>Defence:</b>  <u>Main line:</u> Innocence of defendant (Defendant pleads not guilty of all charges).</p> <ol style="list-style-type: none"> <li>1. Rover car was hired to be used to go on a trip to Derby.</li> <li>2. Defendant said he had four rings by the 12<sup>th</sup> November.</li> <li>3. a) Defendant said he part-exchanged a BMW car for the Cortina he owned in the morning of 25<sup>th</sup> November (Wednesday – 2 days before arrest).  b) Defendant said garage did not have log book when he bought Cortina and no documents were signed.</li> <li>4. Defendant said he did not leave anything in the Rover car when it was stolen.</li> <li>5. Defendant said he was denied a solicitor at first, no interviews took place at the Police Station (he refused to give any interview without his solicitor present) and that documents of interviews and his signature were forged. He denies having confessed about the crimes, having given co-defendant's name and address and informing whereabouts of the gun. The only interviews he admits were the ones with his solicitor present.</li> </ol>	<p><b>Prosecution:</b>  <u>Main line:</u> Prove guilt of defendant</p> <ol style="list-style-type: none"> <li>1. a) Rover car was kept to be used under false plates on the robbery. b) Defendant lied to company about reason for hiring the car.</li> <li>2. Prosecution said defendant had four rings when he was arrested (three of them of identical description to ones stolen from Golden Sun).</li> <li>3. a) Prosecution said defendant returned the car the day after the robbery (on Thursday), the day before arrest (Friday – 27<sup>th</sup> Nov.). Invoice from garage dated 26<sup>th</sup> Nov. saying defendant swapped the BMW for the Cortina. b) Prosecution said the person who bought the Cortina car gave false name and address and that the garage did not have the top copy of the document any longer endorsing that log book would follow later on.</li> <li>4. A plastic bag from Harveys shop was found in the Rover car. Defendant's sister worked in that shop at the time.</li> <li>5. Prosecution puts forward that defendant had confessed his involvement and that he had informed the Police about co-defendant's name and address as well as the whereabouts of the gun.</li> </ol>

Table 3.3. Facts disputed.



Disputed facts give rise to the two (or more) master narratives which are put forward during the trial by the prosecution and defence. The narrative of the defence is guided by the not guilty assumption of the facts, while the prosecution base their narrative on the notion that the defendant is guilty of the charges, and proof has to be established.

It is important to have in mind that the crime story is presented in two conflicting ways during a trial. If we go back to the procedure in the Crown Court explained in chapter two and also briefly outlined previously in this chapter, we see that the prosecution start the trial by outlining their case in the opening statement. They then call witnesses who may corroborate their version of the facts. The defence, in a second stage of the trial, present their version of the same story, portraying the 'facts' in a different perspective. Or perhaps, I would say, in the case analysed here, the defence present a counter parallel story of routine and regularity to the robbery story presented by the prosecution, and introduce a subsequent story of the defendant having had documents fabricated and his signature forged by the police while he was in custody.

However, in the analysis of this data, that is, the evidence of a defendant during examination-in-chief and cross-examination, we have to bear in mind that the prosecution have already presented their case and called their witnesses, who were then cross-examined by the defence. When the defence introduce their case at least three points are being made. First, by calling the defendant to the stand, the defence introduce their case and allow him to tell his story (or the story prepared to be put forward during the trial) to the court. Second, by the very means of introducing their case, the aim of the defence is also to counter-argument the case put by the prosecution. Third, during the examination-in-chief of

the defendant, the defence also try to anticipate possible damaging facts for their case which may be raised during cross-examination.

Soon after the defendant has been examined by the defence counsel, he is cross-examined by the prosecution. As in the adversarial legal system evidence should be presented orally so that it can be tested by the opposing counsel, the prosecution task is then to discredit the evidence given by the defendant during examination-in-chief as well as to reaffirm points in that evidence which would corroborate the prosecution case.

My interest in this study is to investigate how defence and prosecution go about constructing their versions of the robbery story (or rather, robberies) by examining and cross-examining the defendant, respectively, which, they hope, the judge and jury will identify as the best representation of the facts. Besides having to present a coherent narrative of the facts, the legal assumption is that their versions of the story will have to fit the legal definition of robbery.

According to Section 8(1) of the Theft Act 1968 (in Cavendish Lawcards Series – Criminal Law, 2004, p. 83),

a person is guilty of robbery if he steals and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.

For a person to be convicted of a crime, as mentioned previously, the following elements must be proved: the *actus reus* and the *mens rea*. In the Cavendish Lawcards Series (2004) cited above, they explain that the *actus reus* consists of all elements of the crime except for the defendant's mental state, corresponding to the equation: "actus reus = definition of the offence – mens rea" (p. 3). *Actus reus*, in Jackson's (1995, p. 510) terms, is "typically, some combination of act, consequence and circumstance", that is to say, once

the *actus reus* has been identified, it is usually further analysed in terms of conduct, circumstances and consequences. *Mens rea* is the mental components of a criminal offence and refers to the state of mind of the defendant, such as intent, knowledge or recklessness. It is the role of the prosecution to prove these two elements beyond reasonable doubt.

Before starting the analysis proper, it is also important to recall (see chapter two for a more comprehensive discussion on the subject) that during a trial two layers of discourse take place: first, the trial itself; and secondly, the case which is being tried (Jackson, 1995; Hale and Gibbons, 1999; Gibbons, 2003). These two layers intersect constantly, and can be depicted in the following figure:

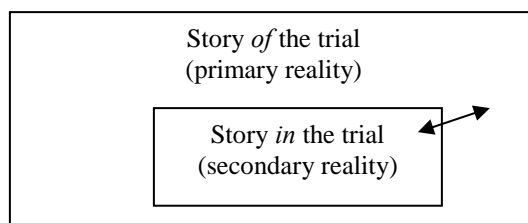


Figure 3.2. The two layers of stories in the court.

Jackson (1995, p. 160) states that “[t]he very telling of the stories is also a form of human action” and explains that the story *of* the trial corresponds to actions and events in the trial process, while the story *in* the trial refers to the events brought to court from the outside world. The terms story *of* the trial and story *in* the trial correspond to the terms *primary reality* and *secondary reality* (Hale and Gibbons, 1999; Gibbons, 2003) respectively.

Even though Jackson (1995) and Hale and Gibbons (1999) tried to describe both layers, distinguishing one from the other, this distinction is not clear-cut. While, for example, questions asked during the examination of witnesses are referred to (Hale and

Gibbons, 1999) as belonging to the sphere of the primary reality (story *of* the trial), they also may contain substantial evidence as to the secondary reality (story *in* the trial). One may also assume that the strategies used by counsels during their questioning of witnesses are part of the story *of* the trial. However, a detailed analysis indicates that some of those strategies are intrinsic to the content of the story told in court. Moreover, the ultimate goal in a trial is to convince the judge/jury that the story *in* the trial fits the legal requirements of the story *of* the trial. Despite the difficulty in always being able to make a clear distinction between the two layers, and despite the fact that my focus of interest is on the story *in* the trial, I will be pointing to one or the other along the analysis herein.

### **3.1. ANALYSIS: EXAMINATION-IN-CHIEF**

#### **3.1.1. The narrative structure in examination-in-chief**

As already discussed, studies have shown that some of the elements that Labov and Waletzky (1967) and Labov (1972, 1997) claim constitute a narrative may be found when describing a trial as a whole (e.g. Cotterill, 2000), or when applying them to examination-in-chief, in particular (Harris, 2001, 2005; Heffer, 2002). I agree that the narrative elements described by Labov and Waletzky (Ibid.) and Labov (Ibid.) may be encountered only if one describes the trial in a very general view without going into the peculiarities of a deeper linguistic analysis. In that case, a trial structure may resemble the elements proposed by Labov and Waletzky (Ibid.) and Labov (Ibid.), as described below (adapted from Cotterill, 2000):

Abstract	=	Opening statements
Orientation	=	Opening statements
Complicating Action	=	Witness questioning
Evaluation	=	Closing arguments
Resolution	=	Verdict
Coda	=	Sentencing/Release

Table 3.4. Trial stages and Labov's (1972) narrative components mapped onto them.

I also argue that even if small chunks of courtroom questioning can display some characteristics of narrative in Labov and Waletzky's (Ibid.) and Labov's (Ibid.) definition, applying it to the entire questioning is extremely difficult, as explained below. Moreover, even though the evidence of a defendant may resemble a narrative of personal experience, the description of the structure of a narrative as well as Labov's definition of narrative do not seem totally appropriate in the analysis of courtroom questioning.

Even though the definition of narrative proposed by Labov and Waletzky (1967) and Labov (1972, 1997) seemed to be too narrow to describe the data with precision, "a sequence of two clauses which contain a single temporal juncture" was frequently found during examination-in-chief. Some of them adhere to the definition of a minimal narrative, as the example shows:

Defence counsel:	Where did you <u>leave</u> the car when you <u>went</u> to do that shift?
Defendant:	Well, I <u>went</u> to work. At dinner time I <u>went</u> to Ladywood to see a friend, I think it was Morrow Street. I <u>parked</u> the car facing Rushton Street which is across [missing word??] Street West.

(Transcript, page 3)

We can see that in the example above, there are temporal junctures both in the defence's as well as in the defendant's turn, the clauses are temporally ordered and the verbs are in the simple past, one of the requirements established by Labov. There are also instances where a longer stretch of text can be found. For example:

Defence counsel:	Can you remember why?
Defendant:	Well, I had seen him at work. I <u>met</u> him at work, we got talking, I told him my address and he said he lived in Handsworth. That morning I was going into Handsworth, I do not think I was working. I <u>opened</u> the front door to

come out and he was just about to knock the door. I told him I was going to pass this, this is Driving You and he asked me if I could give him a lift into Handworth as it was not far from where he lived.

(Transcript, pages 2/3)

Despite the fact that there are several verbs in the simple past, in Labov's definition, it would constitute only a minimal narrative, having *met* and *opened* as heads of the two main clauses. All the other verbs, including *told* and *said*, are not considered by Labov as part of the temporal juncture (they are not 'action' verbs). The past participle *had seen* in the first clause, according to Labov, does not relate to the temporally ordered events of the ongoing narrative. Even when the eliciting question of 'what happened' was found, the account given was still limited. See the example:

Defence counsel: What happened on the Thursday?  
 Defendant: My girlfriend went into hospital to have the operation. I dropped her off at the hospital, Kings Norton or something around there. I think it was about eight o'clock in the morning, it can be a bit later. I could not pick her up that afternoon, I think she got a taxi back to my mother's.

(Transcript, page 10)

Since modal verbs are also not part of the temporal sequence of the narrative, this chunk of text consisted of three independent clauses, having the verbs *went*, *dropped off* and *got* as their heads. The other clauses are either elaboration or evaluation of what was put forward.

In the following example, we can see that the defendant is giving a longer account of the facts:

Defence counsel: What did you notice when you approached your car?  
 Defendant: [O]As I approached the car, the back tyre was flat, completely flat. I had a feeling someone had messed with the car. I had only had it a day, if that. I had a feeling after two days someone had messed with it. [CA]I walked over to the car, opened the door. I thought well, I will fill it up round the corner to see if it is punctured. I sat in the car and started the engine. I looked up. I see a Montego. *I do not know whether it was an estate.* I saw a Montego come round the corner, pick up some speed which made me look. I heard the speed of the car swerve into the middle of the road. Two

officers jumped out with guns and said, "do not move, armed police". [R]I froze, I was shocked, it never happened to me before, I did not know what to do.

(Transcript, page 11)

This stretch of text exemplifies what Labov defines as narrative and also allows us to demonstrate that when dealing with small portions of the questioning, the elements of the narrative can be roughly singled out. In this stretch we have Orientation, the first clause; Complicating Action and Resolution. The underlined clauses refer to the Evaluation and the italicised ones to some kind of elaboration, which is a term proposed by Harris (2001, 2005).

Narratives which take longer than just two or four turns to be accomplished are also available in the data, for example:

- Defence counsel: What happened?
- Defendant: Well, I had already seen the BMW, it had been there maybe a week, maybe a bit less, I had already seen it and I decided I liked the car. I had problems with the Cortina during this, before the part exchange took place, the gearbox went, there was also a very small hole in the petrol tank.
- Defence counsel: You managed to trade it?
- Defendant: I beg your pardon?
- Defence counsel: To trade it in.
- Defendant: Yes, I did, I managed to trade it in.
- Defence counsel: You got the other one out?
- Defendant: For the BMW, yes.
- Defence counsel: You heard what the proprietor of the garage said?
- Defendant: Yes.
- Defence counsel: He thinks you took that one away, the BMW, while you still had the Cortina.
- Defendant: No.
- Defence counsel: So you had them both out at the same time?
- Defendant: What had happened is I took the Cortina back and then I got the BMW out.
- Defence counsel: Was there anything to pay?
- Defendant: There was. We haggled a little over the price. He wanted, if I remember rightly, £50 on top for the BMW but he had not got any of the papers, log book, MOT, things like that. I was not prepared to give him the full

whack and not have any document or anything myself. We **agreed** between us I would go back on the Friday and he reckoned then he would have the log book and everything else for the car. I **drove** the car back home within minutes.

Defence counsel: **Did you try** it before accepting?

Defendant: Yes, I **had driven** it before.

Defence counsel: **Did you try** it?

Defendant: Yes, I **did**. I **said** I **had turned it over**, I **had seen** it moving before, I **had seen** the garage man testing it before.

Defence counsel: On the earlier occasion when the gearbox **had gone** on the Cortina, **had you had to pay** to put that right?

Defendant: Yes, it **cost** me 25 pounds.

Defence counsel: **Did you take** it for a spin or **go** straight home?

Defendant: Well, I **took** it to **get back** to my house. Instead of going straight up the Birchfield Road I **took** it across the island too. It is like a block, you get a reasonable drive in that. I **took** it that way and round the back of the flat where I live.

Defence counsel: What time **did you get back in**?

Defendant: About twenty to quarter to eleven, it was not long after I **left** the flat, it is not far from where I lived.

(Transcript, pp. 6/7)

This exemplifies two points in the present analysis. First of all, it points to the complexity of analysing the questioning of the defendant in terms of the narrative proposed by Labov, in that most of the verbs in this stretch are not in the simple past. Second, if we are to analyse courtroom questioning we ought to consider that other verb tenses may also represent narrative of events and that even when verbs occur on their own, along several turns, they do relate in time to other verbs (actions/events) in the account. That is, the example above illustrates the fact that instead of letting the defendant tell about the events in long turns, it takes several turns for the narrative to be elicited.

Obviously, we do find sequences of temporally ordered clauses with simple past as their head, and we do find that there are traces of the elements of narrative proposed by Labov along the entire examination-in-chief. We can see, for example, that in the beginning



of the examination-in-chief the introductory turns can be identified as the Orientation of the narrative. Of course, we may also find other clauses during the examination which function as Orientation as well. I also have pointed out that some stretches of texts narrate some of the events of the story and, therefore, can be identified as Complicating Action and Resolution and that there are also clauses functioning as Evaluation and Elaboration (category proposed by Harris, 2001, 2005).

However, the identification of sequences of clauses containing temporal junctures and the identification of some of the elements of narrative as Labov describes them, are not enough to account for the way the story is put forward by defence and prosecution counsels. There are also large portions of the questioning that do not fit Labov's description of narrative. Other portions may be identified as Orientation, Elaboration, Evaluation or even as being non-narrative at all (see Georgakopoulou and Goutsos, 2000, 2004 for a discussion on narrative and non-narrative modes); and the difference between what would be Orientation, Evaluation or a non-narrative stretch of text is still controversial.

Instead of applying the structure of narrative proposed by Labov in order to check its fitness to courtroom questioning, the trial and error approach to my data led me to the conclusion that the best way to approach it was to depart from the data and see how it was organised in a way that is possible for a story to be told.

As a tentative analytical approach, I started my analysis by assuming that a narrative does not need to be confined to the recapitulating of past events by means of sequences of clauses temporally ordered, having as their heads simple past, past continuous or historical present only. My understanding is that a story is equally narrativised by means of other forms of verb tenses, including past participle, as well as passive voice, hypothetical and

subordination structure. My aim was merely to widen the spectrum of possibilities, so that other forms of narratives could also be considered and accommodated.

The assumption that when examining witnesses a story is being told and the sense that there is a narrative structure being constructed in their telling of that story is confirmed in the present analysis. Throughout the examination-in-chief of the defendant, the counsel constantly signals to the defendant, and consequently, to the jury, that they have to keep up the story. There are several linguistic markers which are employed by the counsel so as to keep a chronological, spatial and topical track of their account. Some instances of this framing of the narrative found in the examination-in-chief are as follows:

- |   |
|---|
| <ol style="list-style-type: none"> <li>1. <i>Before</i> you lodged in prison, awaiting your trial, [...] (Transcript, p. 1)</li> <li>2. Yes. <i>In last October time</i>, did you [...] (Transcript, p. 2)</li> <li>3. <i>On Monday or following the weekend</i> did you [...] (Transcript, p. 3)</li> <li>4. Mr. Flynn, that was <i>back in October</i>. (Transcript, p. 4)</li> <li>5. <i>In the course of the next month</i> did you ever [...] (Transcript, p. 4)</li> <li>6. <i>Returning to the jewellery quarter</i>, did you [...] (Transcript, p. 4)</li> <li>7. <i>In the weeks before</i> the Post Office attempted robbery at Windmill Precinct, did you [...] (Transcript, p. 4)</li> <li>8. <i>The day of the Wirley Birch robbery</i> it [...] (Transcript, p. 5)</li> <li>9. <i>A couple of days after</i> the Wirley Birch robbery there was [...] (Transcript, p. 5)</li> <li>10. There was <i>Thursday the day before</i> and this robbery where the elderly Indian gentleman was shot was <i>on the Wednesday</i>. [...] (Transcript, p. 5)</li> <li>11. <i>We will return to the cars in a moment</i> but you must complete your movements that day. (Transcript, p. 6)</li> <li>12. <i>When he came out about twelve-ish</i>, when did he go? (Transcript, p. 8)</li> <li>13. <i>Let us go back</i> and deal in a little more detail with the Cortina motor car. (Transcript, p. 8)</li> <li>14. We have given that evidence already, do you see, can you remember now, what happened on the Thursday? Well, maybe <i>before we get to the police station</i> you must deal with the rings that you had. (Transcript, p. 9)</li> <li>15. Mr. Flynn, <i>let us go back now to pick up the story. On the day after</i> you took delivery of the BMW. (Transcript, p. 10)</li> <li>16. <i>On the way to the police station</i>, [...] (Transcript, p. 12)</li> <li>17. Well, you arrive at the police station <i>at ten minutes to two</i> [...] (Transcript, p. 12)</li> <li>18. Well, <i>the record continues</i> to the effect that you then spent [...] (Transcript, p. 14)</li> <li>19. [...] <i>That takes us through to ten past one in the morning</i>. (Transcript, p. 16)</li> <li>20. <i>The next entry</i> as we go through the record [...] (Transcript, p. 16)</li> <li>21. [...] <i>Going on through the day</i> we can see [...] (Transcript, p. 17)</li> <li>22. Mr. Flynn, <i>that completes the Saturday</i> and we now come to <i>Sunday</i> [...] (Transcript, p. 19)</li> <li>23. I think we can get on quite quickly now. [...] and then <i>next day, Monday the 30<sup>th</sup>, at before midday</i>, [...] (Transcript, p. 20)</li> <li>24. <i>After that, going on in time, at five minutes to five</i>, you arrive [...] (Transcript, p. 20)</li> <li>25. <i>The story then goes on to the 1<sup>st</sup> of December</i>. [...] (Transcript, p. 21)</li> <li>26. <i>Let's complete the picture because the story then goes quiet until</i> [...] (Transcript, p. 21)</li> </ol> |
|---|

Table 3.5. Linguistic markers as narrative framing.

These linguistic markers are used in the examination-in-chief to accomplish, at least, three basic functions. First of all, by indicating change of topic and situating the discourse in time and space, the defence counsel sets a general framework for the development of the narrative. Secondly, many of these markers are also used so that the counsel is able to recycle information previously mentioned. Thirdly, these markers also serve the function of summarising previous testimony.

I now turn to the analysis of the way the story is structured in the examination-in-chief.

### **3.1.2. Topic Analysis**

The first step taken in order to describe how defence and prosecution present their stories was to investigate what topics were chosen in their respective accounts of the facts during their questioning of the defendant. I assumed that the topic analysis would allow me to determine which topics were brought up, in which order and how they were dealt with in both examination-in-chief and cross-examination.

As pointed out earlier in this study, we may have to assume that both prosecution and defence have outlined their versions of the story during the opening statements at the beginning of the trial and, therefore, put forward the skeleton of their main narrative. A total of 525 turns were identified during the examination-in-chief of the defendant, being 263 questions posed by the defence counsel and 262 answers by the defendant. One turn by the defence counsel was merely related to the courtroom procedure and the defendant provided no answer to that.

To reach the topic distribution during examination-in-chief and cross-examination, I first counted all defence and prosecution turns. Next, I divided them according to the topic they were referring to and counted them again. Then I described each topic section in terms of content. Since most counsel's turns consisted of multi-layered and complex structure, in this part I opted for providing only the main content of the turn (as a summary), excising what related to courtroom procedures. Even though I tried to keep the description of each turn as closely as possible to what was said, it is obviously not the turn itself. My objective in describing each turn was merely to have a general view of the coverage of the topic. The original content within topic is available in the transcript provided in the appendix.

Generally speaking, the topic distribution during examination-in-chief is shown in table 3.6. Column one shows the topic, column two the number of turns dealing with that topic, and in column three I present the description of content within the topic.

TOPIC	No.	DESCRIPTION OF CONTENT
Name	2	
Address	1	
Occupation	3	Defendant was asked about his occupation, place of work and how long he had that job.
Family	3	Defendant was asked about his partner and child and how old the child was.
Job (+work shifts)	4	Defendant was asked when he started his job and his work shifts.
Relations to co-defendant	2	How long he had known co-defendant.
Origin	3	Asked about his country of origin.
Rover car	13	Asked about: purpose of hiring car/regularity of hiring cars/ how long he intended to have it/extending the hire with that lady, what the procedure to extend the hire, theft of the car, day of theft, co-defendant riding in the car and reasons for that, where he had left the car on Friday.
Trip to Derby	1	Asked about: defendant going off to Derby or Sheffield that weekend.
Rover car	9	Asked about: not taking the car back on Monday; his work shift/where he left car/car keys/defendant driving that car again or paying for it/car having proper number plates when left parked.
Hockley Jewellery Quarter	5	Asked about: going to Hockley Jewellery Quarter in the course of next month/where he bought ring for wife/going there with co-defendant and purpose.
Relations to co-defendant	2	Asked about: becoming friends with co-defendant/going to his house.
Leaving anything inside Rover car	1	Asked about: leaving anything in the Rover, before he reported it stolen.

Hockley Jewellery Quarter	2	<u>Returning to Jewellery Quarter</u> . Asked about: going at any time on a ring snatch raid with co-defendant/finding out at any time that co-defendant had done that.
Robbery at Windmill Precinct	5	Asked about: been to Windmill Precinct in the weeks before the Post Office attempted robbery/being a born and bred Erdington man/how far Erdington is from Smetwick/never been to Smetwick before.
Wirley Birch robbery	2	Asked about: being one of two men seen hanging about near the post office at Wirley Birch/committing the robbery.
Gun	1	Asked about: possessing a double barrelled shot gun.
Wirley Birch robbery	8	Asked about: being informed when arrested that the robbery had taken place at 5.05pm/his whereabouts at that time/how often visit his mother/where she lives/him giving the police her address/why the defendant remembers being at his mother's at that time.
Robbery at Windmill Precinct (+ his whereabouts Wednesday/cortina car)	38	Asked about: the defendant taking part in the robbery at Windmill Precinct, at lunchtime, days after the Wirley Birch robbery/his whereabouts/how he spent Wednesday/when he was due to work/time leaving the flat to part exchange a car/how far the garage was/how long it takes to get there/the precise time of leaving the flat/what he did then/how he was at the garage/what happened in the garage/trading the car/evidence given in court saying that defendant still had the Cortina car when he took the BMW away/confirming that evidence or not/having anything to pay/trying the car before accepting it/paying for a gearbox of the Cortina in earlier occasion/taking the car for a spin or going straight home/what time he got back in/who was in the flat when he got back/the defendant expecting a visitor that day/who that visitor was/reasons for the visit/when the work in the kitchen to be done/what time the visitor left/where the visitor lived/going straight back home after giving the visitor a lift/what happened then.
Cortina car (further details)	14	Asked about: why going to Car Choice in the first place/being to those premises before the 18 <sup>th</sup> to buy the Cortina/being the first time the defendant had bought a car/purpose of been there/when he saw the Cortina/that kind of car being quite sought after/being given a top copy of a used car invoice/given the proprietor of the garage the name of (...) and the (...) address/friend working next door to the garage/when he took delivery of the car/date on document being that of 26 <sup>th</sup> November/when defendant took the car back.
Rings	7	Asked about: how many rings he had when arrested/where he bought them/when the last one of the four rings purchased/being mistaken when he told the police he had bought one in the jewellery quarter.
Movements on Thursday	9	Asked about: what happened on the Thursday/why he could not pick the wife up after the operation/her operation/how long she would be detained in hospital/what time he finish work on the Thursday/going straight to bed or having something to drink/seeing co-defendant that Thursday.
Movements on Friday (+ arrest)	10	Asked about: seeing co-defendant Friday morning/which shift he was supposed to be that Friday/going out Friday morning/plans for the afternoon/being on his own when he went down to the car at about 1.30/what he noticed when approached the car/what in fact occurred/being searched by the police/being handed over to other police officers/being taken off to the police station at Smetwick.
Arriving at the Police Station (+ leaving the scene of arrest)	3	Asked about: time of arriving at the police station/first thing said to the police officers/ what he saw as he left the scene, that is, what was happening to wife and son.
On the way to the Police Station	4	Asked about: if there was any conversation between defendant and police officers/what police say it was said to defendant/what the defendant had answered/something else the defendant had said to police

		officers.
Arriving at the Police Station and remaining in custody	19	Asked about: when arriving to the police station remembering the custody officer reading a notice of his rights/recollecting whether it was done or not/being told about having the right to a solicitor/signing a paper/what the defendant in fact wished at that time/saying so/refusing to sign a form of notification of detention to a named person, his wife/what happened after that/who took him to the female celss/being put him there and leaving him there/what happened then/some officers coming back/what the officers did/times of being left in the cell/being charged with what/why police would pick on the defendant as opposed to all the other people.
Being in custody at the Police Station (1 <sup>st</sup> Interview)	3	Asked about: remembering officers trying to interview him/confirming that police officers inquired him about the right to a solicitor/if asked, what his reaction would have been.
Wife	1	Asked if: knowing what happened to his wife.
Being in custody at the Police Station (2 <sup>nd</sup> Interview)	11	Asked about: two police officers who came to see him in the cell/recognising them/what the allegation was/the defendant telling the police about the co-defendant involvement/remembering being taken up to the third floor/if at any time he admitted to them he had taken part in the robbery/why he was taken up to the room/what questions they asked/producing to the defendant a carrier bag/when it was produced.
Being in custody at the Police Station (3 <sup>rd</sup> Interview) (+ prison procedures)	6	Asked about: remembering police officers who did the second interview/remembering what questions they asked/if police wrote down anything/if wife was mentioned/remembering being charged by some police officers/bail being refused.
Being in custody at the Police Station (4 <sup>th</sup> Interview)	8	Asked about: remembering being changed over to another cell/remembering police officer coming to see him/blurting out to the police officer/being cautioned and reminded he did not have to talk to him/making any sort of admission to him/knowing the gun was loaded/being taken back to the cell/if there were any other people in the adjoining cells.
Being in custody at the Police Station (Before going to court)	6	Asked about: remembering seeing the police officer before he went to court/if he had asked to see them/police saying he wanted to read and sign the notes he had refused to sign before/being given copies of the notes to look at/confirming the defendant said the notes were right/police taking the documents with them when duty solicitor approached the cell.
Being presented before Magistrates' Court	5	Asked about: time officers came to see him before he went to court/application made by the police for him to remand in the police station for further enquires/what application was made on his behalf/the police application being accepted by the court.
Being back to the Police Station (Saturday)	15	Asked about: asking for his own solicitor/message left by solicitor saying he would be available only 29 <sup>th</sup> November, Sunday/going out and showing the police co-defendant address/asking to have another read through the notes he had done/having a further discussion with police officer and being asked if defendant wanted solicitor present/timing of the discussion and going out/not wanting a solicitor to be present/remembering signing that/the reason why his signature was on that document/remembering being offering a solicitor that evening.
Being at the Police Station(Sunday)	13	Asked about: seeing a solicitor for the first time/not being exact because he had seen the duty solicitor at court/having opportunity to take advice/seeing copies of the first three interviews that he had refused to sign/doing anything to the notes/recognising the copies handed to him/defendant dating and writing on the notes/the defendant had written something on the back of the notes in the presence of his solicitor/what was written there. [Counsel asks permission to court for these notes to be accepted].

Being at the Police Station (1 <sup>st</sup> Interview with solicitor present)	4	Asked about: being interviewed by the police about the Wirley Birch allegation/defendant not disagreeing with anything about that interview/admitting at any time that he played any part in the Wirley Birch matter/being able to tell the police where he was.
Being transferred to West Bromwich Police Station	2	Asked about: the police coming over during the night and have a conversation with the defendant and admissions were made.
Being at the Police Station (2 <sup>nd</sup> Interview with solicitor present)	2	Asked about: solicitor getting there/reply given to police about the whereabouts of the gun.
Being at the Police Station (3 <sup>rd</sup> Interview with solicitor present)	1	Asked about: denying any robbery in Smethwick.
Identification Parade	9	Asked about: signing a form and consented to go on an identification parade/having his solicitor with him on the day of the parade/being just the defendant and a police officer in the room/why he didn't think it was a fair idea/being recognised by two people/one seeing him outside the Wirley Birch Post Office/the other seeing him hanging about just prior to the robbery at Smethwick/confirming if they were right.
Being at the Police Station (4 <sup>th</sup> / 5 <sup>th</sup> Interviews w/ solicitor present)	2	Asked about: telling the truth when allegations were put to him and the motor cars discussed/telling the truth when asked about the jewellery snatch.
Tracksuit	3	Asked about: his tracksuit top being produced in court/what make it was/there being many of them.
Offences	1	Asked about: committing any of those offences.
TOTAL	263	

Table 3.6. Topic of defence turns during examination-in-chief

Table 3.6 above shows the sequence of topics used by the defence during examination-in-chief and this gives us an idea of how the defence story is put to the court, in terms of the information chosen to be told.

The defence start their account by introducing the defendant and eliciting his personal information such as name, address, country of origin, occupation and work shifts, and information about his family (see transcript, page 1 for examples). The defence then move on to deal with the case proper, and the topics dealt with are: the Rover car; the robberies at Hockley Jewellery Quarter, at Windmill Precinct and at Wirley Birch; the Cortina car; the rings, the defendant's movements on Thursday and Friday prior to his being arrested and the defendant being held in custody at the police station.

Apart from his occupation and family information, which were introduced as part of the story itself, this introductory stage is not necessarily part of the story which will be told by the defence. Rather, it is part of the court procedure since witnesses have to be sworn in and identified before giving evidence, and therefore, it belongs to the sphere of the story *of* the trial (Jackson, 1988, 1995), that is to say, “the actions and events in the trial process” (1995, p. 160) or in Hale and Gibbons’ (1999) and Gibbons’ (2003) terms, it refers to the *primary reality* of the court, being that “the courtroom itself and the people present” (Gibbons, 2003, p. 78).

Even though the defendant had possibly been identified before the court at the beginning of the trial (see chapter two, 4.6), by asking him his name again, the defence counsel gives the defendant a legitimate position as the official teller of the account which will follow. However, we will discuss later on that, despite the fact that the defendant is officially identified as the teller of his own story, large portions of that story are actually provided by the defence counsel.

At a first glance, it seems that some of the questions asked are inconsequential, since information about his having a wife and child is not of relevance for the case. However, portraying the defendant as an ordinary citizen who has a family, a regular job and a known address serves to establish from the beginning the line the defence will be pursuing during the questioning of the defendant.

The defence counsel maintains control over the sequence of the events and covers most of the facts in dispute (in litigation), keeping the questioning to the basic. Even though he does not spend much time questioning the defendant (or he does not question the defendant extensively) about each topic, except when dealing with the Rover car and the robbery at Windmill Precinct, he does seem to pay particular attention to what happened



while the defendant was in custody, or to be precise, since the defendant was arrested. As a matter of fact, 114 out of the total of 263 turns by the defence (from turn number 290 to turn number 518 in the transcript) deal with the defendant's arrest and his being in custody, accounting for almost half of the questioning of the defendant. It seems that the defence are putting the weight of the defendant's evidence on the fact that interviews were fabricated and signatures were forged by the police.

This leads me to perceive this examination-in-chief as being divided into two large phases (or two distinct stories): the events prior to the defendant's arrest, and the events about his being in custody. In the first one, the defence elicit the evidence in such a way as to provide the court with an account that presents the defendant as leading an ordinary life before being arrested, while some robberies were taking place (from turn number 1 to turn number 289 in the transcript). In the second part, a contrast is then established in that the life of an ordinary citizen is disrupted by his being arrested and treated as a criminal. This citizen is ill treated while in custody and an account is produced on the basis of the police credibility and probity (from turn number 290 to turn number 518). In view of that impression, I carried out a deeper investigation on each turn and a new picture developed. The illustration of this can be seen in the following figure:

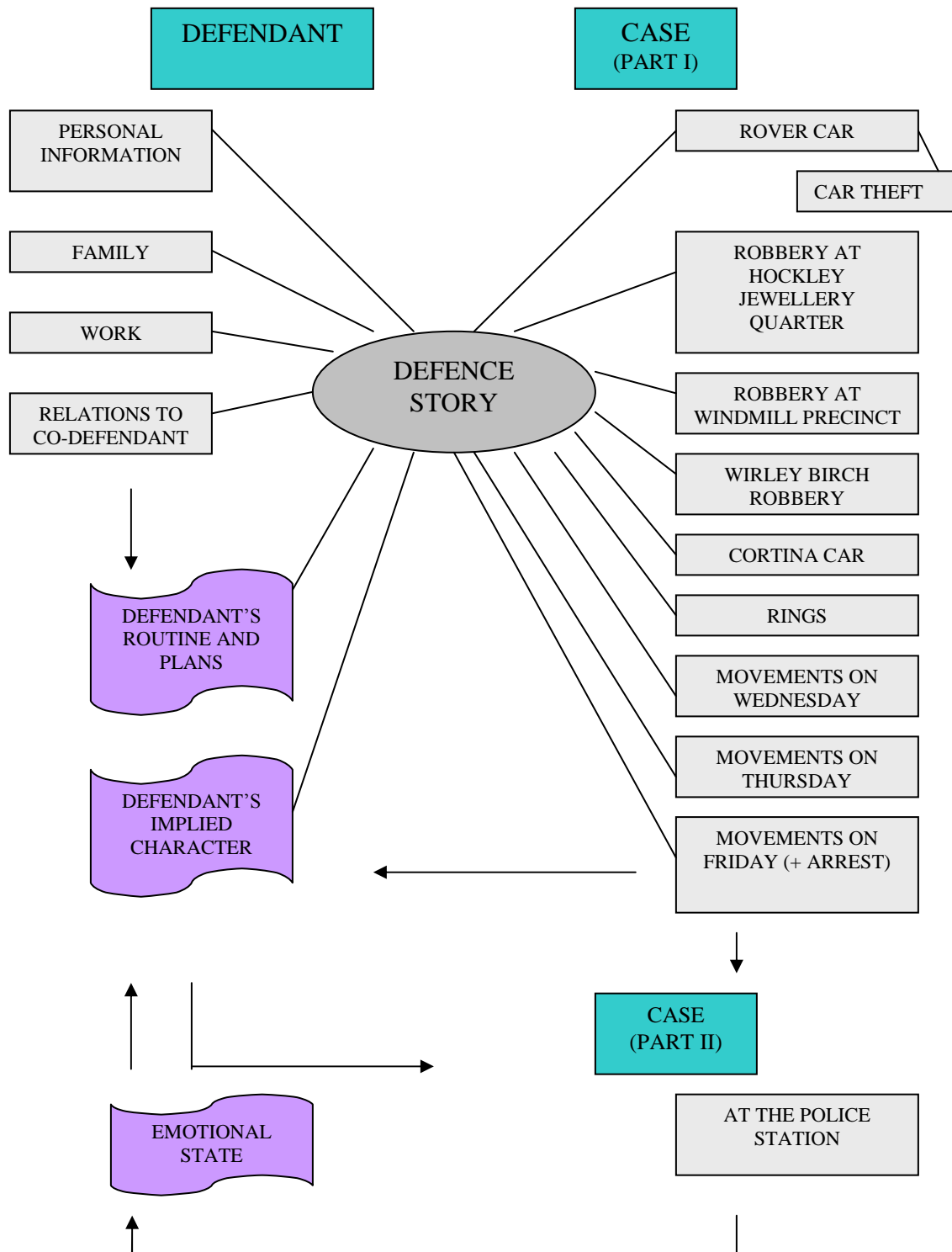


Figure 3.3. The structure of examination-in-chief analysed.

By analysing each turn again, I noticed that some of the topics could be grouped together, as for example the turns related to the defendant's personal information, his family and work. The topics concerning the case remained almost unchanged. It was observed, however, that while most of the turns dealt with distinct topics, some of them overlapped, that is to say, a single turn would inform on two (or more topics). It was also noticed that throughout the examination-in-chief, a subjacent story was being constructed, that being of the defendant's routine, and consequent character description. This characterization of the defendant also included, as one would assume, plans for future actions, as we all have in our daily routine. This characterization intends to portray the defendant as an ordinary person.

In more detail, the story in the first part of the questioning is elicited in the following order, which shows the topics and the turns to which they correspond. Turn numbers in bold overlap, that is, they do inform (refer to) on two or more topics. The turns which correspond to topics trying to convey the defendant's routine are also shown in the table.

(Personal Information: 1, 2, 3, 4, 5, 6) → (Work: 7, 8, 9, 10, 11, 12) → (Family: 13, 14, 15, 16, 17, 18) → (Work: 19, 20, 21, 22, 23, 24, 25, 26) → (Relations to co-defendant: 27, 28, 29, 30) → (Family: 31, 32, 33, 34, 35, 36) → (Rover car: 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48) → (Rover car – car theft: **44**, 49, 50, 51, 52) → (Rover car: 53, 54) → (Relations to co-defendant: **53, 54**, 55, 56, 57, 58) → (Rover car – car theft: 59, 60) → (Relations to co-defendant: 61, 62) → (Trip to Derby: 63,64) → (Rover car: 65, 66) → (Work:67, 68) → (Rover car – car theft: 69, 70) → (Court procedure: 71) → (Rover car – car theft: 72, 73, 74, 75, 76, 77, 78, 79, 80, 81) → (Robbery at Hockley Jewellery Quarter: 82, 83, 84, 85, 86, 87, 88, 89, 90, 91) → (Rings: **83, 84, 85**) → (Relations to co-defendant: **86, 87, 88, 89, 90, 91**, 92, 93, 94, 95) → (Plastic bag: 96, 97) → (Robbery at Hockley Jewellery Quarter: 98, 99, 100, 101) → (Relations to co-defendant: **100, 101**) → (Robbery at Windmill Precinct: 102, 103) → (Family: 104, 105, 106, 107) → (Robbery at Windmill Precinct: 108, 109, 110, 111) → (Wirley Birch Robbery: 112, 113, 114, 115) → (Gun: 116, 117) → (Wirley Birch Robbery: 118, 119, 120, 121, 122, 123) → (Family: 124, 125) → (Family: 126, 127, 128, 129) → (Wirley Birch Robbery: 130, 131, 132, 133) → (Robbery at Windmill Precinct: 134, 135, 136, 137) → (Friday – arrest: **138, 139**) → (Movements on Wednesday: 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209) → (Cortina car: 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237) → (Rings: 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251) → (Movements on Thursday: 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267) → (Family: **255, 256, 257, 258, 259, 260, 261, 262, 263**) → (Relations to co-defendant: 268, 269, 270, 271) → (Friday – arrest: **270, 271**, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289).

Defendant's routine: **40, 41, 42/45, 46, 47, 48, 63, 64/67, 68/124, 125/213, 214, 215/218, 219/267, 268, 269/272, 273.**

Table 3.7. Topic distribution across turns in examination-in-chief

What is shown in the above figures is the narrative of the defendant's life story; consequently it is one version of the story *in* the trial (also, 'secondary reality' (Jackson, 1995; Hale and Gibbons, 1999; Gibbons, 2003) or 'narrative mode' (Bruner, 1986)). We can see that while facts concerning the robberies are referred to, the real defence narrative in the first half of the examination-in-chief is about the defendant's regular routine and good character.

Considering that the police investigation is a pre-trial stage, being an important part of the case, I dare to say that the account provided by the defence in the second phase of the defendant's questioning is mostly done as the story *of* the trial or 'primary reality' (Ibid.). However, it intersects with the story *in* the trial, that is, facts about the defendant being in

custody are put forward in a way to cast doubt on the police credibility and his mental state is highlighted – his being shocked and surprised, effects on someone who is wrongly accused of a crime. This will be discussed shortly.

This re-structuring of the topic distribution and its sequence in the first half of examination-in-chief are summarised in the following table. In the table I present the overall narrative structure of the examination-in-chief, with the topic and the turn numbers in the transcript to which they correspond.

	Turn numbers in transcript:
Personal Information	1, 2, 3, 4, 5, 6.
Family	13, 14, 15, 16, 17, 18 // 31, 32, 33, 34, 35, 36 // 104, 105, 106, 107 // 126, 127, 128, 129 // 255, 256, 257, 258, 259, 260, 261, 262, 263.
Work	7, 8, 9, 10, 11, 12 // 19, 20, 21, 22, 23, 24, 25, 26.
Relations to co-defendant	27, 28, 29, 30 // 53, 54, 55, 56, 57, 58 // 61, 62 // 86, 87, 88, 89 90, 91, 92, 93, 94, 95 // 98, 99, 100, 101 // 268, 269, 270, 271.
Rover car	37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 // 53, 54 // 65, 66
Rover car (car theft)	44 // 49, 50, 51, 52 // 59, 60 // 69, 70 // 72, 73, 74, 75, 76, 77, 78, 79, 80, 81.
Robbery at Hockley Jewellery Quarter	82, 83, 84, 85, 86, 87, 88, 89, 90, 91 // 98, 99, 100, 101.
Rings	96, 97.
Robbery at Windmill Precinct	102, 103 // 108, 109, 110, 111 // 134, 135, 136, 137.
Wirley Birch Robbery	112, 113, 114, 115 // 118, 119, 120, 121, 122, 123 // 130, 131, 132, 133.
Gun	116, 117
Cortina car	210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237.
Rings	83, 84, 85 // 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251.
Movements on Wednesday	138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209.
Movements on Thursday	252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267.
Friday (arrest)	138, 139 // 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289.
////////////////////////////////////	////////////////////////////////////
Defendant's routine and plans	40, 41, 42 // 45, 46, 47, 48 // 63, 64 // 67, 68 // 124, 125 // 213, 214, 215 // 218, 219 // 267, 268, 269 // 272, 273.
Defendant's implied character	Runs across turns.

Table 3.8. Overall narrative structure of the examination-in-chief according to topic distribution.

In this first half of the questioning, large portions of text were presented in narrative form, considering that I am taking as narrative ‘the recapitulating of past events temporally related’. In this phase, most of the evidence (past events) was put forward by the defendant. One example of this occurs when the defendant is questioned about the rings he had:

Defence counsel:	Where did you get them?
Defendant:	Well, I said in my interview to the police I bought one from an Indian shop in the jewellery quarter. To be honest, the ring I bought from the jewellery quarter was for my girlfriend, it was a half sovereign. The ring that I bought was from a jewellery shop. I think that is called The Jewel, in Erdington High Street. That one I have I got from Adrian Goldman.

(Transcript, page 9)

In this example, the defence counsel gives the defendant the opportunity to repair an early mistake establishing that the ring bought in the Jewellery Quarter was not for him and therefore, disassociate himself from the rings stolen in the Jewellery Quarter. By allowing the defendant to admit a mistake, the defence probably win a point in the portraying the defendant as someone trustworthy, which will be discussed shortly.

Soon after the preliminary routine questions are introduced, the counsel provides a glimpse of the type of relationship the defendant had with the co-defendant by asking the defendant two questions about it. The questions are:

Defence counsel:	How long have you known Liam Scott?
Defendant:	A year or so, if that, not very long.
Defence counsel:	Did you know him before you went to Driving You?
Defendant:	Not really, no. I had seen him around but we had not actually spoken.

(Transcript, page 1)

The kind of relationship the defendant and co-defendant had is described when the counsel asks the defendant if the co-defendant had ridden in a car which was allegedly used in one of the robberies, a fundamental point of trying to prove that the defendant did not participate in the robberies. The interaction is:

Defence counsel: During that weekend, had Liam Scott ridden in that vehicle?  
 Defendant: On the Friday he had, the day it was hired, yes.  
 Defence counsel: Can you remember why?  
 Defendant: Well, I had seen him at work, I met him at work, we got talking, I told him my address and he said he lived in Handsworth. That morning I was going into Handsworth, I do not think I was working. I opened the front door to come out and he was just about to knock the door. I told him I was going to pass this, this is Driving You and he asked me if I could give him a lift into Handsworth as it was not far from where he lived. I said yes and I drove off.

(Judge interrupts.)  
 Judge: You told him where you lived and one day he knocked the door as you were setting off?  
 Defendant: That is right, sir, yes.  
 Judge: He asked for a lift?  
 Defendant: Yes, that is right.  
 Judge: To?  
 Defendant: To Handsworth, sir. I dropped him off by the gate.  
(Defence counsel picks up questioning again.)  
 Defence counsel: That is the Ring -----?  
 Defendant: Driving You, yes.  
 Defence counsel: Where did you leave the car that day?  
 Defendant: That Friday, or the day it was stolen sir?  
 Defence counsel: On the Friday did you just drop him off and then drive off somewhere else?  
 Defendant: Yes, I dropped him off, I think it was at the back of vans.

(Transcript, pages 2/3)

To confirm that the defendant did not participate in the robberies, some further questions are asked later on about his going to a jewellery shop with the co-defendant. The interaction is:

Defence counsel: Did you ever go there with Liam Scott?  
 Defendant: Not to that shop, not that I recall, no.  
 Defence counsel: In Hockley?  
 Defendant: I may have done once.  
 Defence counsel: For what purpose?  
 Defendant: To be honest, sir, it is going back a long time, I cannot really be precise about that, it certainly was not anything to do with any mischief or anything like that.

(Transcript, page 4)

Then the defence counsel returns to the topic of their relationship some time later in the examination so as to establish that both defendant and co-defendant were more like acquaintances than real friends, excluding the possibility of their doing leisure activities together, a line pursued by the prosecution. The line of question was:

Defence counsel: Had he become a friend of yours?  
 Defendant: Sort of, it was not as if he was a good friend, we talked as any workmates.  
 Defence counsel: Did he ever go to your house?  
 Defendant: Only the time when he went and had knocked the door, when I was coming out, he never entered my house – well, it is a flat – he never entered.

(Transcript, page 4)

Even though I am analysing the evidence of just one of the defendants, we must not forget that this is the trial of two defendants. For the sake of convincing the court of his story, it is not enough for the defendant to tell the court a plausible story or present an alternative to the story presented by the prosecution. The defence also have to distance their account from the one put forward by the co-defendant.

Evidence that could be damaging during cross-examination is further anticipated by the defence in other three exchanges along the examination of the defendant. Evidence of this type will be discussed in more detail later on.

(1)  
 Defence counsel: Did you see Scott at all on the Thursday?  
 Defendant: Not that day, no, not that I recall, no.  
 Defence counsel: Friday morning?  
 Defendant: No.

(Transcript, page 10)

(2)  
 Defence counsel: They say that you told them that it was Liam Scott who had been involved in the raid and done the shooting.  
 Defendant: Well, as I have said, I did not know what I had been arrested for. I had not committed any crime like what they said. I am not a violent man, I never have been. I did not name anybody because I had not done anything with anybody.

(Transcript, page 14)

(3)  
 Defence counsel: (...) in order to put things into their historical perspective it may be the jury should be asked, your Honour, to bear in mind that it was at twenty-five past five that afternoon that Scott was arrested. (...)

(Transcript, page 20)

After that, the defendant is questioned about his family's country of origin. This information plays a vital role during the questioning of the defendant. First of all, it



anticipates a key point for the prosecution case, that is to say, his appearance will be a recurrent point during cross-examination. There will be extensive arguments between prosecution and defendant to what extent his being identified and described by some witnesses as one of the men seen near the places where the robberies took place (or being seen in the shop days before the robbery) can really be verified as accurate. Another aspect is the fact that the prosecution play with the fact that the defendant is black to trigger in the jurors' mind the masterplot<sup>1</sup> (Abbott, 2002) of black people being more likely to commit crime. This is seen in the prosecuting counsel's last question to the defendant, during his cross-examination:

Prosecuting counsel:      Though you do not mind hanging about outside post offices, **frightening people by your very appearance** and although you do not mind going in with loaded shotguns, you have not got the guts to admit it, have you?  
(Transcript, page 46)

As expected and complying with the rules of evidence, during evidence-in-chief questions should be posed to let the witness tell his/her story in their own words as much as possible. Even though during the first part of the examination-in-chief the defendant was guided so as to provide most of the evidence, we can observe in the trial transcript that most of the evidence given during the second part of the questioning - the recollection of what happened at the police station - was verbalised by the defence counsel and not by the defendant himself. Some examples of this are:

(1)  
 Defence counsel:      **Apparently**, after that episode, which they called an interview, you were taken back ten minutes later, just before five o'clock to the same cell and you were left there, I think, for twenty minutes, twenty-five minutes. You were taken out again, **apparently** at twenty minutes past five and on that occasion you were interviewed, according to the police officers, for some forty-eight minutes from 17.23 (twenty-three minutes past five) until eleven minutes past six before being sent back to the cell. At a quarter past

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<sup>1</sup> Masterplot is being used here in a similar meaning to schemes, schemata, scripts and frame.

six, that was half way **apparently**, Holmes and an officer called Bernstein who's given evidence, can you remember those three?  
 Defendant: Yes sir, when the three officers were in the room that is when they started to rough me up, throw me around a bit. It seemed like they were losing their temper, they wanted the answers from me.

(Transcript, page 15)

(2)

Defence counsel: According to the custody record, you are sent back to the cell at a quarter past six and your visit or detention is reviewed, as we can see, and in fact there is nothing really of importance until we get to half past ten when **apparently** you are given some tea. Then, at twenty-three fifty eight you are charged by Detective Sergeant Wallis, can you remember that?

Defendant: I do not remember the tea, sir, because I do not drink tea, but I was charged, yes.

(Transcript, pages 15/16)

(3)

Defence counsel: That is on the day after your arrest and this will be the Saturday. What is said there, in Mathah's writing, is that at that time: "To DC Holmes for enquiries", it is no more than that. Then this is followed up, do you see, 40: "To cell, PACE" and, I cannot read it, "a copy P. I." Something or other and then there are some signatures from the police officers and someone says, "Review, no change". Then at ten past eight it says that your interview and, do you see, under that it says, "Faithful does not wish a solicitor to be present during this interview", and that is signed by him, and there is your signature, do you see, underneath?

Defendant: Yes.

(Transcript, page 18)

(4)

Defence counsel: After that, going on in time, at five minutes to five, you arrived at West Bromwich police station, so that is the transfer that took place and, in order to put things into their historical perspective it may be the jury should be asked, your Honour, to bear in mind that it was at twenty-five past five that afternoon that Scott was arrested. So far as you are concerned, the record is then silent about anything that is relevant, until ten minutes to twelve when Mr Robins came over to see you. The police officer came over in the middle of the night. He said that he had a conversation with you – that we must deal with. He said that you made some admissions to him. It is said, "This is all games, see, this is all games. I told them... (reading to the words)... police one thing, I told my brief another. That way nobody knows what is going on and I get off with it. Shall I do that with you?"

Defendant: No truth at all whatsoever in that conversation, sir.

(Transcript, page 20)

The examples above illustrate the fact that, by reading or referring to the custody record, and making use of reported speech, the defence counsel is able to reconstruct the events that occurred while the defendant was in custody mostly by himself. The role of the defendant was mainly to agree with what is put forward. Only in few examples was the

defendant called to elaborate on what has been put to him or provide some other explanations to the facts. The defendant's turns are fairly short and in tune with the defence main narrative.

We can observe in examples 1 and 2 above, and throughout the examination-in-chief, that the word *apparently* is used quite frequently. The use of the word *apparently* implies that what is being read or reported in court makes part of the prosecution case and that it may not be what really happened. The defence version of the story is that the defendant had been ill treated at the police station and that interviews and the defendant's signature were forged by the police in order to incriminate him. We mustn't forget that, as already pointed out in chapter two, during that period of time (around 1987/1988, specially after 1989) some cases were brought to the attention of the public demonstrating that police officers had fabricated interviews and statements of suspects (Coulthard, 1996), causing the suspension of several detectives and the disbandment of the Birmingham-based West Midlands Serious Crime. My interpretation can be further confirmed as Potter (1996) explains:

In some recent cases of wrongful imprisonment in Britain the 'uncanny' similarity of different police versions of what happened in the cells was used as evidence that they were carefully rehearsed confabulations. The argument was that 'real testimony' has contradictions and confusions; all the officers describing events in the same way was 'too good to be true', much more likely to be the rehearsed outcome of conspiracy than spontaneous personal remembering (p. 173-4)

The topics dealt during examination-in-chief will be compared to the topics of cross-examination later on in this analysis. I now turn to the discussion of the strategies used by the defence counsel during their telling of the defendant's story (in the first phase of the questioning).

Even though Binder and Bergman (1984, in Boon, 1999, p. 64) claim that what is decisive in a trial is how plausible the story outline is and not “the detailed evidence given by witnesses”, I do believe that the details provided during the examination of the witness is sometimes what makes the story plausible. Jackson (1988, in Boon, 1999, p. 64), on the other hand, agrees that the telling of a story should contain detail, but emphasises that those details should not obscure the main line of the story. He suggests that

... for a story to appear credible, not only must the crucial events be related to one another in a coherent manner, but also the telling of those events must be accompanied by some contextual detail, which is itself irrelevant to the base story-line, but nevertheless places it in a context recognisable to the audience [...] they stress that not too much detail should be provided; the base story line must not be submerged...

The main line of the defence’s story in this analysis is to provide the court with an alternative account for the facts in litigation. Their story’s main line is that while the robberies were taking place, the defendant was engaged in his regular daily routine. The examination-in-chief of the defendant is based on accounts for his activities during the day of the last robbery and the following two days before his arrest. A version of his being in custody and allegedly having had documents and his signature forged by the police officers is then presented. For technical reasons I divided the story provided in his examination-in-chief into two parts: before and subsequent to his arrest. In those two parts, a subjacent story emerged, that of the characterization of the defendant as being an honest man who was wrongly charged with a crime. This subjacent story line just emerged by means of the details added to the main line of the defence narrative.

As expected, in this study, the examination-in-chief is very much about providing an alternative account of the events, recapitulating previous testimony and anticipating cross-examination, which could be described as its main structure (and many are the linguistic

strategies employed by counsel to accomplish that). However, my interest was to investigate what exactly makes the defence and prosecution accounts more vivid, more plausible, more worth ‘buying’, taking into consideration both what trial manuals advocate as ‘golden rules’ of examining and cross-examining witnesses, and the schemas we are oriented to in our lives. Having this in mind, I will concentrate the subsequent discussion on those aspects only.

The basic structure of examination-in-chief differs from that of cross-examination. However, in the questioning of a defendant, the common ground between the two of them is how the defendant is portrayed. While in examination-in-chief a narrative of an honest (innocent) man is created, in cross-examination that narrative is put to test, and, in many cases, successfully reversed.

Apart from its main narrative line of providing an alternative account of the events, recapitulating previous testimony and anticipating cross-examination, in the examination-in-chief analysed in this study, the telling of the story of the defendant as an honest man is done mostly by means of:

- a) status support and daily routine as a humanising<sup>2</sup> characterisation; and
- b) imagery and enlivening testimony.

This construction of the narrative of an honest man is further contrasted to and turned into the story of a man being in the police custody in the second part of the examination. I now proceed to the analysis of these strategies.

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<sup>2</sup> Concerning or typical of ordinary people, as opposed to animals, plants, or machines (Longman Dictionary).

### 3.1.3. The narrative construction of the speech of an innocent man

For Boon (1999) when we tell a story we create ‘word pictures’ and he urges us to note that it will be difficult for the jurors to understand the story, especially because they cannot ask clarifying questions. He suggests that a story should be created so that the jurors

will need to identify with the characters and care about what happens to them; the characters will have to be real and the world which they inhabit will have to be clearly drawn. [...] [a]n advocate has to find the human dimension of a story before he can turn the facts of a case into narrative (p. 22).

He goes on emphasising that

a heightened perception of events is achieved by focusing on a character and a situation. The events are mentally reconstructed in minute detail, using a sensory checklist: sight, hearing, touch, smell, taste and state of mind (p. 23).

The main line of questioning during this first phase of the examination-in-chief is to tell a story of an ordinary man who is then wrongly charged with a crime he did not commit. The aim of the defence is then to portray the defendant in the best light possible in a way to ‘humanise’ him before the court and, hopefully to win the jury’s sympathy. This strategy reflects one of the main aims of examination-in-chief, that is, to tell a story which is vivid and realistic and to which the jury can identify. Questions are put so as to elicit those humane features of the defendant, giving the jury the necessary elements to build a picture of the defendant as a nice man, who has wife and a child, works hard and leads an ordinary life. This information is not necessarily relevant for the case but do help build the defendant’s character and daily routine, enhancing enormously the defence perspective.

### 3.1.3.1. Status support (or self-aggrandizement) and daily routine characterisation

While eliciting from the defendant the facts connected to the case, the defence allow for a subjacent story to emerge. According to Garfinkel (1967, in Gibbons, 2003, p. 113), the court is “the perfect stage for acting out society’s ceremonies of status degradation”. Counsels, especially in cross-examination, make use of this strategy to attack the character of witnesses. Gibbons (2003) points out that a reverse strategy to status degradation is status support, which is often used by counsels during examination-in-chief.

The defence make use of this strategy in order to show the jury that the defendant was an honest man before being charged with having committed the robberies. The defence counsel starts his questioning by pointing that out in his third turn, which is further reinforced in his next turn, as the example shows:

- (1)  
 Defence counsel: *Before you lodged in prison, awaiting your trial, what was your address?*  
 (2)  
 Defence counsel: *What at that time was your occupation?* (Transcript, p. 1)

The narrative of the defendant as an honest man is then constructed. He is presented as a man who has a job, has a wife and child and leads a regular life. He visits his mother regularly, goes on trips with friends on the weekends and is engaged in routine activities with his wife and child. Some examples of that are:

- (1)  
 Defence counsel: *Yes. In last October time, did you hire a Rover that we have heard about?*  
 Defendant: *Yes I did.*  
 Defence counsel: *For what purpose did you hire it?*  
 Defendant: *Well, every now and again, there was a group of us, we used to go to clubs, well, night clubs, to Derby, Sheffield, four or five of us used to chip in 15 pounds each and we would drink in the car. I was the only one with a clean licence, therefore I rented the car.*  
 Defence counsel: *It was not the first time, I think, you rented cars?*  
 Defendant: *No, it was quite regular, quite regular, yes.* (Transcript, p. 2)

- (2)  
 Defence counsel: Where were you at that time?  
 Defendant: I was at my mother's, sir.  
 Defence counsel: How often have you visited your mother?  
 Defendant: Three or four times a week, it can be a bit more, very often, very often.  
 (Transcript, p. 5)
- (3)  
 Defence counsel: In the course of the next month did you ever go to Hockley jewellery quarter?  
 Defendant: I may have done once with my girlfriend, only to look round for a ring for her, which I did buy her.  
 Defence counsel: Who did you buy that from?  
 Defendant: An Indian shop in the jewellery quarter.  
 (Transcript, p. 4)
- (4)  
 Defence counsel: What were your plans for the afternoon?  
 Defendant: If I remember right, we were going to go to the fish shop about one thirty, one thirty to twenty past one. [...]  
 (Transcript, p. 11)
- (5)  
 Defence counsel: There was Thursday the day before and this robbery where the elderly Indian gentleman was shot was on the Wednesday. Tell us, if you can, how you in fact spent Wednesday?  
 Defendant: I had got up about 9.30, it was about the usual time.  
 Defence counsel: What time were you due to go to work?  
 Defendant: Three o'clock, three to eleven shift I was on that day. I got up about 9.00, 9.30, I was going to part exchange a car I owned, a Cortina, then. And it was in my name, I would go and change it that morning. My girlfriend had the breakfast as usual for my son.  
 (Transcript, pp. 5/6)

As mentioned before, the construction of the narrative of an honest man is not explicitly done. Rather, this narrative runs through the eliciting of evidence concerning the facts of the case. In example 1 above, the topic was about the hiring of a Rover car which is a disputed fact. The prosecution allege that the Rover was hired in order to be used in the robbery, while the defendant presents his hiring the car as something done regularly, and therefore, not with the intention claimed by the prosecution. Even though hiring cars is a frequent activity for the defendant (and that, perhaps, would be the answer the defence counsel was expecting), note that his response to the defence's wh-question starts with an account of his engaging in social activities with friends and his being the only one with a



clean driving licence, corroborating the narrative of an honest and trustworthy man. It takes a more 'leading' question for the counsel to obtain the defendant's confirmation about the regularity of his hiring cars, offered as an alternative reason to the prosecution's claim.

The second example is again a fact in dispute. Some rings were stolen in one of the robberies from a shop in the Jewellery Quarter. The defendant claims that he had bought all the rings he had from elsewhere. He admits that he had made a mistake when he told the police he had bought one of the rings from a shop in the Jewellery Quarter later on in the questioning when they deal with the Rings topic (turns 244/245). Interaction 3 above was meant to be more about his going to Hockley before than establishing that the ring bought there was for his girlfriend. However, the defendant takes the chance to point that out, since this would be the reason why he was mistaken about where he had bought his rings. The message that also gets through is that he does engage in nice activities with his family. This is reinforced in example 4.

Example 5 illustrates the contrast between the prosecution's story (the defendant's committing the robberies) and the 'normal' routine of the defendant.

Having established from the beginning that the defendant had been working regularly as a driver and had a family, the defence counsel then continues his examination by trying to present the defendant as an ordinary person, a person who was leading his life as anybody else would, a person anyone can identify with. Since the defence's alternative version of the facts is based on the defendant's movements on the day of the last robbery and the following Thursday and Friday, there is a lot of descriptions and accounts of the defendant's daily routine. I selected three excerpts in order to illustrate the defence's line of questioning.

Excerpts 1 and 2 are to a certain extent related. The first one is about the defendant's movements on Wednesday, the day the last robbery took place. The evidence elicited is about a visitor the defendant and his wife were expecting. This visitor, a friend of theirs, was supposed to look at their kitchen and decide on how many rolls of paper or paint to be used in the redecorating of the kitchen. The second is actually the day the work on the kitchen was to be done, the same day the defendant's girlfriend was undergoing an operation. The first excerpt is:

(1)

Defence counsel: When you got back, who was there?

Defendant: My girlfriend and son.

Defence counsel: Were you expecting a visitor that day?

Defendant: Well, I cannot really say that day but I was expecting a visitor, yes. We had made arrangements for a friend to come and look at the kitchen who was quite handy at decorating.

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Defence counsel: Did he come to give you a price?

Defendant: We haggled a little, not so much price, but he looked and, you know, in his own mind he said yes, so many rolls or paint. He had a look around the kitchen.

Defence counsel: When was the work to be done?

Defendant: I think my girlfriend was going into hospital the next day, it was a Thursday morning, for a small operation. I think he was going to try and finish it before she came out of the hospital, or Friday at the latest, one of those days.

Defence counsel: When he came out about twelve-ish, when did he go?

Defendant: After he had a look at the kitchen I think my girlfriend – I think she done him coffee – he had a cup of coffee, I might have had one myself, I cannot be a hundred percent sure of that, we had a drink and a talk, I dropped him off, well he said he was going home, it must have been twenty past one, it may be half past one. I said I would give him a lift home and I drove him home.

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Defence counsel: Then what?

Defendant: Oh, I think I had my dinner, I think she done me some dinner and I must have left the flat about five to three, ten, to get to work and give myself five minutes to get there, it is not far.

Defence counsel: Off you went.

Defendant: And off I went to work, until the night-time.

(Transcript, pp. 7/8)

It seems that this visitor is part of the defendant's alibi of his whereabouts on that Wednesday, even though nothing is mentioned in the data analysed. The prosecution do

mention, however, the defendant alleging being with his wife and son at that time. Whatever the case, the mentioning of a visitor and how long he had stayed in the house would suffice to establish that the defendant was doing something else instead of committing a robbery. Instead, the defence choose to engage in a more elaborate line of questioning. Again, the interaction is introduced by means of a wh-question followed by a more restricted question, allowing the defendant to elaborate on his answers.

It is interesting to notice that the defendant skilfully constructs his responses by not answering the question straightaway. It takes more than one turn for the defence counsel to get the defendant to provide the expected answer. Besides, the defendant also prefaces his answers before getting to the point. In this excerpt a scene of a family man emerges. Plans have been made about redecorating the kitchen while his wife was being hospitalized - he was considerate to have the job done before she was back home. A friend is called to take a look at the kitchen. They discuss about price and material needed for the job. They have some coffee. He offers the friend a lift home, returns home to have his lunch before reporting to work. This picture is further developed in the following subsequent line of interaction.

(2)

- Defence counsel: Mr. Flynn, let us go back now to pick up the story. On the day after you took delivery of the BMW.
- Defendant: The day after, yes.
- Defence counsel: What happened on the Thursday?
- Defendant: My girlfriend went into hospital to have the operation. I dropped her off at the hospital, Kings Norton or something around there. I think it was about eight o'clock in the morning, it can be a bit later. I could not pick her up that afternoon, I think she got a taxi back to my mother's.
- Defence counsel: Why could you not pick her up?
- Defendant: I had to be in work for three o'clock, she was not due out, if I remember rightly, for about four. I did not know, she signed herself out, or discharged herself out earlier on than that, what she should have.
- Defence counsel: There is no secret about it, she was going there for a ladies' operation.
- Defendant: Yes.
- Defence counsel: One that would only detain her for maybe a day but not longer than that.
- Defendant: Yes.
- Defence counsel: If it was successful.

Defendant: Yes.  
 Defence counsel: What time did you finish work, then, on the Thursday?  
 Defendant: It was again, a three to eleven shift. I got home, ten past, quarter past eleven, from Driving You.  
 Defence counsel: Did you go straight to bed or did you have a glass of something?  
 Defendant: No, I usually sit up and watch the sport, I might have a flick through the paper. That night I think I went to bed quite early.  
 Defence counsel: Did you see Scott at all on the Thursday?  
 Defendant: Not that day, no, not that I recall, no.

(Transcript, p. 10)

The defence counsel introduces the topic by making clear first that what they have been doing during the defendant's examination-in-chief was, in fact, telling a story. He continues the questioning by using wh-questions in the two following turns. This gives the defendant an opportunity to elaborate on his answer and possibly provide a longer narrative of the facts. The defendant then brings up again the fact that his wife was going into hospital for an operation. He starts by giving a general account (an Abstract, maybe!) of her going into hospital and then provides details about the event, such as his dropping her off, the location of hospital<sup>3</sup> and the time of the day. Soon after he establishes these details, he adds that he did not pick her up.

When we are asked to give an account of our day or about something that happened to us, we normally do not tell what did not happen. Taken into consideration that the examination-in-chief of the defendant was probably prepared beforehand, it is expected that the building up of the defence narrative is accomplished by both the defence counsel and the defendant. In fact, the whole examination-in-chief is more of displaying information than actually eliciting it. Since the defendant brings that fact up, the defence next turn is to ensure that a reason is given to account for that, that is, to the fact that he did not pick her up.

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<sup>3</sup> In fact, there is no hospital in the Kings Norton area. He may be referring to the hospital in Selly Oak.

The interesting aspect of this interaction is that the defence counsel introduces the specificity of her hospitalisation in his next turns and gets only a ‘yes’ as an answer from the defendant. These details are introduced as part of the defendant’s ‘movements’ that day, and interesting enough, not by the defendant himself. The counsel’s aim here, it seems, is that of making the defendant’s account meaningful and intimate. According to Boon (1999, p. 22), when you tell “a story with real human interest [...] we want more detail: we want to find out what happens to the characters we have identified with”.

The interaction then goes to the facts of the end of that day. The fact that the defendant got home from work at about a quarter past eleven is elicited. Thus, having confirmed that the defendant spent part of the morning with his wife’s hospitalisation and the rest of the day working and that the defendant arrived home late in the evening, the final question the counsel poses is to make the point that the defendant did not have any contact with the co-defendant that day (even though the defendant’s response does not seem very convincing!). However, the detail added just before that last question, about the defendant’s routine after work is the key point in this excerpt. It is through this description that a fine picture of his routine is depicted, adding enormously to his narrative of an ordinary (and honest) man.

### **3.1.3.2. Imagery and enlivening testimony**

It is not enough to elicit evidence which characterizes the defendant and his activities and daily routine in the best light possible so that the jury can sympathise with him or even identify with him. For the characterization to be really effective, it has to find some sort of

psychological anchor (grounds), that is to say, it has to project a strong mental picture of the facts which can appeal to people's emotions.

The literature abounds in rules on how to present evidence in court. The most frequent piece of advice is that evidence should contain "vivid description and engagement of the witness" (Boon, 1999, p. 100). Stone (1988, p. 87) clearly summarises the main qualities of good evidence as:

The main qualities of persuasive evidence may be stated briefly. It should tell a consistent and probable story, with human interest, which is realistic in quality and strong in visual content. The story should seem vivid and real. The main theme should recur, and be kept in the forefront, for emphasis. In any trial, if both the Crown evidence and the defence evidence satisfy these requirements, the decision will be difficult.

And he adds:

An advocate cannot manufacture dialogue like a playwright, but he may guide a witness into contributing to the "ring of truth", by including factual and human detail and colouring, personal involvement, animation and spontaneity. In addition, the visual elements of a story are aspects of its realism. This is worthy of separate mention if only to emphasise the advantage of expressing things visually where possible. If a witness claims that he arrived at the locus by public transport, this is less vivid than saying that he took a blue bus.

According to these manuals of criminal trials, the most persuasive form of evidence is a story with the features mentioned above. It will integrate the evidence and facts meaningfully. The more the evidence takes the form of a believable human story, the more persuasive it will be.

My assumption is that since lawyers are trained to master the skills of their profession, those 'golden rules' of good advocacy should be part and parcel of their regular practice, that is to say, lawyers are bound to put those rules into practice when constructing their narrative of the case.

In the examination-in-chief analysed in this study, I did not find many examples of 'enlivening testimony' in terms of, for example, mentioning that someone took the 'blue

bus' instead of just mentioning that the person took a bus, as Stone (1988) suggested in the quotation above. Obviously, there was the mentioning of car makers, plate numbers, street names, work place, and so on, but those instances were mentioned mostly to make communication clearer as, for example, when they refer to the Rover, Cortina and BMW cars. I do recognise, however, that even when the mentioning of street names, car makers and the lot was done so as to make communication clearer, it might render a much more familiar description or account of the facts, especially for those in the jury acquainted with those references. It makes the accounts seem something much closer to people's lives. For example:

(1)  
 Defence counsel: Where did you leave the car when you went to do that shift?  
 Defendant: Well, I went to work. At dinner time I went to Ladywood to see a friend, I think it was, Morrow Street. I parked the car facing Rushton Street which is across [missing word] Street West.  
 Defence counsel: Just a minute, had you got the keys with you?  
 Defendant: Yes, I had, yes. When I got back to where the car was it had gone and I immediately contacted Ladywood police and explained.  
 (Transcript, p. 3)

(2)  
 Defence counsel: You said in the interview, it was put to you in the interview, that you were a born and bred Erdington man.  
 Defendant: That is right, sir.  
 (Transcript, p. 4)

(3)  
 Defence counsel: How often have you visited your mother?  
 Defendant: Three or four times a week, it can be a bit more, very often, very often.  
 Defence counsel: She still lives in Erdington?  
 Defendant: That is right, yes.  
 Defence counsel: And did then?  
 Defendant: Yes, that is right.  
 (Transcript, p. 5)

In the first passage they were talking about the Rover car that was rented by the defendant. The defendant is providing the circumstances when the car was stolen. By mentioning the area and street names, the defendant is able to depict the scene as something real, maybe very familiar to those from the same area or with knowledge of the city. When

he found the car had been stolen, he contacted the nearest police station, as any ordinary citizen would also do.

Passages 2 and 3 serve as a reference to place the defendant and his family in a well known residential area and create the idea of a ‘stable’ family: he was brought up in that area and his mother has been living there for quite a long time.

Notwithstanding, the defence narrative in this examination-in-chief is full of colourful details, imaging and scene characterization. The scene characterization is one of the most frequent strategies employed here. Even though I did not include the turns between the judge and the defendant within the scope of my present analysis, it is very interesting to notice the defendant’s responses to the judge’s interruptions in the following two instances:

- (1)
- |                  |   |
|------------------|---|
| Defence counsel: | What time were you due to go to work?   |
| Defendant:       | Three o’clock, three to eleven shift I was on that day. I got up about 9.00, 9.30, I was going to part exchange a car I owned, a Cortina, then. And it was in my name, I would go and change it that morning. <i>My girlfriend had the breakfast as usual for my son.</i>   |
| Judge:           | Just a moment, your girlfriend got breakfast?   |
| Defendant:       | <i>My girlfriend was doing the breakfast for all of us, she asked me if I wanted mine. I said leave it until I had sorted the car out, I was going to go and part exchange, but she had breakfast with the baby, I do not know what it was. I had a wash and got dressed, I left the flat twenty past ten, half past ten.</i> |

(Transcript, p. 6)

In the first example, the defendant is providing an account for his activities that day, as already discussed previously. However, in this account he introduces in the last clause that his girlfriend was preparing breakfast for his son, giving this way a more realistic picture of what was happening in the flat. Interestingly enough, it is exactly this ‘imaging’ that makes the judge interrupt the interaction, perhaps looking for some more information



about it. The defendant then takes the chance to elaborate a bit more on that, providing a full picture of the scene, a typical family scene. The second example is:

(2)  
 Defence counsel: Were you expecting a visitor that day?  
 Defendant: Well, I cannot really say that day but I was expecting a visitor, yes. [...]  
 Defence counsel: Who's that?  
 Defendant: His name is Chris Peterson, Christopher Peterson.  
 Judge: Chris -?  
 Defendant: Peterson. I got home, had some breakfast, read the newspaper, showed my girlfriend the car from the fifth floor which is where I was living, you know, pointed down to it, "do you like the car?" At twelve o'clock, round about then, five to or, you know, not long between when I was in, the door knocked. I answered it and it was Chris. He wanted to have a look at the kitchen to see how much paper or paint it would take because I did not know, I was not very good at that kind of thing.

(Transcript, p. 7)

The defendant was giving an account of a visitor they had, a friend of theirs who was going to redecorate their kitchen. When the defendant answers the counsel's question about this friend's name, the judge interrupts, signalling he wanted the person's complete name. The defendant, however, does not respond to that and carries on to provide the court, once more, with a family scene which anyone can identify with. This is a typical narrative in Labov's definition: he got home, had breakfast, read the newspaper and showed the girlfriend the car. This series of temporally ordered events are disrupted by a knock at the door. At twelve o'clock a friend of his comes in. He has a look at the kitchen. The events are further 'detailed' by reference to the floor the flat was on and the defendant's enthusiasm about the new car, described as reported speech. Everything in this account is so vivid and realistic that we almost can 'see' his getting home, having breakfast, reading the newspaper, showing his wife the car and even 'feel' his enthusiasm about the car. We probably had similar scenes stored in our memories and those are what trigger our ability to reconstruct the verbalised account into a clear image.

One point to be highlighted here is that those accounts were provided by the defendant himself, not because he consciously knew the techniques of giving/taking evidence, but perhaps because he ‘instinctively’ wanted to create a bond with the judge and, consequently, with the jury.

Some more scenes were depicted, as the examples show:

(1)

Defence counsel:

When he came out about twelve-ish, when did he go?

Defendant:

After he had a look at the kitchen I think my girlfriend – I think *she done him coffee – he had a cup of coffee, I might have had one myself*, I cannot be a hundred percent sure of that, *we had a drink and a talk*, I dropped him off, well he said he was going home, it must have been twenty past one, it may be half past one. I said I would give him a lift home and I drove him home.

(Transcript, p. 8)

(2)

Defence counsel:

What were your plans for the afternoon?

Defendant:

If I remember right, *we were going to go to the fish shop* about one thirty, one thirty to twenty past one. *We had been in all morning, we were going to go to the fish shop*. When I went out to the car *I told my girlfriend to put my baby's shoes on*; when I got out to the car the police pulled up with guns and I was arrested.

(Transcript, p. 11)

The two accounts above depict the kind of social activities we are all familiar with. Friends come over, coffee or tea is usually offered, and sometimes even a lift back home is arranged. We are also familiar with more ‘familiar’ scenes: staying home, going out for a meal – not to any restaurant, but to the fish shop, historically known as being part of a lot of people’s favourite food. Everybody has been, at least once, to a fish and chip shop.

Even not being within the scope of this analysis, one cannot help noticing the fact that his wife is portrayed quite often in a submissive role. His telling his wife to put his son’s shoes on in example 2 above is probably meant to convey to the court his being a caring and considerate father. However, we see that he tells her to put the child’s shoes on, she is the one in charge of the household’s chores, such as preparing his and his son’s

breakfast and dinner, making coffee for visitors and so on, as some other examples demonstrate. While his wife takes care of his son, their house and of the defendant himself, he is the sort of man who comes home, watches television, reads the newspaper, rents cars and goes on trips and to nightclubs with friends on the weekends. This characterization, however, does not overturn the defence narrative of the defendant as an honest man. A more attentive audience may perceive him as having a more ‘traditional’ man’s role, but still, it does not make him dishonest, which takes us back to the previously discussed strategy (1.1.).

A detailed account was also used to portray the defendant as a sociable person, who apparently gets on well with a lot of people, as we can see in the following examples:

- (1)  
 Defence counsel: And that is a question of doing what? Do you have to take the car in?  
 Defendant: No, sometimes I would phone. If I was close I would go in and see the lady. *She would say, “Do not worry, just settle the account when you come in”.*  
 (Transcript, p. 2)
- (2)  
 Defence counsel: [...] Mr. Flynn, why did you go to Car Choice in the first place?  
 Defendant: In the first place? Well, I knew a *lad from the taxi office next door*. I got speaking to Mike and the other lad – I cannot remember his name properly – but I got talking to them, you know. They said, “*Do you want to buy a car?*” I used to pass quite often, as I lived in the area.  
 Defence counsel: Had you ever been to those premises before you went there on the 18<sup>th</sup> to buy the Cortina?  
 Defendant: I had, yes.  
 Defence counsel: You had never bought a car before, I do not think?  
 Defendant: No, I had not bought a car, no.  
 Defence counsel: For what purpose had you been there?  
 Defendant: I would see a nice car there, pop in, ask him how much he wanted. Sometimes he would take me for a little test drive up the road – I think he once took me back – then drive and try and impress me to buy the car, kind of thing.  
 Defence counsel: When did you see the Cortina?  
 Defendant: I think it was within a day or two I saw it, that I bought it. I think he impressed me, it was a nice looking car, I had not really got a car like that before.  
 Defence counsel: We have heard it said they are quite sought after.  
 Defendant: Yes. They are nice cars, yes.  
 (Transcript, p. 8)

The two examples above are accounts about the defendant's routine and, obviously, are meant to describe his habitual activities, as well as demonstrating his usual behaviour around people. He is portrayed as a sociable man who people seem to like and trust. However, what is interesting to notice here is the way reported speech is used to give credit and support to his portrayal of a sociable and trustworthy man in the first example; and to imply social interaction in the second.

In the first example by proving the detail of what the lady would normally say, he distances himself from the scene and lets the voice of the woman inform the court on his honesty, not as first-hand information but as an indirect testimony of his character. In the second example, besides establishing his regularity in hiring cars, which is a disputed point in his trial; and the fact that he had, in fact, bought a car, the account describes his interest in cars and what he normally does concerning that fact. Instead of providing a reason for choosing Car Choice to buy the car, he provides a much more dynamic picture of his socializing habits: he knows people – *lads from the taxi office next door*, to be precise, gets to talk to them, discuss cars and, *you know...* This is a description of what his social interaction with colleagues and acquaintances normally looks like.

Not having his question answered, the defence counsel introduces in his next turn the fact that that was the first car the defendant had bought and only then goes back to ask again about the reason why the defendant had chosen to buy the car at Car Choice. It is only then that the defendant gives a more elaborate answer, which is followed by a comment on the car by the counsel, ending this segment in a 'spontaneous conversation' tone, as if the informal conversations the defendant had with friends were, to a certain extent, being projected to his interaction with the defence counsel in court.

However, not all the ‘enlivening testimony’ strategy was in the form of scene description. Throughout the examination-in-chief, many are the instances where a mere detail was added to give the account a ‘human touch’. According to Potter (1996, p. 167), “although [a] rich detail allows the [listener] to ‘make up [their] own mind’, it also allows [them] to intervene in the story actively and invert its moral force”. Although it is not the case with the details analysed in this section, the use of details in court narratives can be dangerous, though, especially when they refer to disputed facts. Potter (Ibid.) warns us that when a detail is used it can be “inspected for contradictions and confusions or provide material that can be inspected for contradictions and confusions or provide material that can be reworked into a different kind of narrative entirely” (p. 166). Some examples in the data are:

(1)  
 Defence counsel: I think at that time you were living with a lady, what was her name?  
 Defendant: Janet Holmes.  
 Defence counsel: By whom you had had a child.  
 Defendant: That is correct, yes.  
 Defence counsel: *How old was the child?*  
 Defendant: *At the time he was three and a half, about that, yes.*

(Transcript, p. 1)

(2)  
 Defence counsel: There is no secret about it, she was going there for a *ladies’ operation*.  
 Defendant: Yes.  
 Defence counsel: One that would only detain her for maybe a day but not longer than that.  
 Defendant: Yes.  
 Defence counsel: If it was successful.  
 Defendant: Yes.

(Transcript, p. 10)

These two examples above draw on the schemas we have of family ties and commitment. The mentioning the child’s age functions as an aid to cause impact and give the narrative a more dramatic tone: the child was ‘only’ three and a half when the defendant was arrested. The child’s age is a determinant factor to trigger our sympathy towards the defendant. Some people would probably think of how his arrest would have disrupted these

family bonds (and probably their plans, as a young couple, of raising a child) and how it would have affected the child.

In the second example, the defence counsel plays with the fact that the defendant's wife was going to have a *ladies' operation*, also appealing to the jury's sympathy. Instead of just stating that the defendant's wife was going for an operation and having the defendant to confirm that, or even, just eliciting that fact from the defendant himself, the counsel makes use of a three-part structure. Jefferson (1990, in Potter, 1996, p. 195) suggests that in everyday conversations lists are usually grouped in three parts. Lists with less than three items tend to be considered incomplete. The three-partedness can be used as summarising or generalising devices. Drew (1990) adds that the three-part structures are generally used for rhetorical emphasis.

In example 2 above, apart from eliciting the topic in a three-part structure, one elaborating on the other, the counsel not only manages to emphasise the topic but he also introduces the third part as a condition-dependent (and pending) situation, allowing for some unforeseeable (and not so pleasant or more traumatic, e.g. complications during the procedure) outcome.

Descriptions can also be used to set a contrast, or a more accurate picture of the facts. For example:

- (1)  
 Defence counsel: Had he become a *friend* of yours?  
 Defendant: Sort of, it was not as if he was a good friend, we talked as any *workmates*.  
 Defence counsel: Did he ever go to your house?  
 Defendant: Only the time when he went and knocked the door, when I was coming out, he never entered my *house* – well, it is a *flat* – he never entered.  
 (Transcript, p. 4)

Contrasts and alternative descriptions are comprehensively explained by Drew (1985, 1990, 1992). This device is normally used in cross-examination to confront the witnesses in order to show inconsistencies in their evidence. In the examples above, the contrast device is used to set an alternative description of the facts. In the first one, the aim was to establish that the relationship between the defendant and co-defendant was more of their being acquaintances than really friends. The second is a self-correction with the aim of being more exact in his evidence, which would probably add to his being described as an honest man.

As discussed and demonstrated previously, we can analyse this examination-in-chief portion by portion and identify in each one its narrative constituent elements. In more general terms, we can also describe the whole examination-in-chief as having Orientation (its participants, place and time of facts and other circumstances); Complicating Action (the defendant's arrest); Resolution (the defendant's imprisonment; or outcome of trial, which lies outside the scope of the examination-in-chief narrative); and Evaluation (Labov and Waletzky, 1967; Labov, 1972, 1997), even though the main narrative also contains micro-narratives (or episodes) which, on their own, can also be described in terms of the narrative elements just mentioned.

There is also the possibility of analysing small portions of the examination-in-chief in terms of Orientation, Core Narrative, Elaboration and Point, as proposed by Harris (2001, 2005), in a slightly modified version of Labov's work. We know that the defence elicit the facts concerning the case in order to have the defendant deny those facts, usually by making use of a confirmatory question either at the beginning or at the end of an eliciting questioning line, as we can see in the following examples:

(1)  
 Defence counsel: Returning to the jewellery quarter, did you at any time go on a ring snatch raid with Scott?  
 Defendant: No, no sir, no.  
 Defence counsel: Did you at any time find out that Scott had done that prior to your arrest?  
 Defendant: No sir.

(Transcript, p. 4)

(2)  
 Defence counsel: The day of the Wirley Birch robbery it is said by a young sikh [seikh] who gave evidence that he had seen a man, two men, hanging about near the post office at Wirley Birch in the afternoon prior to the robbery. Was either of those two men you?  
 Defendant: No, sir, they was not.  
 Defence counsel: Did you commit the robbery?  
 Defendant: No sir, certainly never, no.

(Transcript, p. 5)

However, what is really accomplished in the examination-in-chief here is how the transition between the events occurs, how the narrative elements interweave and what effect they have on the narrative. What happens in this examination-in-chief aligns with what Gergen and Gergen (1986, in Jackson, 1995, p. 236) offer as a successful narrative structure:

To succeed as a narrative the account must first establish a goal state or valued end point. For example, it must succeed in establishing the value of a protagonist's well-being, the destruction of an evil condition, the victory of a favoured group, the discovery of something precious, or the like. With the creation of a goal condition, the successful narrative must then select and arrange events in such a way that the goal state is rendered more or less probable. A description of events unrelated to the goal state detracts or dissolves the sense of narrative. In effect, all events in a successful narrative are related by virtue of their containment within a given evaluative space. Therein lies the coherence of the narrative. As one moves from one event to another, one also approaches or moves away from the desired goal state.

Bruner (1990) claims that narrative is the organising principle of 'folk psychology'<sup>4</sup>, playing a vital role in making sense of experience, and it is "only when constituent beliefs

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<sup>4</sup> The term 'folk psychology' is also referred to as 'folk social science', 'common sense', common-sense knowledge of the world', 'common-sense belief', 'prevailing social knowledge'. Bruner (1990, p. 35) explains that "'folk psychology' [is] a set of more or less connected, more or less normative descriptions about know human beings 'tick', what our own and other minds are like, what one can expect situated action to be like, what are possible modes of life, how one commits oneself to them, and so on". These terms, in turn, can correspond to the terms: scripts, schemas, schemata or frame, being defined as the knowledge of the world we are oriented to. For further discussion, see Baddeley (1990).



in a folk psychology are violated that narratives are constructed” (p. 39). In the same line, Jackson (1995, p. 232) points out that “it may, indeed, be argued that violations of the norm – unusual situations – are the circumstances most likely to prompt the telling of stories. The narrative is then being used as a means of attempting to resolve a ‘polemic’ situation”. According to Jackson (Ibid.), narrative constructions are not only used to describe deviant situations, but are sometimes used to typify how things are, which would correspond to the “typifications of actions accompanied, on the one hand, by a modality of ‘normalcy’, on the other by a modality of ‘abnormalcy’” (p. 232).

In the first part of the defence’s story, their aim was to show how ‘normal’ the defendant’s life was, and his testimony relied very much on his movements and activities during and around the days the robberies took place. Hewstone and Antaki (1988, p. 123, in Jackson, 1995, p. 233) claim that “when performing familiar activities people rely on well-learned ‘scripts’ (which) do not require explanations”. This description of his ‘normal’ life is contrasted to what happened after he was arrested and is emphasised in terms of his unusual state of mind. This contrast gives the defence’s narrative the basis to (re)establish the goal state: the defendant as an innocent man, or in more legal terms, ‘not guilty’.

The scene of his arrest sets out the defence’s second part of the account, that of the defendant being taken to the police station and being remanded there. The defendant’s arrest is the turning point of the defence’s narrative; it is the disrupting factor which causes a change to occur. The ‘normalcy’ of the defendant’s life becomes the ‘abnormalcy’ of an honest man in prison. It is important to notice that the scene of his arrest follows his account for the Thursday, the day his wife went into hospital for a *ladies’ operation*, which makes the scene of his arrest a much more emotionally-laden event. The line of questioning about the Friday event is:

Defence counsel: If all had gone well, when would you have gone to work on the Friday, the same shift was it?

Defendant: No, I was on the late shift again, three to eleven, yes.

Defence counsel: Did you go out that morning?

Defendant: No, I do not think we did, no.

Defence counsel: What were your plans for the afternoon?

Defendant: If I remember right, we were going to go to the fish shop about one thirty, one thirty to twenty past one. We had been in all morning, we were going to go to the fish shop. When I went out to the car I told my girlfriend to put my baby's shoes on; when I got out to the car the police pulled up with guns and I was arrested.

Defence counsel: Let us just take it in stages. When you went down to the car were you on your own?

Defendant: Yes, I was on my own, yes.

Defence counsel: What did you notice when you approached your car?

Defendant: As I approached the car, the back tyre was flat, completely flat. I had a feeling someone had messed with the car. I had only had it a day, if that. I had a feeling after two days someone had messed with it. I walked over to the car, opened the door. I thought, well, I will fill it up round the corner to see if it is punctured. I sat in the car and started the engine. I looked up. I see a Montego. I do not know whether it was an estate. I saw a Montego come round the corner, pick up some speed which made me look. I heard the speed of the car swerve into the middle of the road. Two officers jumped out with guns and said, "do not move, armed police". I froze, I was shocked, it never happened to me before, I did not know what to do.

Defence counsel: What in fact occurred?

Defendant: They told me to – his instructions – put your left hand on the door, right hand turn the keys off and so on, until I got out of the car with my hands up. At that time I can remember looking round, seeing my girlfriend and the baby coming out of the flat. They were a bit hysterical. They made me get down on the floor, face down and put the gun to me and that was it.

Defence counsel: Were you searched?

Defendant: From what I can remember they just cuffed me.

Defence counsel: Were you handed over to other police officers?

Defendant: Yes, I was handed over to two police officers, yes.

Defence counsel: And taken off to the police station at Smethwick?

Defendant: That is right, yes.

(Transcript, pp. 11)

The counsel starts his questioning about the defendant's movements on the Friday by using a hypothetical structure, probably intending to show that some condition was not attained and anticipating the fact that something occurred which disturbed a normal state of affairs. The eliciting of hypothetical situations is further called for with regard to the defendant's plans for the day. In the account the defendant puts forward, he shows that their plans were abruptly 'aborted' by the defendant's arrest.

In order to maintain a more rigid control over the defendant's account, allowing the defendant the opportunity to provide the court with a very detailed description of what happened, the defence counsel manages to divide what would be the defendant's complete narrative of the event into smaller episodes. This is done for rhetorical purposes so as to achieve greater impact on the audience. We then learn that the defendant was on his own when the police arrived. We also learn that, as an innocent man, he was thinking about the fact that someone had messed with his just bought car and that he was going to try and solve the problem and that is why he had started the car (not that he was trying to escape, which may be implied by his turning the car engine on). This is further confirmed by the fact that he had only seen the police car *after* he had started the car.

The scene of the police approaching him is full of sound and visual effects: a car picking up speed, swerving in the middle of the road, police jumping out of the car with guns – an action movie scene that is bound to be kept in the jury's memory. All the action is contrasted with the defendant's reaction: being an innocent man, he froze. He was shocked. From that moment on, his well-being changes. He is subdued, but still, what he can remember seeing is his wife and son. The defence then use parallel structure in a three-part list to highlight the effects of the event on the defendant, making sure the scene would be kept in the foreground. He was cuffed, handed over to other police officers and taken off to the police station. This leads us to the narrative of a victimised man.

#### **3.1.4. The narrative of an honest man turned into the narrative of a victimised man**

The second part of the defence's account then starts. In this second part, three aspects are emphasised. First, the counsel tries to show a change of the defendant's mental

state as a result of his being arrested. Second, the counsel tries to maintain in the foreground the effects of his arrest on his family, by referring to it from time to time during the examination. Third, the defendant is no longer portrayed as someone who *does* things; rather, he is now portrayed as someone who has things *done* to him.

#### 3.1.4.1. The defendant's mental state after his arrest

Several are the turns which point, in some way or the other, to his mental state.

Some examples are:

- (1)  
 Defence counsel: It may be helpful if we keep our eye on the custody record, but apparently it was ten minutes to two when you arrived at the police station.  
 Defendant: To be honest, sir, *I did not realise the time, I was thinking about my girlfriend and my son and what had just happened to me.*  
 (Transcript, p. 11)
- (2)  
 Defence counsel: [...] Apparently the first thing that was mentioned was when you said to them, ["I did not want anyone to get hurt, I did not have the gun."]  
 Defendant: That is not true, sir, *I did not even know what I had been arrested for. I was too shocked and thinking about my son and my girlfriend, I did not know what they had arrested me for.*  
 (Transcript, p. 11)
- (3)  
 Defence counsel: You are alleged to have answered, ["But I did not have the gun, is the bloke all right? I did not want him to get hurt."]  
 Defendant: Like I said, *I did not even know what I had been arrested for*, I did not say anything like that to the police officers, *I was in too much of a shock to even think of that.*  
 (Transcript, p. 12)
- (4)  
 Defence counsel: Can you actually recollect whether that was done or not?  
 Defendant: To be honest, sir, *I was in a lot of shock*, I do not think anything like that was said.  
 (Transcript, p. 12)

Three things are recurrent in the examples above concerning the defendant's mental state while being in custody. First, he did not know why he had been arrested; second, he was worried about his family and what had happened to him; and third, he was in too much shock. The aim is to imply that his 'normal' life was turned upside down when he was

arrested, leaving him in such a state that he could not make sense of what was going on in the police station, let alone the reason of his arrest.

The depiction of his being in this state of mind serves as the basis for the defendant's evidence of what happened in the police station. It explains why the defendant has difficulties in remembering exact details about what happened while he was in custody.

#### 3.1.4.2. Evidence as to the effects of the defendant's arrest on his family

After two more turns about some details of the defendant's being taken to the police station, the defence counsel returns to the description of what happened when the defendant was arrested, as transcribed below:

- (1)
- |                  |  |
|------------------|--|
| Defence counsel: | Did you actually see, as you left the scene, what was happening to your son and girlfriend?  |
| Defendant:       | Yes, I tried to look back as they were dragging me and there was a bit of force. I tried to slow them down. I had my hands behind my back, they were pushing me from behind. I could see my baby and my girlfriend crying, I think she was shouting something like, "what shall I do?". I shouted, "phone a solicitor, it will be all right", something like that. |
- (Transcript, p. 11)

In this turn, the counsel calls for a more 'private' (as opposed to 'public') description. Note how the counsel manages to shift the focus of the defendant being arrested to the effect it had on his family when he refers to *as you left the scene*. The counsel refers to the defendant's wife and son in some other occasions along the examination, as the following examples illustrate:

- (2)
- |                  |  |
|------------------|--|
| Defence counsel: | Did you know what happened to your wife?   |
| Defendant:       | At first I was worried for her. I could see them marching her back towards the flat, the back door where we came out, me first, her second. They shoved me in the car and that was it, until the hours passed and they were taking me backwards and forwards to this room upstairs. As I passed a room I could hear her voice. I said something like, "Are you all right |

Janet?” She said, “Yes Paul, I am all right”, and I knew then that they got her, but they had not mentioned anything to me about that at that stage.  
(Transcript, p. 14)

(3)

Defence counsel:

Was your wife mentioned, your girlfriend?

Defendant:

Not at first, I think later on they might have, they mentioned that she was there. I did not reply to that. They said if I did not start talking that she would be charged and that they would put my child into care.

(Transcript, p. 15)

Since it is obvious that what happened to the defendant’s wife and son is not relevant for the case, the subject is brought up once again by the counsel as a means to try and ‘humanise’ even further the yet dramatic event of his arrest. The scene of the police *marching* her back to their flat is described at the same time that the defendant is *shoved* into the police car, driving them apart. The defendant, however, starts his turn by showing he was worried about what might have happened to her, despite all he was going through, in a way, perhaps, to demonstrate his good character. His worries are then ‘verbalised’ in the reported interaction they had in the police station, giving the account a more realistic support.

The third time the defendant’s wife was mentioned by the defence counsel was in respect to the fact that the police was allegedly threatening the defendant to charge his wife as well if he did not talk to them about the crime. By mentioning the defendant’s wife again, the counsel is able to bring back what had come up previously in the questioning, which is:

(1)

Defence counsel:

[...] apparently so that you were in a cell, according to the record, for two hours and five minutes, is that right?

Defendant:

To be honest, sir, it is very hard to remember everything [...] *They kind of blackmailed me* and, “if you do not admit it, your child is going to be put into care and your girlfriend is going to be charged”, and things like that.

Defence counsel:

Charged with what?

Defendant:

At first they did not say. At first they kept on saying “she is going to be charged unless you start to tell us who the other man is and what your part

in the job was". Then it eventually came out as a conspiracy. I do not really understand that.

(Transcript, p. 13)

By recycling previously given evidence, the counsel manages to have the evidence repeated for emphasis purposes.

#### 3.1.4.3. The portrayal of the defendant's non-agency while in custody

In the second part of the examination-in-chief, the counsel's strategy of characterising the defendant as a non-agent is to make a clear contrast with his agency representation in the description of his routine and activities before being arrested.

When dealing with the defendant's accounts for his routine and movements during and after the robberies, he is portrayed as being the grammatical subject of either intransitive (e.g. *work*) or transitive verbs, such as *hire*, *finish*, *buy* or *visit*. In the second part, after his arrest, he is no longer the subject of those types of verbs, especially transitive verbs of wilful and intentional action which have consequences for their grammatical objects. The grammatical subject of those verbs is now the police officers and not the defendant.

Apart from that, since in the second part of the examination-in-chief the defendant is portrayed as having been deprived of his will, states and processes are also described by means of passivization. Ehrlich (2002) characterises this use as 'a grammar of non-agency'. She explains that this 'grammar of non-agency' can be expressed by grammatical constructions that de-emphasise or mitigate agentive roles, such as verbal or adjectival

passives. In passive constructions “the causal relationship implicit [...] is that an agent wilfully affected a patient in some way” (p. 736).

In this study, the use of passive structure has more to do with emphasizing the defendant as the affected participant than actually obscuring or eliminating the agentive role of the police officers, since it is obviously implied. In sum, in the defendant’s version of these events, two actions are being described with the aid of both wilful/intentional transitive verbs and passive constructions. The defence either cast the defendant as being treated as if he was a puppet with no will whatsoever, or as being the target of the police violent actions - his being ill treated.

In order to be able to discuss the characterization of the defendant in a non-agentive role, I organized this section in the following manner:

- The portrayal of the defendant as someone deprived of agentive actions.
- The portrayal of the defendant as the affected participant of violent actions.

#### *3.1.4.3.1. The portrayal of the defendant as someone deprived of agentive actions.*

The following examples illustrate how the defendant is portrayed as someone who loses his status as the actor of actions as if deprived of his will, and is, consequently, acted upon, becoming someone to whom things are done or in a position where he is told what to do.

This change of status is depicted in the following two examples:

- (1)  
 Defendant: All what I can recall, sir, when I *was taken* to the custody desk the Indian officer said [...]  
(Transcript, p. 12)
- (2)  
 Defence counsel: What *happened to you* after that?  
 Defendant: After I refused to sign the form?  
 Defence counsel: Yes.  
 Defendant: They *took me* round to the female cells and *shut me* in there and *locked* the door.



Defence counsel: Who was it who *took you*, can you remember?  
 Defendant: The same two officers that *had arrested me*.  
 Defence counsel: *You were put in there?*  
 Defendant: Yes that is right.  
 Defence counsel: *Did they leave you there?*  
 Defendant: They *left me* there but it was not for long.  
 Defence counsel: What happened?  
 Defendant: They came back.  
 Defence counsel: The same officers?  
 Defendant: I think it was different officers, they *took me*, they *said to me*, “*come with me*”. *I did not know what they wanted, where I was going. I followed them. They took me* out onto a corridor and up some stairs into a room where *they assaulted me*.

(Transcript, pp. 12/13)

The first example sets out a series of event descriptions depicting the defendant as no longer the agent of his own actions. In the second example, the counsel uses the expression ‘*happen to*’ to prompt the defendant to give a detailed account of the events which took place while he was in custody. The defendant’s response is a brief linguistic description of the events, which, in fact, points to the symbolic meaning of being arrested – being shut and locked in from the outside world. It may be too farfetched, but the way the defendant describes his being locked in seems the way a child would see and describe as being punished for a wrongdoing. He describes the event as if this was done to him and not as a consequence of his own actions, which would be in alignment with his claiming his innocence.

In the next turns, the counsel takes it in steps to elicit more details until the defendant provides a final complement to the account. In this turn, the defendant manages to reinforce his having no command of his own actions. As he describes it, he was just following them, and being an innocent man, having no idea what they wanted or where he was going. This depicts him as being totally at a loss in this alien situation. Not knowing what to do, he just followed the police officers as he was told, and then he was assaulted – the point he wanted to have emphasised.

In the second part of the examination-in-chief, many are the examples further depicting the defendant as a non-agentive participant of the events that took place while he was in custody. The following two examples just corroborate what was discussed above:

(3)  
 Defence counsel: [...] it was at 16.45 that you apparently *were taken away* [...] and it was 16.55 when *you were returned*, [...] Do you remember *being taken* by them up to the third floor?  
 Defendant: *I had been taken* upstairs to the third floor on a few occasions, two or three, it is hard to remember the times exactly.  
 (Transcript, pp. 14/15)

(4)  
 Defence counsel: Apparently, after that episode, which they called an interview, *you were taken back* [...] and *you were left there*, I think, [...]. *You were taken out* again, apparently at [...] and on that occasion *you were interviewed*, according to the police officers, for some forty-eight minutes [...] before *being sent back* to the cell. At a quarter past six, [...] Holmes and an officer [...], can you remember those three?  
 (Transcript, p. 15)

In the examples above, we almost can see the defendant being treated as a puppet (He is taken away and then returned, only to be taken back again and, this time, left there. Then taken out and sent back again...), and this is perhaps what the defence want the jury to imagine, so that they can ‘visualise’ what the defendant was going through and, hopefully, compare it to his ordinary life before that and, at least, take pity on him.

#### 3.1.4.3.2. *The portrayal of the defendant as the affected participant of violent actions.*

After the defendant ends his turns (example 2 above) by informing that ‘*they assaulted me*’, the defence’s next turn is meant to elicit more details about that. The defence counsel then asks:

(1)  
 Defence counsel: *What did they do in fact?*  
 Defendant: First of all they said, “What was your part in the job?” They repeated it a couple of times. I said, “what job?” *I was poked very hard in the chest, pushed up against a wall and threw on the floor a couple of times.* There

were two or three of them in the room if I remember, different ones kept coming in and out, now and again. I just kept saying “what job?” They were like getting more violent [sic] as if they wanted answers from me. *I could not give them answers* because I had not done anything. *I did not know why I was arrested.*

(Transcript, p. 13)

As the example illustrates, the defendant is portrayed as someone that, being deprived of his agentive role, is not only acted upon but mainly the actions he is subjected to are those of violent nature. Note the three-part list (underlined) utilised by the defendant to show the intensity and to what extent the violence had escalated. He ends his turn by using the modal ‘could’ to portray himself as helpless in face of what he was being put through since he had no answers (the answers were beyond his knowledge) and did not even know why he was there. Some more examples of this type of action are:

(2)

Defendant:

Yes sir, when the three officers were in the room that is when *they started to rough me up, throw me around* a bit. It seemed like they were losing their temper, they wanted the answers from me.

(Transcript, p. 15)

(3)

Defence counsel:

Did they write down anything that you said?

Defendant:

There was no paper, no pens, it was mouth to mouth, it only lasted a couple of minutes, if that, actually talking, the rest of the time *I was being pushed, I was roughed up, I was being thrown* about the room.

(Transcript, p. 15)

I think these two more examples, especially the last one, exemplify well the analysis carried out so far. He again casts himself as being subjected to violent action, by means of both wilful and intentional transitive verbs or by the use of passive constructions. In his turn, in example 3, he again uses the three-part list as a technique of showing the course of action was complete.

Narrative is, above all, to create ‘word pictures’ and in my search for the human component of the stories told in court and its importance in the construction of plausible,

believable and appealing stories, I came to the conclusion that it is exactly the human component that renders the story its realistic dimension.

In the examination-in-chief analysed in this study, I investigated how the defence version of the facts was made more vivid, more realistic and more appealing to the court, departing from the fact that this is what trial manuals advocate as being basic elements that make the stories in court more convincing.

In order to understand the stories in court, studies (see Pennington and Hastie, 1993) demonstrate that the jury draw on the trial evidence, world knowledge about similar events and knowledge about story structures. It was observed that the defence skilfully construct their story around the defendant's personal life, trying to place the evidence given within the scope of 'normalcy', that is, within the schemas we may have of honest people as opposed to criminals. It was also emphasised how an arrest would affect the life of an honest man. To support their story's main line, the defence then claim that while the defendant was in police custody, he was ill treated and had documents and his signature forged. That was then the defendant's story.

Since I was interested in analysing how the defendant's story was constructed during his testimony, and having in mind that during cross-examination the main aim is to verify the evidence (story) previously given during examination-in-chief in order to show possible inconsistencies or to discredit the witness (in this case, the defendant) altogether, I will briefly discuss the cross-examination of the defendant and mainly, how he is characterised by the prosecution.

## 3.2. ANALYSIS: CROSS-EXAMINATION

### 3.2.1. The Narrative Structure in Cross-Examination

Unlike examination-in-chief, cross-examination is not so much telling a story as it is verifying the coherence, completeness and plausibility of the account provided during examination-in-chief. Instead of pursuing a story line, cross-examiners usually raise only parts of the evidence (story) previously given so as to undermine, discredit or destroy that evidence. Obviously, this is done by means of recapitulating, summarising and, consequently, revisiting what happened or what was said in the previous evidence. Therefore, past tenses are used, but they rarely indicate temporally related events.

Although previous accounts are being recycled so that the counsel can confront the witness or check the account's plausibility (and, consequently, past tenses are then used), most of the interaction is a struggle between the counsel's confronting the defendant and making accusation and the defendant's rebutting them. In other words, questions and answers are less of a story and more of negotiating actions of accusations, challenges, denials and rebuttals. In fact, while in examination-in-chief a story is displayed, in cross-examination what comes into play is a struggle between counsel and witness to either destroy or maintain that story. In the cross-examination analysed here, few were the occasions when the defendant had the opportunity to elaborate on his answers, providing the court with a minimal narrative. One example of a minimal narrative provided by the defendant is:

Prosecuting counsel:	Now the only people on that occasion who can tell us where you were are your relatives, your mother or your girlfriend, is that right?
Defendant:	Sir, when I was being interviewed –

Prosecuting counsel: Is that right?  
 Defendant: Yes. I want to explain myself if you would let me.  
 Prosecuting counsel: Certainly.  
 Defendant: *While I was being interviewed, I told the police I went to my mother's, which is correct. Within a few hours of making that interview I realises on that Monday I did not take my girlfriend and my baby, it was the day before I took them. We visited my mother's very often and on that Monday I went to my mother's on my own. I admit I did make the mistake while being interviewed, yes.*  
 Prosecuting counsel: We will not trouble with that for the moment, let us just consider what was happening at Wirley Birch. [...]

(Transcript, p. 33)

This is one of the few instances where minimal narratives were provided. Note that even though the prosecuting counsel allows the defendant to explain himself, he makes clear that what was said must be discarded.

When analysing the occurrence of past tense verbs in both examination-in-chief and cross-examination, an interesting pattern emerged.

VERBS	EXAMINATION-IN-CHIEF	CROSS-EXAMINATION
	Total no. of verbs: 1.281 (100%)	Total no. of verbs: 1.534 (100%)
To be (present and past)	242 (18,9%)	404 (26,3%)
Simple past	561 (43,8%)	337 (22%)
Simple present	107 (8,4%)	212 (13,8%)
Present Perfect	26 (2,0%)	101 (6,6%)
Past Perfect	84 (6,6%)	51 (3,3%)
Past Continuous	27 (2,1%)	27 (1,8%)
Present Continuous	6 (0,4%)	59 (3,8%)
Modal verbs	111 (8,7%)	153 (10%)
Passive constructions	109 (8,5%)	92 (6,0%)
Imperative	7 (0,5%)	79 (5,2%)
Future	1 (0,1%)	19 (1,2%)

Table 3.9. Occurrence of verb tenses in examination-in-chief and cross-examination.

The figures above are not the result of a fine analysis and the numbers alone do not point to any particular verbal patterns either in examination-in-chief or cross-examination. However, they do indicate that, at least in the data analysed here, there are more occurrences of simple past in examination-in-chief and more occurrences of simple present, present perfect and imperative in cross-examination. Further research would be necessary

to confirm whether this is a recurrent pattern and why that is so. One question would be: why is present perfect more frequent in cross-examination than in examination-in-chief?

For example:

(1)  
Prosecuting counsel: Scott must believe you are an innocent man who has been framed by the police.

Defendant: Sir, I am innocent of the crime, I did not rob anybody.

Prosecuting counsel: Scott has been served, we know, with the same papers that you have had.

Defendant: I do not know about that.

(Transcript, p. 39)

(2)  
Prosecuting counsel: Mr. Flynn, now you have had a rough time, you have told us, at the hands of the police officers?

Defendant: Very rough, yes.

(Transcript, p. 40)

(3)  
Prosecuting counsel: You demonstrated that this morning over and over again.  
Defendant: I have committed petty crime in the past, I have never been a violent man, I never will be, I have not robbed anyone.

(Transcript, p. 46)

Since cross-examination is not the telling of a story, but rather, the legal procedure to ensure that all testimony is tested and challenged, I now proceed to describe some of the linguistic features used to achieve that.

### 3.2.2. Strategies in cross-examination

In order to verify previous accounts, cross-examiners usually make use of three basic techniques<sup>5</sup>, namely, confrontation, probing and insinuation. In fact, these three techniques can actually be reduced to only two, in that confrontation is only firm insinuation (Munkman, 1991). In addition to those three techniques, Munkman (Ibid.) claims that it is usually the case that a fourth technique is also frequently employed in cross-examination -

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<sup>5</sup> See footnote 3, Chapter Two.

the technique of undermining. He explains that undermining is actually a line of approach that uses “the methods of the other [three]”, but its purpose is totally different from the other techniques. When using the technique of undermining, the main objective is not to “break down the evidence by inquiring into the facts”. Rather, the aim is to “take away the foundations of the evidence” mostly by showing that the witness cannot be trusted (p. 66).

The cross-examination analysed in this study can be described as being basically conducted through the techniques of probing, insinuation, confrontation and undermining. Through those questioning techniques, the prosecuting counsel was able to challenge and discredit the defendant’s account, as well as to build up accusations against the defendant. This is all done by recycling previous information so as to show its inconsistencies. Drew (1990, p. 63) claims that

the management of ‘producing’, of creating the impression of, unreliability and inconsistency is one central purpose of questioning in cross-examination. That is, inconsistency is not always a ‘natural’ product of a witness’ testimony but is often created by the way opposing counsel manages to construe how the witness has formulated that testimony.

Basically, there are three types of inconsistency which can be raised in court (Drew, 1990).

- a) Internal inconsistencies: the witness is shown to have contradicted him/herself;
- b) Inconsistencies with early statements and evidence: what the witness is saying is contrasted with what he/she had already said;
- c) Inconsistencies with other evidence.

In the present analysis, only inconsistencies with early statements and evidence and inconsistencies with the evidence of other witnesses were found. One instance which illustrates the defendant being confronted with the statement of a witness can be observed in the following excerpt:



Prosecuting counsel: [...] You say you hired the car innocently intending to use it to go to Derby.  
 Defendant: That is right sir, yes.  
 Prosecuting counsel: Why did you lie to the hire company about the reason for your hiring the vehicle?  
 Defendant: I did not lie, sir.  
 Prosecuting counsel: Let me remind you of the evidence of Mrs Ingram who hired it to you, which is at page one, your Honour, this is the statement which was read to the jury. [“He gave me the reason for the hire of the car as his mother was ill and that he wanted to visit her.”] Now, why did you lie about the reason for the hiring of the vehicle?

(Transcript, pp. 24/25)

The defendant had already said in the examination-in-chief that he used to hire cars regularly to go on trips to Derby and Sheffield with friends for the weekend. The prosecuting counsel raises the topic again so as to be able to contrast it with what the witness had said and, consequently, confronting the defendant. Another example of showing inconsistencies in the defendant’s account is when the prosecution confront the defendant with the fact that he had said earlier in the examination-in-chief that he had been away from the Rover car (when it was stolen) for about ten minutes and not for half an hour as stated previously in the insurance form.

Prosecuting counsel: You wrote down there, [“I left the car locked at about one o’clock Monday afternoon by a road facing Rushton Street in Ladywood and everything was in order at the time. I returned at 1.30 when I discovered the car was missing and nobody seen anything at all.”] Why were you telling the insurance company you had been away from the car for half an hour when you were careful to tell the jury you were only away for five or ten minutes?  
 Defendant: Maybe I am mistaken in the times, sir.  
 Prosecuting counsel: Or maybe you are wrong about it.  
 Defendant: No, I am not wrong sir, it seemed about ten minutes to me.  
 Prosecuting counsel: But think about it, this version cannot be true, on your present account, because you were only as far as the jury is from the front door of your friend.  
 Defendant: Yes.  
 Prosecuting counsel: And the fish and chip shop is no more than two or three minutes from there.  
 Defendant: [no reply]  
 Prosecuting counsel: So you would have been away for half an hour.  
 Defendant: Maybe. I was not, sir, no, but it seemed like about ten minutes to me.  
 Prosecuting counsel: The problem is, Mr. Flynn, that when you make up stories you may not always remember what it is you have made up.

Defendant: It was not made up, sir, it was an accurate account of what I can remember at the time.

Prosecuting counsel: If you were telling the truth you have told it from your memory what you remember happening.

Defendant: That is right.

Prosecuting counsel: But when you make something up, it is difficult to remember, is it not?

Defendant: What I have said, sir, from what I can remember I said.

Prosecuting counsel: Well, now, we will see as we go on, but I suggest to you whenever we check your story we can find that it is not true and I am going to show you some more examples as we go along. Now, still with the car, [...]

(Transcript, pp. 26/27)

In the example above the prosecuting counsel confronts the defendant with his own words, which had already been dealt with earlier in the cross-examination when the counsel had mentioned the defendant's evidence during examination-in-chief:

Prosecuting counsel: You were away no more than five or ten minutes, that is what you told the jury, you were at pains to tell the jury you were only away a brief time.

Defendant: Yes, that is about right.

(Transcript, p. 26)

He starts then by reading what the defendant had written in the insurance form, points to the inconsistency in the stated time and challenges the defendant saying that he was wrong. He then demonstrates that, logically, the defendant could not be right when saying that he was away for only ten minutes. The prosecuting counsel's point is then made clear. Since a Rover car was used in the robbery, the point the counsel wants to make here is that the car was not really stolen and that the defendant had made all that up. The counsel also makes sure that the defendant (and the jury) understands that his aim in this cross-examination is to demonstrate that the defendant's story is not true. The counsel then goes on, for quite a long time, probing into the details concerning the Rover car, showing more inconsistencies.

The prosecuting counsel also uses summaries to make a point and to build up accusations. Examples are:

(1)

Prosecuting counsel: Mr. Flynn, there it is, the jury have listened to what you say, about it, the point I make is this, that when the Rover appears in Smethwick, watching those premises, it is very odd that on two days a working man, it coincides, has time off from work and when the jury look at this case they will find that every time you are alleged to be in Smethwick, committing a crime, it coincides with the time that you are not at work.  
(Transcript, p. 30)

(2)

Prosecuting counsel: Is it a mere misfortune that once again, not only a man, who's described like you, but a man who is identified as you, was Scott's companion on this crime?  
(Transcript, pp. 34/35)

(3)

Prosecuting counsel: You see how odd it appears for these three coincidences: in the hands of the man who hired the vehicle that was used for the theft, to have the same appearance as one of the thieves, and he cannot prove where he was on the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> or 12<sup>th</sup> of November.  
(Transcript, p. 32)

In the examples above, the counsel brings together several pieces of evidence so that he provides the jury with a summary of the evidence given. By doing so, he confronts the defendant with damaging 'misfortunes' and 'coincidences', restating the prosecution case. Very often these summaries are structured in three-part lists, as example 3 above illustrates. Sometimes these summaries are followed by further scrutinising line of questions, as the following example illustrates:

(4)

Prosecuting counsel: It is a grave misfortune, is it not, that you are not only linked to the car, you cannot prove where you were and then a witness describes you to a tee.

Defendant: Sir, just because the lady says I am light-skinned, there is more people than me around who look like me.

Prosecuting counsel: But it is height and weight and hair.

Defendant: Well, I can show you hundreds of half-castes with my height, weight and hair.

Prosecuting counsel: But they did not hire that Rover, did they?

Defendant: I did hire a Rover, I am not denying that.

Prosecuting counsel: They did not go to Pacific Ocean Garage where the Rover E128, which we know now to be stolen.

Defendant: Sir, I do not know anything about any 128.

Prosecuting counsel: You see, this just eliminates all the other people bit by bit, do you follow?

Defendant: I follow, yes, sir.

(Transcript, pp. 31)

The prosecuting counsel starts by summarising previous evidence in a three-part list to emphasise that the evidence is complete. The defendant's skilful answer, however, points to the fact that the description provided by the witness does not necessarily narrow down all possibilities to just one - his being the thief, since there are lots of people like him. This forces the prosecuting counsel to list (again in a three-part structure so as to emphasise that it is not only one more detail, but, in fact three) other details that would also corroborate his description, which is once again rebutted by the defendant. Note that the counsel then introduces two more elements in his next turns, complementing a third three-part structure. By doing so, the counsel manages to "take away the foundations" of the defendant's argument (Munkman, 1991, p. 66).

Besides retrieving previous statements and testimony as to facts in order to challenge the defendant's story, the prosecution also confront the defendant with his own feelings and reactions. In my analysis, I considered the examples below as being part of the same line of questioning. I numbered them so as to make clear that they do occur separately along the cross-examination.

(1)  
 Prosecuting counsel: Do forgive me. Think how a dramatic piece of news it would be to you, just think about how dramatic it would be if you had no idea that Scott was an armed robber.  
(Transcript, p. 23)

(2)  
 Prosecuting counsel: Mr. Flynn, if you were an innocent man –  
 Defendant: I am, sir.  
 Prosecuting counsel: - Who had been kept in a police station and accused of a crime which you had not committed, the moment you were told that a workmate and friend of yours was the other half would be a very dramatic moment indeed, would it not?  
 Defendant: I was quite surprised, yes sir.  
(Transcript, p. 24)

(3)  
 Prosecuting counsel: You, Mr. Flynn, when the police told you on the 30<sup>th</sup> of November, late that night just before midnight, that Scott had been arrested, you never expressed any surprise at all, did you?  
 Defendant: I cannot remember exactly what my expression was, sir, then.  
 Prosecuting counsel: Oh, I think you probably could.

Defendant: In all honesty I cannot, sir.  
 Prosecuting counsel: Just picture the situation, imagine, try and imagine, you are innocent and there you are in the cell, all these terrible things have happened to you and the police come in and they say the other man is Scott. What would your reaction have been?  
 Defendant: Quite surprising.  
 Prosecuting counsel: But you never expressed any surprise.  
 Defendant: I did not express it, sir, because I had been put through enough over this. I was in the police station and that is why.  
 Prosecuting counsel: Shall I tell you what you did do and you think about it and think whether you wonder if it is odd, now, looking back. You see, they told you they had arrested Scott, [“nicked him”] was the words they used, but Scott had told them untruthfully that you had got rid of the gun.  
 Defendant: Sir, I have never owned a firearm.  
 Prosecuting counsel: Listen to your reaction: [“Scott says that, fuck me he got rid of that.”]  
 Defendant: That is not true, sir, I did not make any admissions like that at all.  
 (Transcript, p. 43)

In examples 1 and 2, the prosecution raise the fact that since the defendant was innocent, it would be terrible news to know that the co-defendant, a co-worker and a friend, was a robber. By putting that to the defendant, the counsel makes the defendant agree with him and say that he was quiet surprised. Almost at the end of cross-examination (example 3), the counsel brings the topic back, this time claiming that the defendant expressed no surprise at all when learning that the co-defendant had been arrested. This time the defendant expresses uncertainty about his reaction at the time. The counsel then urges the defendant to picture the situation and makes him admit that the reaction to such news would be that of a surprise. The counsel confronts the defendant again saying that he did not express any surprise, showing that ‘not expressing any surprise’ would be inconsistent with the defendant’s claim that he was innocent. Having confronted the defendant with his lack of surprise, implying that he knew all about the co-defendant’s activities since he had participated in the robberies, the counsel finally introduces what the defendant’s ‘allegedly’ real reaction was by referring to what the co-defendant said about the gun.

A second example is about the defendant’s signature on one of the police forms. The defendant claims the only form he signed was one to be transferred to another police

station. First, the counsel approaches the point he wants to make by recapitulating what the defendant had claimed happened while he was at the police station:

Prosecuting counsel: You had then been dreadfully treated.  
 Defendant: Yes, sir.  
 Prosecuting counsel: You had been beaten up.  
 Defendant: Yes, sir.  
 Prosecuting counsel: You had been threatened.  
 Defendant: Yes.  
 Prosecuting counsel: You had interview records forged.  
 Defendant: There was no interview taken place without my solicitor.

(Transcript, p. 41)

A few turns later, he continues:

Prosecuting counsel: Right. You would not sign anything then?  
 Defendant: No, sir.  
 Prosecuting counsel: You are taken up to court, remanded, back to the cells [...]

(Transcript, p. 41)

Some more turns later, after recapitulating what had allegedly happened to the defendant and reaffirming that the defendant would not sign any papers, the counsel establishes that the defendant would be in complete distress for being remanded in custody:

Prosecuting counsel: You must have thought, “good grief”.  
 Defendant: I felt relief.  
 Prosecuting counsel: “I wonder what is going to happen now I am back in these cells”.  
 Defendant: Yes I did.

(Transcript, p. 41)

The next step then was to challenge the defendant with the fact that he had signed a form, which would be totally inconsistent with his state of mind at the time:

Prosecuting counsel: Are you saying that man coolly – you happily had that man – at ten minutes past eight put your name to this document without asking and looking to see what it was you were signing?  
 Defendant: I put my name to the document before then as well, signing property, or handing some money out to my girlfriend.

(Transcript, p. 42)

After some more turns, the counsel confronts the defendant by making his point explicitly clear:

Prosecuting counsel: Mr. Flynn, were you in your state of mind signing a document with two blank lines above it in the presence of police officers you loathed and distrusted?

(Transcript, p. 42)

The present analysis shows that this cross-examination is particularly a negotiation (or better yet, a struggle) between the prosecution and the defendant, in their attempts to discredit and to maintain their version of the facts. At the same time that the prosecuting counsel tries to discredit the defendant's story, he also reaffirms his own version of the facts. In many instances during cross-examination, the prosecution make their case clear by confronting the defendant's evidence, not so much as to undermine it but particularly to establish a contrast between them, making that clear to the jury. The following examples illustrate that:

(1)  
Prosecuting counsel: *The prosecution say you hired that car intending to keep it and use it under false plates, do you understand?*

Defendant: I understand but that is not true, sir.

Prosecuting counsel: *You say you hired the car innocently intending to go to Derby.*

Defendant: I had hired other cars over the month, sir.

(Transcript, p. 24)

(2)  
Prosecuting counsel: But you know *the prosecution allege* you were in the jewellery quarter at around midday on the 9<sup>th</sup> of November, do you not?

Defendant: Sir, if what you are trying to say, I took part in any taking of rings, I did not steal any rings.

(Transcript, p. 30)

In example 1, a contrast is clearly expressed in parallel structure between what the prosecution say and what the defendant says. Note that in the second turn, the prosecuting counsel introduces the adverb *innocently* to evaluate the defendant's case and, therefore, imply that what the defendant says is not to be considered credible. Even though there is no explicit contrast between the prosecution's case and that of the defendant's, it is still retrievable by the mere mention of the prosecution's allegations, and the prosecution's case is once again made very clear.

Sometimes, however, the prosecution's case is made clear by other means. In the following examples, this reference is made as *the jury know, that is the evidence, we know* and *there was*.

- (1)  
 Prosecuting counsel: [...] Now, still with the car, *the jury know* that that was used under false plates. [...]  
 (Transcript, p. 27)
- (2)  
 Prosecuting counsel: Let us just stay with the Rover for a minute. On the 10<sup>th</sup> and 11<sup>th</sup> of November a Rover bearing those plates was seen at the Wildmill precinct, *that is the evidence*, is it not?  
 Defendant: That is what they say, yes sir.  
 (Transcript, p. 29)
- (3)  
 Prosecuting counsel: Well, it is one brick after another. Let us go, please, to the 12<sup>th</sup> November, to Old Street in Hockley. *We know* the Rover car was being used on that crime because Scott has told us so. He has also told us that you were one half of the team, being the driver. [...]  
 (Transcript, p. 30)
- (5)  
 Prosecuting counsel: Let us leave Wirley Birch and come to the Windmill precinct. On the 25<sup>th</sup> of November *there was* a Ford Cortina used in that attempted robbery, *was there not?*  
 Defendant: Yes, sir, that is what they say, yes.  
 (Transcript, p. 35)

The prosecution's case is put forward as if it has already been the story accepted by the court. If the *jury know, that is the evidence*, or if the generalizing *we know* is established as being the common agreement as to the facts, there is no point in disputing that any longer. In the last example, number 5, however, the prosecution's case is stated not as the court's coming to a logical conclusion, but the case is reaffirmed as an existential fact per se (*there was*), beyond scrutiny.

Contrast devices are also used to provide alternative descriptions and characterisation of the facts (Drew, 1985, 1990, 1992). For example:

- (1)  
 Prosecuting counsel: *Mrs. Henson said that she was not sure.*  
 Defendant: *No, she said I was not the man.*



Prosecuting counsel: The jury remember her evidence. She told them that when she said to the police officer [“no”], she was meaning to say “I am not sure”.  
 Defendant: It is there in the statement, sir.  
 Prosecuting counsel: I know. Well, the jury will decide her evidence.  
 Defendant: If you show the jury they can see what she said.

(Transcript, p. 34)

(2)

Prosecuting counsel: *You heard him say that, did you not?*  
 Defendant: *I heard him giving evidence, yes sir.*

(Transcript, p. 36)

(3)

Prosecuting counsel: November 1986 before the Crown Court for theft, another twelve month’s youth custody.  
 Defendant: It is to run concurrent *with the term I had served.*  
 Prosecuting counsel: *With the term you were then serving.*  
 Defendant: Yes.

(Transcript, p. 43)

In the examples above, the struggle between counsel and defendant in their attempts to maintain and reinforce their version of the story is made very clear. As in the examples previously discussed, they repeat parallel structures to correct or rebut the version provided by the opposing party as well as to emphasise and contrast their different alternatives to the facts. We see in examples 1 and 2 that it is the defendant who is fighting for his version, while in example 3, it the prosecuting counsel who uses the contrast device to correct the defendant’s evidence. Note that in example 1, their struggle is further pursued in a confrontational manner.

The following example shows how complex the interaction between counsel and defendant can be.

Prosecuting counsel: [...] But Scott has told us this is the car. What other brown Cortina car would Scott have had access to other than this one?  
 Defendant: Sir, he did not have access to my car.  
 Prosecuting counsel: Oh, I thought you were at pains to explain to the jury that you had returned that car.  
 Defendant: That is right.  
 Prosecuting counsel: To the garage, Car Choice, on the morning of the 25<sup>th</sup> of November.  
 Defendant: *That is right*, sir, yes.  
 Prosecuting counsel: *That is your case*, is it not?  
 Defendant: *That is what happened*, sir. (CONTRAST)

Prosecuting counsel: What you are saying to the jury is this: “Well, if the car was used in a robbery, it was no longer in my possession.” (REFORMULATION)

Defendant: Sir, any car I ever owned has never been used in a robbery.

Prosecuting counsel: *That is what you are saying to the jury?*

Defendant: *That is the truth.*

Prosecuting counsel: Just listen to the question, never mind protesting your innocence for the moment. If it was used you are saying it was not in your possession.

Defendant: Sir, as far as I am concerned while I drove the car it was not used in any robbery.

Prosecuting counsel: Think about this. The evidence in this case proves that you returned the car to that garage on the day after the robbery, does it not?

Defendant: No sir, I returned that car on the Wednesday, I only had it seven days.

Prosecuting counsel: Face up to this would you. Just take a look at exhibit 6, it is the used car invoice from Car Choice. Have you got it?

Defendant: Yes sir.

(Transcript, p. 35)

Counsel and defendant are discussing the exact date the Cortina car owned by the defendant was returned to the garage, being that one of the disputed facts. The prosecution affirm that that car was used in the robbery because the co-defendant had told them so. The prosecuting counsel replaces the defendant’s assertion *that is right for that is your case*, possibly implying that that is not true, it is only the defendant’s account, which is, in turn, replaced by the defendant’s alternative characterisation as *that is what happened*.

The interaction is then followed by the prosecution’s reformulation of the defendant’s case. The contrasts and reformulation are further reinforced in their next turns by more contrast and reformulation structures. The prosecution continue the interaction by pointing out that there is evidence to prove it and then starts another line of questioning probing into the facts related to the event. The prosecuting counsel’s last two turns also exemplify how incisive and forceful his language is, reflecting the adversarial aspect of cross-examination.

On the other hand, in the examples above we can see that the defendant rebuts the prosecution’s allegations and also tries to maintain and reaffirm his version of the story. He always has an explanation for all prosecution raised points. For example:

- (1)  
 Prosecuting counsel: Can you offer any other explanation, apart from the one I am putting forward?  
 Defendant: There is plenty of cars at Pacific Ocean, I do not go round looking at cars. I went there to enquire about hiring a car.  
 (Transcript, p. 28)

However, what stood out in this cross-examination was the defendant's ability to avoid answering leading questions, or avoid giving incriminating answers as a whole. Some examples are:

- (1)  
 Prosecuting counsel: The prosecution say you hired that car intending to keep it and use it under false plates, do you understand?  
 Defendant: *I understand but that is not true, sir.*  
 (Transcript, p. 24)

- (2)  
 Prosecuting counsel: Mr. Flynn, there it is, the jury have listened to what you say, about it, the point I make is this, that when the Rover appears in Smethwick, watching those premises, it is very odd that on two days a working man, it coincides, has time off from work and when the jury look at this case they will find that every time you are alleged to be in Smethwick, committing a crime, it coincides with the time that you are not at work.  
 Defendant: *It does not mean I have committed a crime, same if I was not at work.*  
 (Transcript, p. 30)

- (3)  
 Prosecuting counsel: But you know the prosecution allege you were in the jewellery quarter at around midday on the 9<sup>th</sup> of November, do you not?  
 Defendant: *Sir, if what you are trying to say, I took part in any taking of rings, I did not steal any rings.*  
 (Transcript, p. 30)

- (4)  
 Prosecuting counsel: [...] There it is, the brown Cortina car with Mr. Lincoln (?), do you remember the young man who chased it in his Mini, with his baby on the back seat?  
 Defendant: *I do not remember being chased, sir, because it was not me who was driving.*  
 (Transcript, p. 35)

The examples above show how able the defendant was in this case as to skilfully avoid giving incriminating answers as well as avoid accepting the assertions and the presuppositions embedded in the prosecuting counsel's questions. This may probably raise questions about the claim that less powerful people would be in disadvantage in court.

### 3.2.3. Topic Analysis

During cross-examination 710 turns were identified. Out of this total, 357 were the prosecution turns and 353 were the defendant's answers to the prosecution. Two of the prosecution turns were related to court procedure to which the defendant gave no answers. Moreover, the defendant did not give any answers to two of other questions posed by the prosecution, which were signalled in the transcripts as "no reply". The topic distribution during cross-examination is as follows:

TOPIC	N.	DESCRIPTION OF CONTENT
Information on co-defendant (and defendant's reaction to the news that co-defendant had been arrested)	31	Asked about: co-defendant not working at (...) at this time/when he finished working for (...)/day of the defendant's arrest/defendant seeing co-defendant since he finished working for (...)/where/the defendant knowing nothing about the crimes co-defendant was committing/first time defendant learnt co-defendant might have been committing crime/defendant remembering the date of that interview/being told about that 1 <sup>st</sup> December and being asked about the gun/being told by police officers co-defendant was arrested/having worked with co-defendant, knowing nothing about crimes and learning co-defendant was suspected of crime until 30 <sup>th</sup> November/what parts of it the defendant does not agree with/how a dramatic piece of news it would be to the defendant/not being able to forget the moment he learnt co-defendant had been arrested/dates of being told that/police officers telling defendant co-defendant had been arrested/being asked if he wanted a solicitor present/being that occasion the first time the defendant heard co-defendant was part of the armed robbery/defendant saying that maybe the date/the news being a very dramatic moment for the defendant.
Rover Car	61	Asked about: defendant understanding the prosecution saying that he hired the car intending to keep it and use it under false plates/the defendant saying he hired the car intending to go to Derby/why the defendant lied to the hire company about the reason for hiring car/telling the company he wanted it because his mother was ill and he wanted to visit her/witness being lying/defendant deliberately lied about the reason he hired the car/the day the car was reported stolen by defendant/going to Ladywood to visit a friend during lunch time/friend being not in/parking outside their address/parking within a few yards of it/remembering the day the car was stolen/how far from the friend's address the defendant parked the car/friend not being there and the defendant going to the fish and chip shop/the defendant telling the jury he was away no more than five or ten minutes/his intention when coming back to the car/how the defendant would describe the visit to the friend/the reasons for the visit/going to visit friend to see if he wanted to go out the weekend/why

		<p>he had lied about what he was doing at the time the car was stolen/the heading of a document, being "Avon Insurance Plc"/that being a form made out by Hallway to claim from insurance company about stolen car/something being crossed out in the form and written "theft"/confirming the defendant's writing when describing the theft in the form/why he wrote in the form he had being away from the car for half an hour and now telling it was only five or ten minutes/the fact that this version now cannot be true and telling the defendant why/the fact that he is making up stories and that is difficult to remember/false plates someone had made up and put on the car/being a coincidence that the defendant was a customer at the Pacific Ocean garage where the true Rover was kept/being striking that the man who stole the car and change the plates went to that garage to obtain the number/why the defendant did not hire the car from Pacific Ocean to go to Derby/defendant having guilty feelings about Pacific Ocean garage/defendant being connected to Pacific Ocean and the plate number/interview on 17<sup>th</sup> December/being asked in the interview about Pacific Ocean garage/being asked about hiring cars from them/defendant not answering those question and when the subject changed he started answering again/what he was afraid of/this interview being with solicitor present/why he chose not to answer those questions/the fact that those were the only questions not answered/what the subject about Pacific Ocean garage/the fact that he had taken the number plates from the car that was on the forecourt of the garage/any other explanation/making the point.</p>
Rover car and Windmill precinct/workshifs	14	<p>Asked about: a Rover car bearing those plates being seen at Windmill precinct/being a coincidence that defendant was not at work at that time/the fact there has never been any suggestion that defendant was at work and it would be nothing easier for defence to prove/being a coincidence that on the 12<sup>th</sup> November when a crime was committed at Golden Sun he was not at work/the defendant serving an alibi/being rotas if defendant was at work/the defendant knowing he was not at work/being help by employers in proving he was at work/an alibi being served in 1988 saying he was not at work/being a coincidence that every time the defendant is alleged to be at Smethwick committing a crime, he was not at work.</p>
Rover car and Hockley (Old St.)	9	<p>Asked about: evidence given that two men came to the shop on the 9<sup>th</sup> November, around midday (crime was committed on 12<sup>th</sup> November and co-defendant told police a Rover was used on that crime)/prosecution alleging he was in the jewellery quarter at around midday on the 9<sup>th</sup>/defendant not working at that time/defendant being sighted and four opportunities for an alibi to be produced/this being the precise occasion to prove where his was/description from a witness and the fact that the defendant used jewellery before being arrested/confirming the description.</p>
Rings	2	<p>Asked about: the fact that he did not wore three rings on his right hand before 12<sup>th</sup> November/prosecution saying there were two half sovereign.</p>
Rover car and Hockley (Old St.)	6	<p>Asked about: the fact that he is linked to the car, cannot prove where he was and described to a tee.</p>
Rings	33	<p>Asked about: the fact he had three rings of identical description when arrested 15 days after theft/prosecution knowing he had another one/three rings were stolen from Golden Sun on the 12<sup>th</sup> November/specific description of the rings/being a coincidence that three like that were on the drawer that was stolen/three coincidences: hiring the car used for the theft, having the same appearance as one of the thieves and cannot prove where he was 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup>/no admission made/when and where the rings were bought/how much</p>

		jewellery he possessed in November 1987/how long before the ring was bought/being a nuisance that he had bought a ring identical to the one in the shop 15 days before the theft/how much he paid [questions repeated for each ring: where, when, how much]/the fact that in 5 months he had spent &370 on jewellery, 20% of his income/trips to Derby and the hiring cars.
Wirley Birch robbery	23	Asked about: defendant not being at work at the time the crime was committed/co-defendant habit of committing crimes when defendant was not at work/only people to tell where he was are mother or girlfriend/defendant remembering seeing two witnesses who gave evidence/their evidence making an impact on the defendant/the fact that those two witnesses were very struck by the two men they saw across from the post office/defendant not believing her/one of the witnesses having no doubt one of the men was the defendant/the other said she was not sure/misfortune that a man who's described like him, identified as him was co-defendant's companion on this crime.
Windmill precinct and the Cortina car	48	Asked about: a Ford Cortina used on the 25 <sup>th</sup> November in that attempted robbery/remembering a man chasing the Cortina car in his mini/number plates taken/what other brown Cortina car co-defendant would have access to/returning the car on the 25 <sup>th</sup> November/the fact that if a car was used it was not in his possession any longer/evidence proving he returned the car to the garage the day after the robbery, on the 26 <sup>th</sup> November/invoice for swapping BMW for Cortina, the day before arrest/witness misdating the document/police having taking it away the next day (day of arrest)/defendant refusing to accept any piece of evidence that is not consistent with his innocence/defendant buying the Cortina/person buying it giving false name and address/defendant giving false name and address/the fact that there was no log book or MOT endorsed on document/this has been put down on the receipt given to purchaser/garage not having the top copy of this document any longer/who they gave it to/garage going in for a bit of forgery themselves/garage lying when they say the purchaser signed that document/defendant saying someone forged signature/who the defendant suggest has forged that signature/defendant not recognising the importance of his position that that cannot be true/the fact that the Cortina was used on the Windmill precinct robbery.
Plastic Bag	5	Asked about: a plastic bag found in the car and prosecution suggesting it came from his flat/his sister working at that shop Harveys at that time/defendant having Harveys plastic bags available in his flat/coincidence that robbers not only were in his car but also had left a bag that could be connect to defendant/being that another misfortune defendant suffered in this case.
Interviews at the police station	62	Asked about: defendant's case, that is, never at any time admitted involvement in the attempted robbery at Windmill precinct/police at Smethwick police station having falsified their evidence/defendant being roughed up and threatened to make admissions but he never made any.
(information on co-defendant and admissions of co-involvement)		defendant knowing co-defendant's address/how co-defendant's name and addresses had been written down by the police by the end of day (27 <sup>th</sup> November)/police managing to find out the name and addresses of the gunman/police getting that information from defendant/getting a further address by the 28 <sup>th</sup> November, Saturday/defence saying that co-defendant was lying because he believe defendant had informed upon him/the fact that if defendant is innocent, co-defendant knew he never informed upon him/defendant's guilt/co-defendant believing defendant was an innocent man framed by police/co-defendant being served with the same paper that the defendant had and he must know those

		confessions were fabricated/motives co-defendant had to injure a man who the police had framed/discussing the motive put by defence counsel/prosecution accept that co-defendant believe defendant had informed on him/the fact that he could only believe it if defendant was guilty, otherwise, he cannot believe it.
(solicitor)		defendant having a rough time at the hands of police officers/by the end of Friday defendant wanting nothing to do with them at all/police treating him dreadfully/it being relief when, Saturday morning, the duty solicitor popped into the cell/nobody trying to stop him coming into the cell/police having power to deny access to a solicitor/nobody denying the duty solicitor access/prosecution putting to the defendant he never told the duty solicitor the account he is now giving/that being an invention/prosecution putting it in those terms so that defence is enabled to call solicitor and disprove it.
(interviews)		having returned from court, defendant asking to see those two police officers at 19.20, 28 <sup>th</sup> November/being taken out of the cells at that time/defendant having refused to sign anything he went to police station/being dreadfully treated, beaten up, threatened and having interview records forged/being shown the forgeries Saturday morning before going to court/defendant knowing they were forgeries/defendant's case that police produced to him forged interviews/going back to cell after court and thinking "good grief", wondering what was going to happen now he is back to cells/defendant allowing someone to put his name to a document and the defendant signing it/what said above his signature/defendant knowing what was written there when signed the form/defendant being in his state of mind signing a document with two blank lines and in the presence of police officers who he had distrusted.
Record of previous convictions	17	About defendant: dealing with first conviction in February, 1982 (16 years old) for taking and interfering with a motor vehicle and being in breach of a conditional discharge for an offence of burglary and handling stolen goods/in October 1982, for taking another motor vehicle and a burglary/ November 1983, for theft of a motor car/ October 1985 for attempted burglary/ November 1986 for attempted burglary and by the time he appeared for sentence he had committed more offences. [a question was put to him saying the this is the man who alleges police are lying and fabricating evidence + that co-defendant was also given a job handling money and helping old people]
Reaction to co-defendant arrest (+ gun)	7	Asked about: defendant never expressing any surprised when told by police on 30 <sup>th</sup> November that co-defendant had been arrested/imagining what his reaction would have been when known that the other man was the co-defendant/co-defendant being arrested and he had told the police the defendant had got rid of the gun.
Recovering the gun	34	Asked about: police asking him if he could help to recover the gun before solicitor present/what the point was to have solicitor present if he could not help about the gun/being that a bit of farse (with solicitor present)/it must have been difficult for solicitor, helping the police about this recovery/police knowing he never admitted being on this robbery/police knowing he was protesting his innocent – "we will get him or we will forge the interviews"/what reason the Sergeant would have to think he would help get the gun back/there was no point in coming to see him in West Bromwich/defendant not facing up to the point of the question/being in the interview with solicitor present he would take the opportunity of saying he was not guilty of that robbery/defendant's answer as a carefully phrased answer, not saying yes or no/answer very carefully thought out/keeping his options open/admitting being innocent and not knowing about the gun/the

		answer as his best effort of protesting his innocence/how devious it is/the defendant planning it.
Defendant's character	5	Asked about: being a dishonest man/the defendant demonstrating that over and over again during questioning/being his answers to the police an example of his devious and cunning nature/the defendant not having the guts to admit his involvement in the crimes, even though he does not mind plotting to rob people and hanging about frightening people by his very appearance and possessing loaded shotguns.
TOTAL	357	

Table 3.10. Topic of prosecution turns during cross-examination

As already pointed out, the aim of cross-examination is to discredit the evidence given during examination-in-chief. For that reason, the line of questioning tends to be much more incisive, and counsel rarely follows the chronological order of the events. During cross-examination, the defendant is not questioned all over again about every detail of the case. Rather, the points of questioning selected by the cross-examiner are usually the ones in dispute. By checking only points in dispute, the questioning also conforms to the rule of evidence of relevance and brevity.

According to topic distribution, Table 3.10 shows that the questioning of the defendant starts without any preamble and goes directly to the main fact in dispute, that is, the alleged co-participation of the defendant in the robberies. Thirty-one turns were about this matter. This number points to one of the particularities of cross-examination. If we observe Table 3.6 and Table 3.10, we can see that the numbers of turns within each topic is rather different. During examination-in-chief the defence counsel deals with most of the topics very briefly, except for the events concerning the Rover car (22 turns), the robbery at Windmill Precinct (38 turns) and the events after his arrest and at the police station (117 turns). It seems that the defence are mainly concerned with what happened to the defendant since his arrest, that is, the abuse by the police force and possible involvement of police



officers in the fabrication of statements and confessions rather than providing the court with an alternative version of the story presented by the prosecution.

During cross-examination, however, each point of questioning selected is extensively scrutinised. The first topic selected takes 31 turns and the Rover car topic takes 61 turns and a further 29 turns about the Rover car in its connection with Windmill Precinct and Hockley. The numbers in this analysis corroborate one of the most important characteristics of cross-examination, that is, once a certain point is selected it is the cross-examiner's task to probe into the details of that point so as to find possible inconsistencies, or to totally destroy the evidence given before. As discussed previously, one of the techniques is to probe into the matter by using a series of rapid questions in the hope that a lie is revealed. When dealing with the rings topic, there is a long line of questions, but the following excerpt would be a fine illustration on how counsels probe into facts during the witness questioning:

Prosecuting counsel:	All right, what about this one, the one with the hexangular cut to it, where did you buy that?
Defendant:	The corner of [inaudible] Lane, Erdington High Street.
Prosecuting counsel:	All right. How much?
Defendant:	I think it was about £170.
Prosecuting counsel:	And when?
Defendant:	I think the first of the many I had about five months before I was arrested.
Prosecuting counsel:	£170?
Defendant:	I think so, yes.
Prosecuting counsel:	I am sorry, I did not hear the name of the shop.
Defendant:	The Jewel I think it is called.
Prosecuting counsel:	Do you forget so easily where you spend £170?
Defendant:	No, it is months ago, sir, it is hard to remember everything.
Prosecuting counsel:	But these rings have been in your mind for the last twelve months, ever since your arrest. They must have been then because you were asked where you bought them. Where did you buy this last one, exhibit 11? I have referred to 9 and 10.
Defendant:	I have got all the sovereigns from Fred off the Jewel while I was being interviewed.
Prosecuting counsel:	How much?
Defendant:	I think that was £130 or £145, something like that.
Prosecuting counsel:	And when?
Defendant:	And when?
Prosecuting counsel:	When?
Defendant:	About two months before I was arrested.

Prosecuting counsel: *If I have got it right, in the five months prior to your arrest.*  
 Defendant: I had all the rings, yes.  
 Prosecuting counsel: *You spent £370?*  
 Defendant: Yes sir.  
 Prosecuting counsel: *On jewellery, which was what, equivalent to just over a month's earnings?*  
 Defendant: Sir, I am a very good saver, I am careful with my money.  
 Prosecuting counsel: You must be to spend 20% of your income on jewellery.  
 Defendant: I do not smoke, I only drink once a week.  
 Prosecuting counsel: And what about trips to Derby and the hiring of cars?  
 Defendant: That is once a week, five of us chip in, it is only about £15 each between us.

(Transcript, pp. 32)

This excerpt, like many others in the transcript, also shows the way the cross-examiner brings the evidence given to the stage of making his point. He uses elliptical questions to elicit most of the evidence, possibly at a fast pace so as not to give the defendant much time to think. Note how the counsel manages to introduce the point he wants to make (italicised turns). He introduces it by means of an If-clause. Even though there are no hesitations and pauses marked in the transcript analysed, I assume the counsel must have paused a bit before completing his turn, which probably gave the defendant opportunity to try and complete it with what he assumed the counsel intended to conclude, that is, that the defendant had all the four rings. However, in his next turn, the counsel refers to the amount spent on the rings, obviously implying that the defendant could not have spent so much money on jewellery. He ends this portion of questioning by ironically agreeing with the defendant when he said he was a good saver, but then points to the fact that the defendant goes quite frequently on trips to Derby and Sheffield, implying that he is not as careful with money as he wants the jury to believe.

Many of the topics dealt with during examination-in-chief are brought back again to the questioning of the defendant during cross-examination, except for the defendant's previous convictions, which are disclosed towards the end of cross-examination. The introduction of the defendant's previous convictions in court will be discussed shortly.

Taking into account that in cross-examination the aim is not exactly to present a story but, in fact, to verify the story told by the witness during examination-in-chief, the cross-examiner, particularly in this analysis, uses other witnesses' evidence as well as his own perceptions on the defendant's character to construct a totally different picture of the events, juxtaposing that to the one offered by the defence.

First, he tries to show the jury that the defendant is not so innocent as the defence tried to demonstrate, by pointing out several inconsistencies in his evidence and showing that he was probably lying or inventing facts altogether. Second, the prosecuting counsel makes reference to other witnesses' evidence and feelings and reactions, as well as to his own perceptions on the defendant to try and 'dehumanise' him, that is, to characterise him as criminal. In the characterisation of the defendant, the counsel also exploits bias by presenting the defendant's previous convictions and by making implicit reference to his being black.

Since I have already discussed the strategies used by the prosecuting counsel to try and reveal the defendant's lies and, consequently, characterising him as a liar, I will limit the discussion in this section to the disclosure of the defendant's previous convictions record and to some subtle and implicit strategies the counsel uses to picture the defendant as criminal.

#### **3.2.4. Record of the defendant's previous convictions**

As Murphy (1998, p. 107) puts it:

[t]here is probably no criminal case in which the defendant's character, be it good or bad, does not pose some problem for the advocate. Usually, the problems are more on the defence side than the prosecution side, though this is by no means an invariable rule. Nor

are the problems confined to cases in which the defendant's character is bad, though in such cases the problems differ from those in which his character is good. It is, therefore, a safe assumption that whether the defendant models his life-style on St Francis of Assisi or on Fagin, or on some representative of humanity somewhere between the two, his character will have to be considered in some detail.

The term 'character' is often mistakenly referred to as previous convictions only. Murphy (1998, p. 108), however, explains that "[c]haracter, whether good or bad, comprises three distinct areas, all of which are the concern of the law of evidence." These areas are:

- (a) *A person's general reputation in his community.*
- (b) *A person's propensity or disposition to behave in a certain way.*
- (c) *Previous specific acts, including but not limited to previous convictions.*

In practice, the term 'character' is commonly used in reference to previous convictions. As to any other evidence, the introduction of evidence of 'character' is bound by the rules of evidence. Evidence of good character is usually admissible and in many cases constitutes evidence of the defendant's innocence. According to the English law of evidence, when evidence of bad character is admissible, it should affect only the credibility of the defendant as a witness, not constituting evidence of his guilt. When two defendants are tried together, the jury may tend to compare both in terms of good or bad character and, consequently, judge unfavourably the one of bad character (Murphy, 1998).

A defendant can choose to give evidence on his/her own trial; and he/she can only be cross-examined when he/she has chosen to testify. Moreover, when cross-examined, it is not usually permitted for the defendant to be questioned about his/her previous convictions<sup>6</sup>

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<sup>6</sup>Previous convictions are allowed to be presented in court after the verdict and before sentencing. Only exceptionally can the prosecution disclose record of previous convictions of defendants during the trial (Keane, 2006). For example, evidence of bad character of a defendant and his/her previous convictions is disallowed unless his/her good character has been put forward by the defence as part of their case. In this case, prosecution is then allowed "to provide the jury with the full picture" (Hopkins, 2007, p. 60). Murphy

or to have evidence of his/her bad character introduced in court (Hopkins, 2007; Keane, 2006; Murphy, 1998).

However, in the data analysed, the prosecution confront the defendant with a long record of previous convictions, starting when he was about 16 years old and his character was also attacked. It is not clear in the transcript I have on which grounds the defendant's previous convictions were disclosed in court. It seems that in this case defence and prosecution have agreed to allow the defendant to be questioned on his previous convictions, as the following excerpt from the data shows:

Prosecuting counsel:	Let us just question this please, let us all have clear the nature of the man who is making these allegations. You took this document in your hand. ( <u>Addressing the Judge</u> ): My learned friend has said he does not require me to make an application to your Honour. [to Flynn:]That is the record of your previous convictions, is it not?
Defendant:	Shamefully, it is, yes sir.

(Transcript, pages 42)

Even though agreement seems to have been achieved between the parties concerning the disclosure of the defendant's previous convictions, I do believe it helped the jury in their mental construction of the defendant's bad character, since previous convictions may serve as a triggering factor as to the common-sense knowledge (schemata) that "once a thief always a thief". When introducing the record of the defendant's previous

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(1998, p. 112) explains that "there are cases in which it is genuinely doubtful whether the shield has been lost. It may be clear enough if the defendant gives evidence that he is a builder, and is hard-working, when such evidence can have no relevance to the case other than in terms of an assertion of good character". Evidence of bad character can also be introduced when previous convictions characterized "similar facts" (similar fact evidence rules). They can be admissible in order for the prosecution to prove "system or intent" (Munkman, 1991, p. 57). 'Similar-fact evidence' is rarely used in court. Murphy (1998, p. 116) states that "similar-fact evidence is evidence of other acts, including but not limited to previous convictions, which are so strikingly similar in their nature to the facts of the offence charged that the court is justified in concluding that the similar features represent a hallmark of a particular offender". Murphy (Ibid.) goes on explaining that "the degree of similarity required to make evidence of similar acts admissible is extremely high, simply because anything less would amount simply to evidence of bad character". Immunity against being cross-examined about bad character and previous convictions (commonly referred to as 'the defendant's shield') can also be lost when the defendant has given evidence against a co-defendant.

convictions, the prosecution's purpose is made very clearly "Let us all have clear the nature of the man who is making these allegations" (transcript, p. 55), which is followed by the prosecution's declining the defendant's claiming it is shameful.

After presenting the defendant's record, the prosecuting counsel ends the interaction by challenging the defendant, as the example shows:

- |                      |   |
|----------------------|---|
| Prosecuting counsel: | So you are the man who alleges that in this case it is the police who are lying and fabricating evidence.   |
| Defendant:           | Sir, I have been a man of dishonesty in the past, yes, I am not denying that. When I came out of prison I turned over a new leaf, I got myself a job, handling money, working with disabled people, I was making a go of things until I am arrested for these series of offences of armed robbery which I never done. |
| Prosecuting counsel: | Mr. Flynn, Scott, who had his record put to him, got the same job handling money and helping old people, he was the man who had the gun.  |
| Defendant:           | His job, sir, was more just riding on the bus, sir. My job was to take care of the patients, the money, help them in and out of their houses and drive them around.   |

(Transcript, p. 43)

The defendant's previous convictions are clearly put to court so as to undermine his credibility as a witness. The prosecuting counsel uses the defendant's convictions as the basis to portray him as an unreliable witness, as a way to "bring home to him the futility of further desingenuity" (Murphy, 1998, p. 107). By disclosing the defendant's convictions, the counsel places the defendant in a context which projects him before the jury in a totally different picture from that put forward by the defence. This is the foundation which allows the counsel to establish that the defendant is not to be trusted in his allegations against the police.

The defendant, on the other hand, makes use of his turn to further elaborate on his own story so as to reinforce it once again. The counsel uses the defendant's own line of thought to reason that working with disabled people does not mean being honest, as the co-defendant's behaviour exemplifies. The interaction ends with the defendant going into the

specifics of his job, in an attempt to undo the impact of his having his criminal record revealed in court.

Even though previous convictions do not prove the defendant's guilt, I believe that their disclosure in court does have a strong impact on the jury's mind, strongly adding to an unfavourably judgement towards the defendant.

### **3.2.5. The characterisation of the defendant as criminal (status degradation)**

As already said, the main aim in cross-examination is for the cross-examiner to undermine the evidence and/or to discredit the witness. Throughout cross-examination, the prosecuting counsel systematically confronts the defendant with previous evidence and statements in order to portray the defendant as a liar and, therefore, pointing to the fact that his evidence could not be accepted as the truth. For instance:

Prosecuting counsel:     The problem is, Mr. Flynn, that when you make up stories you may not always remember what it is you have made up.  
(Transcript, p. 27)

The counsel then adds:

Prosecuting counsel:     Well, now, we will see as we go on, but I suggest to you whenever we check your story we can find that it is not true and I am going to show you some more examples as we go along. [...]  
(Transcript, p. 27)

After several attacks on the defendant's evidence and character, as already discussed, the counsel makes sure that that process is pointed out so that the jury can be made aware of it. Examples are:

Prosecuting counsel:     Well, it is one brick after another. Let us go, please, [...]  
(Transcript, p. 30)

You see, this just eliminates all the other people bit by bit, do you follow?  
(Transcript, p. 31)

[...] You do understand the picture that has developed, Mr. Flynn, do you?  
(Transcript, p. 31)

In these examples, the counsel points out that what he had set out to do, “whenever we check your story we can find that it is not true and I am going to show you some more examples as we go along”, has been successfully accomplished.

Taking into account the adversarial nature of cross-examination, it is very hard to pinpoint specific linguistic features that are used by the prosecuting counsel in order to either undermine the defendant’s evidence or to attack his character. Moreover, many are the innuendos used by the prosecuting counsel so as to pass judgement on the defendant’s character. Many of these are the result of a complex line of argument or the product of irony disguised in reasoning statements, which is implicit and can only be inferred.

One example of this is the discussion about the defendant’s reaction to being informed that the co-defendant had been arrested. These examples have already been discussed earlier in this study, but I transcribe them again for practical reasons.

(1)  
 Prosecuting counsel: Do forgive me. Think how a dramatic piece of news it would be to you, just think about how dramatic it would be if you had no idea that Scott was an armed robber.  
 (Transcript, p. 23)

(2)  
 Prosecuting counsel: Mr. Flynn, if you were an innocent man –  
 Defendant: I am, sir.  
 Prosecuting counsel: - Who had been kept in a police station and accused of a crime which you had not committed, the moment you were told that a workmate and friend of yours was the other half would be a very dramatic moment indeed, would it not?  
 Defendant: I was quite surprised, yes sir.  
 (Transcript, p. 24)

(3)  
 Prosecuting counsel: You, Mr. Flynn, when the police told you on the 30<sup>th</sup> of November, late that night just before midnight, that Scott had been arrested, you never expressed any surprise at all, did you?  
 Defendant: I cannot remember exactly what my expression was, sir, then.  
 Prosecuting counsel: Oh, I think you probably could.  
 Defendant: In all honesty I cannot, sir.



- Prosecuting counsel: Just picture the situation, imagine, try and imagine, you are innocent and there you are in the cell, all these terrible things have happened to you and the police come in and they say the other man is Scott. What would your reaction have been?
- Defendant: Quite surprising.
- Prosecuting counsel: But you never expressed any surprise.
- Defendant: I did not express it, sir, because I had been put through enough over this. I was in the police station and that is why.
- Prosecuting counsel: Shall I tell you what you did do and you think about it and think whether you wonder if it is odd, now, looking back. You see, they told you they had arrested Scott, ["nicked him"] was the words they used, but Scott had told them untruthfully that you had got rid of the gun.
- Defendant: Sir, I have never owned a firearm.
- Prosecuting counsel: Listen to your reaction: ["Scott says that, fuck me he got rid of that."]
- Defendant: That is not true, sir, I did not make any admissions like that at all.
- (Transcript, p. 43)

By implying that the defendant had no reaction to the news of the co-defendant being arrested, the counsel manages to convey the idea that the defendant did not present any reaction because he was probably aware of the crimes, being one of the robbers.

Since the cross-examiner's aim is to undermine the previously given evidence as well as the witness' character, it is not surprising that evaluative language is pervasive in the counsel's turns. Many are the ways in which evaluation was conveyed by the prosecuting counsel. One of the ways by which the counsel conveyed evaluation was lexical choice. Some examples are:

- (1)  
Prosecuting counsel: You say you hired the car *innocently* intending to go to Derby. (repeated later on)  
(Transcript, p. 24)
- (2)  
Prosecuting counsel: I suggest the jury make up their mind about it, you *deliberately* lied to her about the reason you hired the vehicle.  
(Transcript, p. 25)
- (3)  
Prosecuting counsel: You were away no more than five or ten minutes, that is what you told the jury, you were *at pains* to tell the jury you were only away a brief time.  
(Transcript, p. 26)
- (4)  
Prosecuting counsel: It is just a *rough nuisance* that a fortnight before the theft you happened to buy a ring that was identical to the one that Mrs. Herbert lost.  
(Transcript, p. 32)
- (5)  
Prosecuting counsel: You see how *devious* it is?

Defendant: It is not devious, sir.  
 Prosecuting counsel: Is it not?  
 Defendant: It is a correct answer I gave.  
 Prosecuting counsel: Look at it, can you not recognise the *deviousness* of it, you planned it.  
 Defendant: It was not planned, sir, it was the truthful answer at the time.  
 Prosecuting counsel: Really?  
 Defendant: Yes, sir.  
 -----  
 Prosecuting counsel: So you told us. Mr Flynn, you were and are a *dishonest* man, are you not?  
 Defendant: I am not, sir. I was a dishonest man –  
 Prosecuting counsel: You demonstrated that this morning over and over again.  
 Defendant: I have committed petty crime in the past, I have never been a violent man, I never will be, I have not robbed anyone.  
 Prosecuting counsel: The jury can see an example of, I suggest, your *devious* and *cunning nature* in the answers to the police.  
 Defendant: I answered the question to the best I could.

(Transcript, pp. 46)

The examples above illustrate how evaluation on the defendant's story and character is conveyed by the counsel's lexical choices. Example 5, in particular, shows that apart from using evaluative wording, the counsel further evaluates the defendant's responses in his next turns: "Is it not?" and "Really?" Example 5 also illustrates how the counsel manages, after pointing to the defendant that he had "carefully phrased" his answer to the police about the whereabouts of the gun, to portray the defendant as a dishonest man and establish that as a fact, a result of his successful unveiling of the defendant's true nature.

Irony and insinuation were also used by the prosecuting counsel as means of evaluating the defendant's evidence. Some examples are:

- (1)  
 Prosecuting counsel: Adrian Goldman and King is a firm of solicitors in Birmingham, *I do not think they would be selling jewellery. I do not know, but I suspect not.* Maybe you are confusing.  
(Transcript, p. 32)
- (2)  
 Prosecuting counsel: *It seems that Scott had an uncanny habit of committing his crimes when you were not at work, [...]*  
(Transcript, p. 33)
- (3)  
 Prosecuting counsel: *Are you suggesting, because the jury can see it is signed by the purchaser, the garage have gone in for a bit of forgery themselves?*  
(Transcript, p. 37)

- (4)  
 Prosecuting counsel: If I have got it right, in the five months prior to your arrest.  
 Defendant: I had all the rings, yes.  
 Prosecuting counsel: You spent £370?  
 Defendant: Yes sir.  
 Prosecuting counsel: On jewellery, which was what, equivalent to just over a month's earnings?  
 Defendant: Sir, I am a very good saver. I am careful with my money.  
 Prosecuting counsel: *You must be to spend 20% of your income on jewellery.*  
 (Transcript, p. 33)
- (5)  
 Prosecuting counsel: Did you not believe her?  
 Defendant: Yes, she has given evidence on oath.  
 Prosecuting counsel: Never mind the oath, *you are giving evidence on oath too.* [...] (Transcript, p. 34)

It seems that in this particular cross-examination, irony was a powerful tool for the counsel to pass judgement on the evidence, enhancing the defendant's bad character. By using irony, the counsel was able to judge the defendant's accounts without explicitly expressing it, giving the jury the opportunity to make their own inferences and reach their own conclusions.

The prosecuting counsel also tried to portray the defendant as having, in his evaluation, suspicious feelings and reactions, which could only be explained if the defendant was guilty of the charges. For example:

- (1)  
 Prosecuting counsel: Did you have *any guilty feelings* about Pacific Ocean Garage after you were arrested?  
 Defendant: Not really, no sir.  
 Prosecuting counsel: Did you think Pacific Ocean garage might connect you with E128 AOL?  
 Defendant: I did not know anything about plates.  
 (Transcript, p. 27)
- (2)  
 Prosecuting counsel: [...] And then you paused to think and you said ["no reply"] and then the subject changed and you picked up and answered questions again.  
 Defendant: Yes sir.  
 Prosecuting counsel: What was it that *you were afraid of*?  
 Defendant: Sir, I was not afraid, I had been in the police station a long time, [...] (Transcript, p. 28)
- (3)  
 Prosecuting counsel: Oh really. *It has never struck you* has it, as a workman, when accused of a crime in the working day, that *you might wonder to yourself*, "can my employers help?", *it never occurred to you*?  
 (Transcript, p. 29)

The counsel not only evaluates feelings and reactions but he also refers to them as if they were the defendant's. His mentioning of these feelings and reactions as being an indisputable account of the facts may lead the jury to believe and accept it as being the truth.

Another device used by the prosecuting counsel to convey judgement on the evidence was reformulation:

(1)  
 Prosecuting counsel: What you are saying to the jury is this: "Well, if the car was used in a robbery, it was no longer in my possession."  
(Transcript, p. 35)

(2)  
 Prosecuting counsel: What it means is, Mr. Morris or his partner Mr. Osborne for some reason forged the signature on the document.  
(Transcript, p. 37)

By reformulating what the defendant said or what the counsel thinks the defendant was trying to say, the counsel is able to express in his own words what otherwise should be the defendant's evidence. By doing so, he also manages to use the reformulation as a means to evaluate the evidence for the sake of the jury.

As to provide the court with an alternative perspective on the defendant's daily activities (as compared to the one offered by the defence), the counsel offers a summary of the defendant's alleged activities, portraying him in a somehow different picture from that of the defence's.

Prosecuting counsel: Mr. Flynn, there it is, the jury have listened to what you say about it, the point I make is this, that when the Rover appears in Smethwick, watching those premises, it is very odd that on two days a working man, it coincides, has time off from work and when the jury look at this case they will find that every time you are alleged to be in Smethwick, committing a crime, it coincides with the time that you are not at work.  
 Defendant: It does not mean I have committed a crime, same if I was not at work.  
(Transcript, p. 30)

Even though the defendant manages to parry the counsel's description, the jury is presented with an alternative perspective on the defendant's activities, which will probably compete with that offered by the defence. This is further pursued in the following excerpt:

Prosecuting counsel: [...] *While you say you were at your mother's two women, Mrs. Henson and Mrs. Scott, finished work at about five o'clock and went to get to Mrs. Henson's car. Do you remember seeing them in the witness box?*

Defendant: I have seen a few people in the witness box, sir, I do not know.

Prosecuting counsel: Can you not remember the ladies?

Defendant: I cannot remember names, sir, no.

Prosecuting counsel: *Can you not remember two ladies, never mind their names, who were very fearful of what two men were planning. Do you not remember them as you sat there listening to this case?*

Defendant: I remember it being said.

Prosecuting counsel: *Did it not make any impact on you at all, the thought of that woman going down the pavement, worrying that she was going to be attacked, did that not strike you as something rather dramatic in this case?*

Defendant: What, when I was listening to it? Yes, it did, I have never been a mugger, I have never been a violent man.

Prosecuting counsel: So I take it you do remember the evidence?

Defendant: I do remember hearing it, yes, sir.

Prosecuting counsel: *Now those two women were very struck, were they not, by the two men they saw skulking across the road from the post office.*

Defendant: That is what she said, yes, yes sir.

-----

Prosecuting counsel: *Dear me. It is obvious to everybody in this court, including you I suggest, that those two women were particularly struck by the two men, they were frightened of them, one much more than the other and it worried them.*

Defendant: That is what she said, yes sir.

Prosecuting counsel: Later, on the 17<sup>th</sup> December, Mrs. Scott had no doubt that one of the men she watched was you.

Defendant: Sir?

Prosecuting counsel: Is that a mere coincidence?

Defendant: I was not the man she seen, I am not a white man with straight brown hair. She is mistaken. It was not me she has seen.

(Transcript, pp. 33/34)

This excerpt starts with the prosecuting counsel establishing a parallel between how the defendant had described his daily activities and what the prosecution are trying to demonstrate. The scene is then described as being terrifying to those two women. While the defence described the defendant as an ordinary family man, the prosecution tried to describe the activities in a more dramatic perspective, drawing on the common-sense

knowledge of suspicious activities of possible criminals – scenes we would like to avoid. The description is fully enhanced by reference to the ladies’ feeling.

The scene here is especially problematic not because it describes two men hanging around in front of a building, but because those two men are black. The issue of the defendant being half-caste (White-black) had been raised since examination-in-chief; the issue was debated during cross-examination when witnesses’ descriptions of the defendant were offered (transcript, pages 33/34); and it was dealt again in the closing of cross-examination. In the example above “that those two women were particularly struck by the two men, they were frightened of them, one much more than the other and it worried them” refers to the fact that they were previously described by other witnesses as “a West Indian male with a dark complexion, another West Indian youth with a light skin, almost like a half caste” (Transcript, p. 30).

It seems that the prosecuting counsel is trying to place weight on the idea that black people are more likely to be considered criminals, as the closing of cross-examination indicates:

Prosecuting counsel:	I suggest that <i>though you do not mind plotting to rob people –</i>
Defendant:	I did not rob anybody.
Prosecuting counsel:	- <i>Though you do not mind hanging about outside post offices, <u>frightening people by your very appearance</u>, and although you do not mind going in with loaded shotguns, you have not got the guts to admit it, have you?</i>
Defendant:	If I committed the crime I would admit it, sir. As you can see from my petty crime in the past I have admitted my crimes, if committed. I did not rob anybody.

(Transcript, p. 46)

The disclosure of the defendant’s convictions, the heavily evaluative language employed by the prosecuting counsel and the description of suspicious activities of two

black men added enormously to the alternative construction of the defendant as a dishonest man.

### 3.3. EXAMINATION-IN-CHIEF AND CROSS-EXAMINATION: AN OVERVIEW

The examination-in-chief and the cross-examination analysed in this study are not only the presentation of the defendant's story, and the testing of that story and affirmation of the prosecution's case, respectively; in terms of the story *of* the trial, there is also a dialogical interaction between the defence's and the prosecution's macro-narrative of guilt or innocence. One of the main aims of examination-in-chief is to respond to the prosecution's case as well as to anticipate cross-examination, that is, when examining the defendant the defence oriented the defendant's evidence not only towards the prosecution's case and the evidence given during the presentation of the prosecution's case, but also towards cross-examination. This implicit reference to the prosecution's case can be seen in the following examples:

- (1)  
 Defence counsel: A couple of days after the Wirley Birch robbery there was a robbery, *we have heard*, at Windmill Precinct, about lunchtime, 12 o'clock. Did you take any part at all in that?  
 Defendant: No sir.  
 (Transcript, p. 5)
- (2)  
 Defence counsel: Exhibit 5 is the carbon copy, *apparently*, of a used car invoice the top copy of which, *it is said*, was given to you. Did you ever have a top copy?  
 Defendant: No sir, I never had a copy. [...]  
 (Transcript, p. 9)
- (3)  
 Defence counsel: *They say* that this was mentioned to you. [...]  
 Defendant: Nothing like that was said to me, sir, nothing at all.  
 (Transcript, p. 12)

(4)  
 Defence counsel: *What they say* about that is that they came to see you and said, [...]. You *apparently* said [...]  
 Defendant: No sir, I had not seen any notes, as far as I am concerned no interviews took place.

(Transcript, p. 16)

(5)  
 Defence counsel: *Apparently*, what happened *according to the police officers* is that they, again, had a photocopy of the notes, *they say* following the request from you, [...]

(Transcript, p. 19)

In the examples above, the defence clearly signal the interconnection between their story and that of the prosecution's: it is their case as opposed to the prosecution's case. At the same time that this is signalled to the court, it also serves as a way to maintain the legal boundaries between the two of them. What is put forward is what *we have heard, it is said, they say*, what it is said *according to the custody record*, or simply what *apparently* happened, maintaining their cases apart.

This dialogical interaction between defence and prosecution, that is, the interaction between counsels during the trial of the case, is seen in more explicit ways during cross-examination, as the examples show:

(1)  
 Prosecuting counsel: Do forgive me. *Twelve months this case has been in preparation. We have seen your lawyers here*, there has never been any suggestion made in this case that you were at work at the time that car was seen on the Windmill Precinct because there would have been nothing easier for the *defence* to prove.  
 Defendant: Well sir, I am not saying I was at work, I am not saying I was not at work, it is hard to remember everything.  
 Prosecuting counsel: But you know perfectly well because, you see, *in the preparation of your defence* that question about whether it could be proved that you were at work that day would have been looked into, so you know absolutely clearly that you were not at work, do you not?  
 Defendant: I did know what I would be looked into, I did not know that.  
 Prosecuting counsel: Oh come along, look, look at it, *this is the defence team*, are you really wanting to pretend to the jury you may not have been at work and no-one has troubled to demonstrate that, do you really want to pretend that to them?  
 Defendant: I am not pretending anything, sir, I am telling the jury the truth.

(Transcript, p. 29)



- (2)  
 Prosecuting counsel: Never mind that. You have been told it is the day after the robbery, all right. *Your counsel put to the witness* that he might have misdated that document.  
 Defendant: He must have done, sir. (Transcript, p. 36)
- (3)  
 Prosecuting counsel: I am discussing *the motive put by your counsel*, do you see?  
 Defendant: Yes sir. (Transcript, p. 39)
- (4)  
 Prosecuting counsel: *I put it in those clear terms so that your defence is enabled to call that solicitor if they choose*, do you understand?  
 Defendant: Yes, sir.  
 Prosecuting counsel: *Because having alleged that is an invention it can, if that allegation is not correct, be disproved.*  
 Defendant: Sir, that is exactly what happened that morning. (Transcript, p. 40)

In example 1, there is clear reference to the defence case, not as to the story *in* the trial, but particularly reference to their role in the legal system, as defence and prosecution of a criminal case. This is ratified in examples 2 and 3. In this case, reference is to the fact that the defence have already legally acted on behalf of the defendant when cross-examining the prosecution's witnesses. Finally, in example 4, the prosecuting counsel is not only indirectly communicating with the defence team, but he is challenging them to further action.

The reference to the case as the story *of* the trial can be further verified in examples such as the following one:

- (1)  
 Prosecuting counsel: Do not be silly, and *I am not talking about the time of your arrest, it is December 1988, you have been preparing this case for twelve months.*  
 Defendant: I have not been preparing, sir, I will tell the jury the truth, sir, I have not prepared anything. (Transcript, p. 29)

Thus, the interconnection of the story *in* the trial and the story *of* the trial, as far as examination-in-chief and cross-examination of the defendant go, can be depicted as follows:

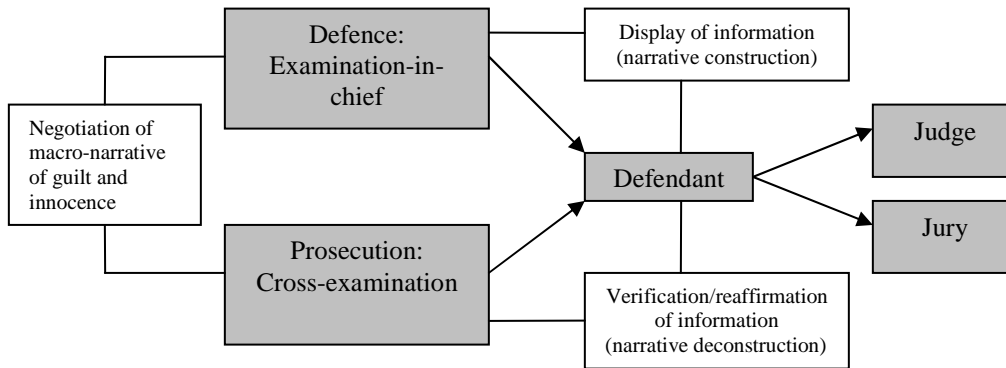


Figure 3.4. The structure of the examination-in-chief and cross-examination interaction

During the examination-in-chief and cross-examination of the defendant, the basic interaction is between counsels and the defendant. The examination-in-chief is basically a conjoint construction of the defence's story, whereas cross-examination is a struggle between counsel and defendant in their attempt to verify and maintain the evidence previously given. However, examination-in-chief and cross-examination are also a means for the defence and prosecution to establish legal negotiation about the case. All this (display of information, testing evidence and attempts to discredit and maintain each other's version of the story during both examination-in-chief and cross-examination) is done for the sake of the jury, the silent participant of the speech event. Obviously, defence and prosecution occasionally interact with the judge, who, in turn, can interrupt both examination-in-chief and cross-examination for clarification and other court procedure. The judge can also ask questions directly to the defendant.

Even though the jury are the silent participants in the trial, their role in the case under study is constantly emphasised mainly during the cross-examination of the defendant, which is shown below:

- (1)  
Prosecuting counsel: I suggest the jury make up their mind about it, [...] (Transcript, p. 25)
- (2)  
Prosecuting counsel: The jury will make up their mind about that. [...] (Transcript, p. 25)
- (3)  
Prosecuting counsel: Tell the jury, you [...] (Transcript, p.25)
- (4)  
Prosecuting counsel: Right, well, there is the picture the jury have got. [...] (Transcript, p. 23)
- (5)  
Prosecuting counsel: You were away no more than five or ten minutes, that is what you told the jury, you were at pains to tell the jury you were only away a brief time. (Transcript, p. 26)
- (6)  
Prosecuting counsel: I know. Well, the jury will decide her evidence.  
Defendant: If you show the jury they can see what she said. (Transcript, p. 34)
- (7)  
Defendant: I am not making a suggestion like that, I am just telling the jury what happened. (Transcript, p. 37)

As we can observe in the examples above (particularly examples 1 and 2), the prosecuting counsel not only emphasises the decisive role of the jury but he also tries to impose on the jury's judgement. The defendant also seems aware of the jury's importance in the trial. The defence counsel, however, very rarely mentions the jury explicitly. When the jury are mentioned, it mostly refers to court procedure (In fact, only eight instances of this kind of reference to the jury were found in examination-in-chief). Some examples are:

- (1)  
Defence counsel: The jury – to be reminded of the documents they have about this, Exhibit 5 and then 6. [...] (Transcript, p. 8)
- (2)  
Defence counsel: Mr. Flynn, that completes the Saturday and we now come to Sunday and apparently at 11.30 on the Sunday – the jury do not have this, [...] (Transcript, p. 19)

Except for the occurrence cited above in which the jury are referred to as part of court procedure, only four more instances which point to the role of the jury more clearly were found in the examination-in-chief:

- (1)  
 Defence counsel: I wonder if, Mr. Flynn, you would tell His Honour and *the Jury* what your country of origin, or your family's country of origin, is?  
 (Transcript, p. 2)
- (2)  
 Defence counsel: I do not know - *the jury will* - how far is that from Smethwick?  
 (Transcript, p. 5)
- (3)  
 Defence counsel: [...]. It appears in the custody record and *the jury know* that it was at 16.45 that you apparently were taken away [...]  
 (Transcript, pp. 14/15)
- (4)  
 Defence counsel: [...] in order to put things into their historical perspective it may be *the jury should be asked*, your Honour, to bear in mind that it was at twenty-five past five that afternoon that Scott was arrested. [...]  
 (Transcript, p. 20)

Even when the defence counsel makes explicit reference to the jury's role during the trial, it tends to be less incisive than when the prosecution counsel refers to them. The examples above emphasise the fact that evidence is given in court for the jury's (and judge's) benefit and it is their role to weigh it so as to reach the verdict.

In this chapter I presented and discussed the structure of examination-in-chief and cross-examination. They were both analysed in terms of narrative structure, topic analysis, and how the defendant was portrayed by the defence and prosecution, respectively. I now proceed to the conclusion.

## CHAPTER FOUR

### CONCLUSION

What we call the beginning is often the end  
And to make an end is to make a beginning.  
The end is where we start from. And every phrase  
And sentence that is right (where every word is at home,  
Taking its place to support the others, [...])  
Every phrase and every sentence is an end and a beginning.  
Every poem an epitaph.  
(T. S. Eliot, *Four Quartets*, 1944[1991], p. 47)

I started my analysis bearing one basic question in mind – What makes a story more or less plausible to a jury? In order to investigate the plausibility of the defence's and prosecution's stories in court and their consequent appealing to the jury, I raised three issues as the guiding points of my analysis. First I tried to determine how courtroom narratives were linguistically constructed during examination-in-chief and cross-examination by the defence and prosecution, respectively. Second, my interest was to unveil which linguistic elements in their stories would possibly render their version of the case more convincing and appealing to the jury. The final point was to describe what linguistic elements were used in their account so as to portray the defendant as innocent and guilty, aligning to their master narratives of innocence and guilt, respectively.

Since the counsel's aim when cross-examining witnesses is that of verifying the evidence given during examination-in-chief, and possibly, trying to undermine and

discredit both evidence and witness, I concentrated this study on the analysis of examination-in-chief and only briefly described cross-examination<sup>1</sup>.

It was assumed that the facts of the case had been presented by the prosecution during their opening statement, and were corroborated by the prosecution witnesses' testimony. It is always the case that the prosecution story is presented in such a way that the defendant's actions should be disapproved by the court. Taking into account that the data analysed in this study consisted of the examination-in-chief and cross-examination of a defendant, I started the actual analysis with the examination-in-chief.

The first step taken was to analyse examination-in-chief in terms of narrative structure. As pointed out before, the narrative structure proposed by Labov and Waletzky (1967) did not seem appropriate to account for the complexity of courtroom questioning, even though it was demonstrated that it could be applied to small portions of the questioning. The identification of small portions of texts which would be considered narrative was not enough to account for how the story was put forward by the defence.

As a starting point, I approached the data by considering narrative as the recapitulation of past events temporally related. In order to define narrative I drew on Abbott's (1996) definition, that is, narrative is the representation of events in the past and consists of *story* and *narrative discourse*, the story being what actually happened and narrative discourse being the events as represented. In my view, this approach seemed adequate to accommodate the complex way in which a story is told in court.

My next step was to carry out a topic analysis in order to investigate which topics were raised by the defence in their telling of the defendant's story and in what order. My

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<sup>1</sup> In fact, because of its adversarial nature, cross-examination has been the focus of analysis in most studies on courtroom questioning to date, which leaves examination-in-chief understudied.

aim was also to investigate to what extent the topics raised during examination-in-chief corresponded to the topics raised during cross-examination. As far as topic analysis is concerned, it was observed that most of the topics in dispute were raised during examination-in-chief, and were dealt with either to counter-argue the prosecution case or to anticipate cross-examination so as to minimise damaging facts for the defence.

The topic analysis led me to the conclusion that during examination-in-chief the defence not only presented an alternative story to the one offered by the prosecution, where the story actions were projected in a quite different perspective and were evaluated in the best light possible, but they also presented the court with a story of police abuse and improbity. The second account allowed the defence to portray the defendant as a victim in this trial. In other words, the defence story presented two distinct phases. In the first part of the examination, while the facts concerning the robberies were being elicited, emphasis was given to the defendant's activities around the days of the robberies. By doing so, the defence counsel had the opportunity to characterise the defendant as an ordinary citizen leading a regular family life. The accounts were full of realistic and emotional details, giving their story a touch of human dimension.

In the second part of the examination, the account was to the effect that the defendant had been subjected to abuse by the police and allegations were made as to interviews and documents being fabricated and the defendant's signature forged while he was in the police custody. A contrast was then implicitly established between the defendant's life before and after his arrest. The defence counsel constructed his story on the evaluative aspects of normalcy and abnormalcy, that is, his main story line was that the defendant was leading a normal life until the moment he was unfairly arrested. His

arrest violated the norm, being an unusual situation, and set the narrative in motion. In the second part of examination, the defendant emerged as a victimised man and emphasis was given to his state of mind. He was no longer the subject of wilful actions, and was characterised as being deprived of his freedom, his own will and even his rights (solicitor was allegedly denied before the defendant was presented before the Magistrates' Court). The contrast established gave the defence counsel the opportunity to reinforce the macro narrative main line, the defendant as an innocent man.

The examination-in-chief analysed in this study was structured in terms of providing alternative accounts of the events, counter-arguing the prosecution case and anticipating cross-examination. The analysis suggested that the subjacent story of the defendant's family life and good character emerged mainly by means of the details added to the main line of the defence narrative, those details which were widely advocated as being essential for a story to seem plausible and convincing.

The telling of the subjacent story of the defendant as an honest man was mostly accomplished by means of status support and daily routine characterisation, and enlivening testimony, which were contrasted to and turned into the story of a victimised man. The ultimate aim of the examination-in-chief analysed here was to create a story with real human interest and portray the defendant in the best light possible, so as to win the jury's sympathy.

As expected, cross-examination did not display characteristics of narrative structure. Instead of presenting a story line, cross-examination was organised so as to test the evidence given in examination-in-chief. The topics raised by the prosecuting counsel were basically the ones dealt with during examination-in-chief. Each topic raised was



scrutinised by the prosecution so as to show its inconsistencies and, by doing so, undermine and discredit the defence story altogether. The cross-examination was structured in terms of recapitulating, summarising, revisiting and recycling the evidence-in-chief.

In the cross-examination analysed, the interaction between counsel and defendant was mostly the negotiating actions of accusations, challenges, denials and rebuttals, respectively, in their attempt to destroy and/or maintain their story, which complied with the legal procedure that all testimony should be tested.

Many are the techniques and strategies employed by cross-examiners in order to test the evidence given in examination-in-chief, and the main ones used in the cross-examination analysed here were: probing, insinuation, confrontation and undermining. The defendant was systematically confronted with inconsistencies concerning early statements and evidence as well as with the evidence of other witnesses; and summaries were used so as to allow accusations to be built against the defendant. Three-part lists, contrasts and reformulations were also part of the strategic conducting of cross-examination.

The analysis also showed that apart from trying to discredit the defendant's story, the prosecuting counsel used the questioning to reaffirm his version of the facts. Several times the prosecution confronted the defendant with the contrast between the prosecution case and that of the defence.

Many of the topics dealt with in examination-in-chief were raised again by the prosecution. However, during the cross-examination the record of the defendant's previous convictions was also disclosed. It was not clear in the transcript why this was

done. Apparently defence and prosecution had agreed upon the fact of having the defendant being questioned on his previous convictions. Even though the disclosure of previous convictions are in some exceptional cases allowed in court, in the cross-examination analysed, the prosecuting counsel used it as a triggering factor to the common-sense knowledge that “once a thief always a thief”. By doing so, the counsel was able to overshadow the defence’s portrayal of the defendant as an honest man, offering the jury a different picture of the defendant.

Although previous convictions cannot be used as proof of the defendant’s guilt, my understanding is that, when disclosed in court, they can have a strong impact on the jury’s perceptions of the case. In this analysis, it was aggravated by the defendant’s skin colour, a fact which was also subtly exploited by the prosecuting counsel. Apart from the disclosure of the defendant’s previous convictions and the references made to the defendant’s appearance, the prosecuting counsel also made use of other innuendos in order to be able to pass judgement on the defendant’s character.

Due perhaps to its adversarial nature and primary aim of discrediting the story provided in examination-in-chief, evaluative language was pervasive in cross-examination, especially in the counsel’s turns. Evaluation was mostly conveyed by lexical choices, irony and insinuation, and reformulation. While the defendant was portrayed by the defence as a family man, the prosecution managed to portray the defendant’s activities under a more suspicious perspective as well as to convey negative evaluation on the defendant’s character.

Even though the focus of attention was the story *in* the trial, some aspects concerning the story *of* the trial also emerged. The analysis has shown that while

conducting examination-in-chief and cross-examination respectively, the aim is for counsels to debate (affirm and discredit) the macro-narratives of guilt and innocence.

The present analysis indicated that examination-in-chief was a conjoint construction of the defence's story, whereas cross-examination proved to be a conflicting negotiation between the two versions of the facts. Restrained by the question and answer format of displaying evidence in court, counsels' main strategies revolved around and were oriented to the construction of the two macro-narratives of guilt and innocence.

We have seen that it is not always easy to tell when a detail raised in court is relevant information or only a mere detail. However, my understanding is that the details of human interest pointed out in the analysis and discussion of the data become part and parcel of the stories put forward in court. They may not determine the verdict but they do add force to the case.

What I tried to demonstrate in this study was that the way prosecution and defence constructed their stories of guilt and innocence went beyond the mere display of facts before the jury. In their attempt to convince the jury of their version of the case, counsels also resorted to the jury's knowledge of the human condition. That is to say, the prosecution's and the defence's stories not only presented evidence as to facts but also provided the court with a whole context of realistic colouring, dramatic scenes and human interest, which they hoped, would make their stories more plausible and, consequently, appeal to the jury.

I hope I have succeeded in demonstrating the strategies used by counsels when constructing their stories in court, and the impact they may have on the jury's understanding of those stories. I also hope this study shows the sociological importance

of carrying out research in courtroom discourse in that the language used in court not only determines verdicts but also, and more importantly, have real effect on people's lives.

#### **4.1. Suggestions for further research**

Several points raised during the present analysis could not be considered and further research is in order. One of them derived from the analysis of verb forms occurring in examination-in-chief and cross-examination. The figures have shown that there is more occurrence of simple past in examination-in-chief and more occurrences of simple present, present perfect and imperative in cross-examination. Further analysis would be necessary in order to confirm the pattern. It would also be necessary to investigate other instances of examination-in-chief and cross-examination to verify if the pattern is recurrent.

Another issue which should be further investigated is the language of witnesses and defendants. Based on the present analysis, it is my perception that witnesses/defendants make use of a number of strategies so as to parry the counsel's questions, to avoid confirmation, to contradict assertions and to rebut alternative accounts of the facts. It was also observed that, at least in this case, there was "interactive accommodation" (Aronsson, Jönsson and Linell, 1987, in Jackson, 1995, p. 413), in that the speech behaviour of the defendant and that of the counsels converged sometimes.

A further issue concerning the language of defendants, in particular, is the adoption of powerless speech. Even though the defendant in this case demonstrated ability in dealing with counsels' questions, it was also noted that throughout his questioning his language was marked by hedges, uncertainty, intensifiers and mitigation, supposedly the attributes of powerless language. The question I would leave here is: is that the reflection of powerless speech or just another strategy consciously employed by the defendant to corroborate his story of an innocent man?

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[ In the Crown Court at BIRMINGHAM  
Queen Elizabeth II Law Courts, 1 Newton Street, Birmingham

Thursday 1st December 1988 and Friday 2nd December 1988

Before his Honour Judge R. Sinclair (and a Jury)

Regina v. Liam Scott and Paul Elliott Flynn

Transcript of the shortHand notes of Nicholas Carter Simpson Ltd.,  
10/11 Baker Street, London EC4, Official Court Reporters

Mr. S. Linderman appeared on behalf of the Prosecution  
Mr. D. Potter appeared on behalf of the Defendant, Flynn ]

[ Abbreviations: Judge R. Sinclair JS  
Paul Flynn PF  
D. Potter DP  
S. Linderman SL ]

[ Evidence of Paul Elliott Flynn ]

[ Paul Elliott Flynn: Sworn  
Examined by Mr. Potter ]

<P 01>

1. <S DP> 1. What are your full names please Mr. Flynn?
2. <S PF> 2. Full names, sir?
3. <S DP> 3. Full name.
4. <S PF> 4. Paul Elliott Flynn.
5. <S DP> 5. Before you lodged in prison, awaiting your trial, what was your address?
6. <S PF> 6. 14 Congress Tower, Boulevard Road, Perry Barr.
7. <S DP> 7. What at that time was your occupation?
8. <S PF> 8. I was a driver.
9. <S DP> 9. For Driving You, as we have heard.
10. <S PF> 10. That is right.
11. <S DP> 11. How long had you had that job?
12. <S PF> 12. About six months.
13. <S DP> 13. I think at that time you were living with a lady, what was her name?
14. <S PF> 14. Janet Holmes.
15. <S DP> 15. By whom you had had a child.
16. <S PF> 16. That is correct, yes.
17. <S DP> 17. How old was the child?
18. <S PF> 18. At the time he was three and a half, about that, yes.
19. <S DP> 19. If it was six months before you had that job, when was it that you got it, early summer?
20. <S PF> 20. Yes, May, June, summer time.
21. <S DP> 21. Did you have set hours in which to work?

22. <S PF> No sir, there were different shifts, it was marked down on a sheet, a three month rota kind of thing.
23. <S DP> How long if you spent doing one shift was the three to eleven?
24. <S PF> About eight hours, sir, you actually drive for about five or six hours.
25. <S DP> Was it the same, day after day, for a set period or was it a different shift every day?
26. <S PF> No, it all depends how they worked it out in the office. Sometimes it was a set period, sometimes it was a different shift.
27. <S DP> How long have you known Liam Scott?
28. <S PF> A year or so, if that, not very long.
29. <S DP> Did you know him before you went to Driving You?
30. <S PF> Not really, no. I had seen him around but we had not actually spoken.
31. <S DP> I wonder if, Mr. Flynn, you would tell His Honour and the Jury what your country of origin, or your family's country of origin, is?
32. <S PF> What is your origin?
33. <S DP> Yes.
34. <S PF> Half-caste.
35. <S DP> Half-caste what?
36. <S PF> White-black.
- <P 02>
37. <S DP> Yes. In last October time, did you hire a Rover that we have heard about?
38. <S PF> Yes I did.
39. <S DP> For what purpose did you hire it?
40. <S PF> Well, every now and again, there was a group of us, we used to go to clubs, well, nightclubs, to Derby, Sheffield, four or five of us used to chip in 15 pounds each and we would drink in the car. I was the only one with a clean licence, therefore I rented the car.
41. <S DP> It was not the first time, I think, you rented cars?
42. <S PF> No, it was quite regular, quite regular, yes.
43. <S DP> As the witness has said, when you hired the Rover for how long did you intend to have it?
44. <S PF> It was a weekend then, I was going to extend it when it was stolen.
45. <S DP> Had you in fact extended the hire before with this lady?
46. <S PF> Yes I had.
47. <S DP> And that is a question of doing what? Do you have to take the car in?
48. <S PF> No, sometimes I would phone. If I was close I would go in and see the lady. She would say, "Do not worry, just settle the account when you come in".
49. <S DP> What happened to that car?
50. <S PF> I have it stolen from Ladywood, I believe it was, during a dinner time of my shift at work.
51. <S DP> What day was that?
52. <S PF> I believe it was a Monday, yes, a Monday.
53. <S DP> During that weekend, had Liam Scott ridden in that vehicle?
54. <S PF> On the Friday he had, the day it was hired, yes.
55. <S DP> Can you remember why?

56. <S PF> Well, I had seen him at work, I met him at work, we got talking, I told him my address and he said he lived in Handsworth. That morning I was going into Handsworth, I do not think I was working. I opened the front door to come out and he was just about to knock the door. I told him I was going to pass this, this is Driving You and he asked me if I could give him a lift into Handsworth as it was not far from where he lived. I said yes and I drove off.

<S JS> You told him where you lived and one day he knocked the door as you were setting off?

<S PF> That is right, sir, yes.

<S JS> He asked for a lift?

<S PF> Yes, that is right.

<S JS> To?

<S PF> To Handsworth, sir. I dropped him off by the gate.

57. <S DP> That is the Ring --- ?

58. <S PF> Driving You, yes.

59. <S DP> Where did you leave the car that day?

60. <S PF> That Friday, or the day it was stolen, sir?

<P 03>

61. <S DP> On the Friday did you just drop him off and then drive off somewhere else?

62. <S PF> Yes, I dropped him off, I think it was at the back of vans.

63. <S DP> Did you in fact go off to Derby or Sheffield that weekend?

64. <S PF> Yes, I did, if I can remember rightly, it was a voluntary thing, every other weekend or every weekend.

65. <S DP> On Monday or following the weekend did you in fact take the car back to the hire depot?

66. <S PF> No sir, what I intended to do was to extend the hire of the car. I believe I was working that morning, therefore I could not take the car back, I think it was nine o'clock Monday morning. I had asked my girlfriend to phone to let them know I would be popping in to extend the car and I would bring some more money after I finished my shift, which I think was three o'clock that afternoon.

67. <S DP> You did that shift did you?

68. <S PF> Yes sir, that is right.

69. <S DP> Where did you leave the car when you went to do that shift?

70. <S PF> Well, I went to work. At dinner time I went to Ladywood to see a friend, I think it was, Morrow Street. I parked the car facing Rushton Street which is across [missing word??] Street West.

71. <S DP> Take it slowly because his Honour is making a note.

<S JS> Do you know whom you went to see, a friend where?

<S PF> Yes, but he was not in.

<S JS> Where?

<S PF> Morrow Street, sir, he was not there. There was a chip shop, it was not far from where I was parked at the time. I walked round to the fish shop, I had only left the car a matter of five minutes, ten minutes at the most when I got back -

72. <S DP> Just a minute, had you got the keys with you?

73. <S PF> Yes, I had, yes. When I got back to where the car was it had gone and I immediately contacted Ladywood police and explained.

74. <S DP> Did you yourself ever drive that car again?  
 75. <S PF> No sir, I never saw the car again.
76. <S DP> Or pay for it?  
 77. <S PF> No sir, I never saw the car again after that day.
78. <S DP> Had it still got the proper numberplates on it when you left it parked?  
 79. <S PF> Everything was in order when I parked, I locked the car, everything was just like when I hired it.
80. <S DP> Mr. Flynn, that was back in October.  
 81. <S PF> Yes, that is right.
82. <S DP> In the course of the next month did you ever go to Hockley jewellery quarter?  
 <P 04>
83. <S PF> I may have done once with my girlfriend, only to look round for a ring for her, which I did buy her.
84. <S DP> Who did you buy that from?  
 85. <S PF> An Indian shop in the jewellery quarter.
86. <S DP> Did you ever go there with Liam Scott?  
 87. <S PF> Not to that shop, not that I recall, no.
88. <S DP> In Hockley?  
 89. <S PF> I may have done once.
90. <S DP> For what purpose?  
 91. <S PF> To be honest, sir, it is going back a long time, I cannot really be precise about that, it certainly was not anything to do with any mischief or anything like that.
92. <S DP> Had he become a friend of yours?  
 93. <S PF> Sort of, it was not as if he was a good friend, we talked as any workmates.
94. <S DP> Did he ever go to your house?  
 95. <S PF> Only the time when he went and had knocked the door, when I was coming out, he never entered my house - well, it is a flat - he never entered.
96. <S DP> When you have left the car, the Rover, before you reported it stolen, had you left anything in it of yours?  
 97. <S PF> No, not that I can recall, no.
98. <S DP> Returning to the jewellery quarter, did you at any time go on a ring snatch raid with Scott?  
 99. <S PF> No, no sir, no.
100. <S DP> Did you at any time find out that Scott had done that prior to your arrest?  
 101. <S PF> No sir.
102. <S DP> In the weeks before the Post Office attempted robbery at Windmill Precinct, did you ever go to that precinct?  
 103. <S PF> No, sir, as I stated in the interviews, I have never been to Smethwick before, no.
104. <S DP> You said in the interviews, it was put to you in the interview, that you were a born and bred Erdington man.  
 105. <S PF> That is right, sir.
106. <S DP> Is that right?  
 107. <S PF> Yes, that is right.

108. <S DP> I do not know - the jury will - how far is that from Smethwick?  
 109. <S PF> Twenty minutes in a car.

110. <S DP> You have never been to Smethwick before?  
 111. <S PF> Never, no, never.

112. <S DP> The day of the Wirley Birch robbery it is said by a young sikh [seikh] who gave evidence that he had seen a man, two men, hanging about near the post office at Wirley Birch in the afternoon prior to the robbery. Was either of those two men you?  
 113. <S PF> No, sir, they was not.

114. <S DP> Did you commit the robbery?  
 115. <S PF> No sir, certainly never, no.

<P 05>

116. <S DP> Did you ever have in your possession a double-barrelled shotgun?  
 117. <S PF> No sir, I have never owned a firearm, like I told the police.

118. <S DP> When you were arrested you were informed that that robbery had taken place at five minutes past five.  
 119. <S PF> That is about right.

120. <S DP> In the evening?  
 121. <S PF> Yes.

122. <S DP> Where were you at that time?  
 123. <S PF> I was at my mother's, sir.

124. <S DP> How often have you visited your mother?  
 125. <S PF> Three or four times a week, it can be a bit more, very often, very often.

126. <S DP> She still lives in Erdington?  
 127. <S PF> That is right, yes.

128. <S DP> And did then?  
 129. <S PF> Yes, that is right.

130. <S DP> You gave the police the address.  
 131. <S PF> That is right, yes.

132. <S DP> What is it that enables you to remember that you were there on that occasion, at that time?  
 133. <S PF> Well, when the police arrested me they were asking me of an event that had only happened four days ago. My memory was reasonably fresh, I could remember where I was a few days back.

134. <S DP> A couple of days after the Wirley Birch robbery there was a robbery, we have heard, at Windmill Precinct, about lunchtime, 12 o'clock. Did you take any part at all in that?  
 135. <S PF> No sir.

136. <S DP> Where were you?  
 137. <S PF> I was at home, sir, with my girlfriend and a friend of mine, with my son.

138. <S DP> Tell us a bit more about that. You were arrested on the Friday?  
 139. <S PF> Yes that is right, yes.

140. <S DP> There was Thursday the day before and this robbery where the elderly Indian gentleman was shot was on the Wednesday. Tell us, if you can, how you in fact spent Wednesday?  
 141. <S PF> I had got up about 9.30, it was about the usual time.

142. <S DP> What time were you due to go to work?

143. <S PF> Three o'clock, three to eleven shift I was on that day. I got up about 9.00, 9.30, I was going to part exchange a car I owned, a Cortina, then. And it was in my name, I would go and change it that morning. My girlfriend had the breakfast as usual for my son.

<S JS> Just a moment, your girlfriend got breakfast?

<S PF> My girlfriend was doing the breakfast for all of us, she asked me if I wanted mine. I said leave it until I had sorted the car out, I was going to go and part exchange, but she had breakfast with the baby, I do not know what it was.

<P 06>

I had a wash and got dressed, I left the flat twenty past ten, half past ten.

144. <S DP> Just take it slowly. You left the flat at twenty past ten?

145. <S PF> Near them times, yes.

146. <S DP> How far away is the garage?

147. <S PF> Oh, it is minutes in a car, a minute if that.

148. <S DP> It appears on the map which is labelled and there is a label for your Tweed Tower address as well.

149. <S PF> Yes.

150. <S DP> If one runs very fast, how long does it take, not in a car but on foot?

151. <S PF> Three minutes.

152. <S DP> Three minutes?

153. <S PF> Yes.

154. <S DP> We will return to the cars in a moment but you must complete your movements that day.

155. <S PF> Yes.

156. <S DP> You left, you think it was about twenty past ten?

157. <S PF> Yes.

158. <S DP> That is quite an accurate time to remember.

159. <S PF> Twenty past, half past, within five or ten minutes of the time.

160. <S DP> What did you do?

161. <S PF> Well, I left the flat, drove the car round the island and parked it on the side of the garage where I had previously brought [sic] it from.

162. <S DP> How long were you at the garage?

163. <S PF> Ten minutes, so it was not very long, or it did not seem that long anyway, five or ten minutes.

164. <S DP> What happened?

165. <S PF> Well, I had already seen the BMW, it had been there maybe a week, maybe a bit less, I had already seen it and I decided I liked the car. I had problems with the Cortina during this, before the part exchange took place, the gearbox went, there was also a very small hole in the petrol tank.

166. <S DP> You managed to trade it?

167. <S PF> I beg your pardon?

168. <S DP> To trade it in.

169. <S PF> Yes, I did, I managed to trade it in.

170. <S DP> You got the other one out?

171. <S PF> For the BMW, yes.

172. <S DP> You heard what the proprietor of the garage said?

173. <S PF> Yes.

174. <S DP> He thinks you took that one away, the BMW, while you still had the Cortina.

175. <S PF> No.

176. <S DP> So you had them both out at the same time?

177. <S PF> What had happened is I took the Cortina back and then I got the BMW out.

<P 07>

178. <S DP> Was there anything to pay?

179. <S PF> There was. We haggled a little over the price. He wanted, if I remember rightly, £50 on top for the BMW but he had not got any of the papers, log book, MOT, things like that. I was not prepared to give him the full whack and not have any document or anything myself. We agreed between us I would go back on the Friday and he reckoned then he would have the Log book and everything else for the car. I drove the car back home within minutes.

180. <S DP> Did you try it before accepting?

181. <S PF> Yes, I had driven it before.

182. <S DP> Did you try it?

183. <S PF> Yes, I did. I said I had turned it over, I had seen it moving before, I had seen the garage man testing it before.

184. <S DP> On the earlier occasion when the gearbox had gone on the Cortina, had you had to pay to put that right?

185. <S PF> Yes, it cost me 25 pounds.

186. <S DP> Did you take it for a spin or go straight home?

187. <S PF> Well, I took it to get back to my house. Instead of going straight up the Birchfield Road I took it across the island too. It is like a block, you get a reasonable drive in that. I took it that way and round the back of the flat where I live.

188. <S DP> What time did you get back in?

189. <S PF> About twenty to quarter to eleven, it was not long after I left the flat, it is not far from where I lived.

190. <S DP> When you got back, who was there?

191. <S PF> My girlfriend and son.

192. <S DP> Were you expecting a visitor that day?

193. <S PF> Well, I cannot really say that day but I was expecting a visitor, yes. We had made arrangements for a friend to come and look at the kitchen who was quite Handy at decorating.

194. <S DP> Who's that?

195. <S PF> His name is Chris, Christopher Paulson.

<S JS> Chris -?

<S PF> Paulson. I got home, had some breakfast, read the newspaper, showed my girlfriend the car from the fifth floor which is where I was living, you know, pointed down to it, "do you like the car?" At twelve o'clock, round about then, five to or, you know, not long between when I was in, the door knocked. I answered it and it was Chris. He wanted to have a look at the kitchen to see how much paper or paint it would take because I did not know, I was not very good at that kind of thing.

196. <S DP> Did he come to give you a price?  
 197. <S PF> We haggled a little, not so much price, but he looked and, you know, in his own mind he said yes, so many rolls or paint. He had a look around the kitchen.
198. <S DP> When was the work to be done?  
 199. <S PF> I think my girlfriend was going into hospital the next day, it was a Thursday morning, for a small operation. I think he was going to try and finish it before she came out of the hospital, or Friday at the latest, one of those days.
- <P 08>  
 200. <S DP> When he came out about twelve-ish, when did he go?  
 201. <S PF> After he had a look at the kitchen I think my girlfriend - I think she done him coffee - he had a cup of coffee, I might have had one myself, I cannot be a hundred percent sure of that, we had a drink and a talk, I dropped him off, well he said he was going home, it must have been twenty past one, it may be half past one. I said I would give him a lift home and I drove him home.
202. <S DP> Where did he live?  
 203. <S PF> Erdington, not far from my mother's house, round the corner.
204. <S DP> Did you go straight back?  
 205. <S PF> Yes I did, I was home within ten or fifteen minutes of dropping him off.
206. <S DP> Then what?  
 207. <S PF> Oh, I think I had my dinner, I think she done me some dinner and I must have left the flat about five to three, ten, to get to work and give myself five minutes to get there, it is not far.
208. <S DP> Off you went.  
 209. <S PF> And off I went to work, until the night-time.
210. <S DP> Let us go back and deal in a little more detail with the Cortina motor car.  
 211. <S PF> Yes.
212. <S DP> The jury - to be reminded of the documents they have about this, Exhibit 5 and then 6. Mr. Flynn, why did you go to Car Choice in the first place?  
 213. <S PF> In the first place? Well, I knew a lad from the taxi office next door. I got speaking to Mike and the other lad - I cannot remember his name properly - but I got talking to them, you know. They said, "Do you want to buy a car?" I used to pass quite often, as I lived in the area.
214. <S DP> Had you ever been to those premises before you went there on the 18th to buy the Cortina?  
 215. <S PF> I had, yes.
216. <S DP> You had never bought a car before, I do not think?  
 217. <S PF> No, I had not bought a car, no.
218. <S DP> For what purpose had you been there?  
 219. <S PF> I would see a nice car there, pop in, ask him how much he wanted. Sometimes he would take me for a little test drive up the road - I think he once took me back - then drive and try and impress me to buy the car, kind of thing.
220. <S DP> When did you see the Cortina?  
 221. <S PF> I think it was within a day or two I saw it, that I bought it. I think he impressed me, it was a nice looking car, I had not really got a car like that before.
222. <S DP> We have heard it said they are quite sought after.  
 223. <S PF> Yes. They are nice cars, yes.



<P 09>

224. <S DP> Exhibit 5 is the carbon copy, apparently, of a used car invoice the top copy of which, it is said, was given to you. Did you ever have a top copy?

225. <S PF> No sir, I never had a copy. When I brought the car again he said he did not have the log book, he did not have the MOT, I do not think he had anything for the car. I did give him œ850 if I remember rightly, I gave him the œ50 or the œ800 first and came back and gave him the rest to finish it off. He said he would have the log book and the rest of the documents in the next couple of days but during those next couple of days the gearbox went and that is when I took it back. I think it was the next day, after I bought the car, the gearbox went.

226. <S DP> Before we go into details, for it is declared the name that appears on the used car invoice is Roy Smith and there is an address at 55 Sandy [?] Road, Great Barr which written purpose, apparently it is some other address. Did you give the proprietor of that garage that information?

227. <S PF> No, I have never used that name, there is no need to use that name, he did not have any document therefore I did not see any. I was hoping to see them in a couple of days of having the car. I knew him to talk to, as far as I was concerned he could not go anywhere. Quite frankly I thought, well in a couple of days he will have the document and I would sign them then.

228. <S DP> Your friend Mr. Lance lived or worked?

229. <S PF> He worked in the taxi office next door, A-Z Cars.

230. <S DP> That was said to be the 18th that you took delivery of it?

231. <S PF> That is about right.

232. <S DP> As far as you know is that about right?

233. <S PF> That is about right, I had the Cortina a week, a week at the most, a week.

234. <S DP> Then, looking at - the jury can see - exhibit no. 6, this is the time apparently, so it is said, the details on the top of that were copied out by the rear from the details of exhibit 5, the date at the top, there and in the middle and at the bottom is the 26th of November. That of course would be the date before your arrest.

235. <S PF> That would be a Thursday, would it, a Thursday?

236. <S DP> When did you take the vehicle back?

237. <S PF> I was a morning but days before I was arrested, a Wednesday morning, I was given work on the nightshift again, the day I took the car back it was free until eleven o'clock. I took the car back, ten o'clock, eleven o'clock, sometime that morning.

238. <S DP> We have given that evidence already, do you see, can you remember now, what happened on the Thursday? Well, maybe before we get to the police station you must deal with the rings that you had.

239. <S PF> Yes.

240. <S DP> When you were arrested, how many did you have?

241. <S PF> Four, four rings.

242. <S DP> We have seen those?

243. <S PF> Yes.

<P 10>

244. <S DP> Where did you get them?

245. <S PF> Well, I said in my interview to the police I bought one from an Indian shop in the jewellery quarter. To be honest, the ring I bought from the jewellery quarter was for my girlfriend, it was a half sovereign. The ring that I bought was from a jewellery shop, I think that is called The Jewel, in Erdington High Street. That one I have I got from Adrian Goldman.

<S JS> Just a minute, you had how many rings from The Jewel?

<S PF> I think I had three, sir, two or three.

<S JS> That is from The Jewel in Erdington High Street?

<S PF> Yes, the corner of Cotton Lane.

<S JS> Yes?

<S PF> I think the other one, I cannot remember there was a signet ring, Adrian Goldman, something like that, it is the third one up the High Street in Erdington.

246. <S DP> When was the last one purchased of those four rings?

247. <S PF> The last one, I think I had it about a month before I was arrested, something like that.

248. <S DP> So when you told the police you had bought one in the jewellery quarter from an Indian shop -

249. <S PF> I was mistaken.

250. <S DP> That was wrong?

251. <S PF> It was my girlfriend, I mean I was under a lot of pressure, I had been in the police station a good few hours, I just could not think properly at the time.

252. <S DP> Mr. Flynn, let us go back now to pick up the story. On the day after you took delivery of the BMW.

253. <S PF> The day after, yes.

254. <S DP> What happened on the Thursday?

255. <S PF> My girlfriend went into hospital to have the operation. I dropped her off at the hospital, Kings Norton or something around there. I think it was about eight o'clock in the morning, it can be a bit later. I could not pick her up that afternoon, I think she got a taxi back to my mother's.

256. <S DP> Why could you not pick her up?

257. <S PF> I had to be in work for three o'clock, she was not due out, if I remember rightly, for about four. I did not know, she signed herself out, or discharged herself out earlier on than that, what she should have.

258. <S DP> There is no secret about it, she was going there for a ladies' operation.

259. <S PF> Yes.

260. <S DP> One that would only detain her for maybe a day but not longer than that.

261. <S PF> Yes.

262. <S DP> If it was successful.

263. <S PF> Yes.

264. <S DP> What time did you finish work, then, on the Thursday?

265. <S PF> It was, again, a three to eleven shift. I got home, ten past, quarter past eleven, from Driving You.

<P 11>

266. <S DP> Did you go straight to bed or did you have a glass of something?

267. <S PF> No, I usually sit up and watch the sport, I might have a flick through the paper. That night I think I went to bed quite early.

268. <S DP> Did you see Scott at all on the Thursday?

269. <S PF> Not that day, no, not that I recall, no.

270. <S DP> Friday morning?

271. <S PF> No.

272. <S DP> If all had gone well, when would you have gone to work on the Friday, the same shift was it?

273. <S PF> No, I was on the late shift again, three to eleven, yes.

274. <S DP> Did you go out that morning?

275. <S PF> No, I do not think we did, no.

276. <S DP> What were your plans for the afternoon?

277. <S PF> If I remember right, we were going to go to the fish shop about one thirty, one thirty to twenty past one. We had been in all morning, we were going to go to the fish shop. When I went out to the car I told my girlfriend to put my baby's shoes on; when I got out to the car the police pulled up with guns and I was arrested.

278. <S DP> Let us just take it in stages. When you went down to the car were you on your own?

279. <S PF> Yes, I was on my own, yes.

280. <S DP> What did you notice when you approached your car?

281. <S PF> As I approached the car, the back tyre was flat, completely flat. I had a feeling someone had messed with the car. I had only had it a day, if that. I had a feeling after two days someone had messed with it. I walked over to the car, opened the door. I thought, well, I will fill it up round the corner to see if it is punctured. I sat in the car and started the engine. I looked up. I see a Montego. I do not know whether it was an estate. I saw a Montego come round the corner, pick up some speed which made me look. I heard the speed of the car swerve into the middle of the road. Two officers jumped out with guns and said, "do not move, armed police". I froze, I was shocked, it never happened to me before, I did not know what to do.

282. <S DP> What in fact occurred?

283. <S PF> They told me to - his instructions - put your left Hand on the door, right Hand turn the keys off and so on, until I got out of the car with my Hands up. At that time I can remember looking round, seeing my girlfriend and the baby coming out of the flat. They were a bit hysterical. They made me get down on the floor, face down and put the gun to me and that was it.

284. <S DP> Were you searched?

285. <S PF> From what I can remember they just cuffed me.

286. <S DP> Were you Handed over to other police officers?

287. <S PF> Yes, I was Handed over to two police officers, yes.

288. <S DP> And taken off to the police station at Smethwick?

289. <S PF> That is right, yes.

<P 12>

290. <S DP> It may be helpful if we keep our eye on the custody record, but apparently it was ten minutes to two when you arrived at the police station.

291. <S PF> To be honest, sir, I did not realise the time, I was thinking about my girlfriend and my son and what had just happened to me.

292. <S DP> We have had some evidence given by the officers who took you over after your arrest, that is Smith and Brown, in the car. Apparently the first thing that was mentioned was when you said to them, ["I did not want anyone to get hurt, I did not have the gun."]

293. <S PF> That is not true, sir, I did not even know what I had been arrested for. I was too shocked and thinking about my son and my girlfriend, I did not know what they had arrested me for.

294. <S DP> Did you actually see, as you left the scene, what was happening to your son and girlfriend?

295. <S PF> Yes, I tried to look back as they were dragging me and there was a bit of force. I tried to slow them down. I had my Hands behind my back, they were pushing me from behind. I could see my baby and my girlfriend crying, I think she was shouting something like, "what shall I do?". I shouted, "phone a solicitor, it will be all right", something like that.

296. <S DP> On the way to the police station, was there any conversation between you and the police officers?
297. <S PF> None at all, sir, they just asked me, "what was your part in the job?". I replied, "what job?". I did not even know what I had been arrested for.
298. <S DP> They say that this was mentioned to you, ["You understand you are under arrest, on suspicion of armed robbery, a post office at Smethwick on Wednesday, do you not? You do not have to say anything unless you want to."]
299. <S PF> Nothing like that was said to me, sir, nothing at all.
300. <S DP> You are alleged to have answered, ["But I did not have the gun, is the bloke all right? I did not want him to get hurt."]
301. <S PF> Like I said, I did not even know what I had been arrested for, I did not say anything like that to the police officers, I was in too much of a shock to even think of that.
302. <S DP> They also said you said this, ["Who was the other man with you then (... reading to the words ...)"]
303. <S PF> I did not mention anything like that, sir. I had not done anything wrong therefore I would not mention anybody. I had not done anything wrong.
304. <S DP> Yes, well you arrive at the police station at ten minutes to two and Mr. Flynn, upon arrival, can you remember the custody officer, Sergeant Mathah who has given some evidence?
305. <S PF> Yes, I can, yes.
306. <S DP> Do you remember him reading a notice out to you of your rights?
307. <S PF> No, no.
308. <S DP> Can you actually recollect whether that was done or not?
- <P 13>
309. <S PF> To be honest, sir, I was in a lot of shock, I do not think anything like that was said.
310. <S DP> The time came, apparently, when you were told about an option that was available to you as to whether you wanted a solicitor as soon as possible or whether you did not want one at all. Can you remember that option being put to you?
311. <S PF> All what I can recall, sir, when I was taken to the custody desk the Indian officer said something to the effect: "you will not be able to have a solicitor now because of the seriousness of the charge", or something like that.
- <S JS> Wait a minute.

<S PF> "But when the police officers have finished with their enquiries, you may well be able to have one", or something like that, and he asked me to sign a dotted line.
312. <S DP> What did you do?
313. <S PF> I refused.
314. <S DP> What in fact were your wishes at that time?
315. <S PF> I did want a solicitor.
316. <S DP> Did you say so?
317. <S PF> Yes.
318. <S DP> It is also said on the form, the jury can see, that the time of service of notification of detention to a named person requested or not requested underneath, it says ["wife already aware"] and you apparently refused to sign there as well?
319. <S PF> That is correct, sir.
320. <S DP> What happened to you after that?
321. <S PF> After I refused to sign the form?

322. <S DP> Yes.  
 323. <S PF> They took me round to the female cells and shut me in there and locked the door.
324. <S DP> Who was it who took you, can you remember?  
 325. <S PF> The same two officers that had arrested me.
326. <S DP> You were put in there?  
 327. <S PF> Yes that is right.
328. <S DP> Did they leave you there?  
 329. <S PF> They left me there but it was not for long.
330. <S DP> What happened?  
 331. <S PF> They came back.
332. <S DP> The same officers?  
 333. <S PF> I think it was different officers, they took me, they said to me, "come with me". I did not know what they wanted, where I was going. I followed them. They took me out onto a corridor and up some stairs into a room where they assaulted me.
334. <S DP> What did they do in fact?  
 335. <S PF> First of all they said, "What was your part in the job?" They repeated it a couple of times. I said, "what job?". I was poked very hard in the chest, pushed up against a wall and threw on the floor a couple of times. There were two or three of them in the room if I remember, different ones kept coming in and out, now and again. I just kept saying "what job?" They were like getting more violent [sic] as if they wanted answers from me. I could not give them answers because I had not done anything. I did not know why I was arrested.
- <P 14>
336. <S DP> It is noted in the custody record that you were in the cell from two o'clock until three o'clock and that you were visited at three o'clock, when you were all in order, by Sergeant Mathah and that you were left there until five past four, apparently so that you were in a cell, according to the record, for two hours and five minutes, is that right?  
 337. <S PF> To be honest, sir, it is very hard to remember everything but I know I was taken to that room upstairs on two or three occasions where I was assaulted. They kind of blackmailed me and, "if you do not admit it, your child is going to be put into care and your girlfriend is going to be charged", and things like that.
338. <S DP> Charged with what?  
 339. <S PF> At first they did not say. At first they kept on saying "she is going to be charged unless you start to tell us who the other man is and what your part in the job was". Then it eventually came out as a conspiracy. I do not really understand that.
340. <S DP> Have you any idea why they should pick on you as opposed to all the other people in Birmingham?  
 341. <S PF> No sir, no.
342. <S DP> Mr. Faithful, the record mentioned that you were at five minutes past four taken away by Smith and Brown to be interviewed, that that interview lasted for something less than twenty minutes, fourteen minutes in all, and that you then returned to the cell. Do you remember officers trying to interview you?  
 343. <S PF> It was not so much an interview, sir, it was as far as I was concerned, more of a rough-up, like, what I have just explained. There was not any paper there for me to sign, I was just being pushed and thrown around.
344. <S DP> It is said by Sergeant Mathah that in view of what had happened on your reception at ten to two and your refusal to make an option as to a solicitor he inquired of you again, apparently, at five past four, as to whether you wanted a solicitor, that is what he said.  
 345. <S PF> I do not remember that, sir.

346. <S DP> If you had been asked that, what would have been your reaction?

347. <S PF> Yes, I knew my rights when I was arrested, as I have said. I shouted back, "phone a solicitor" or something like that, words to that effect.

348. <S DP> Did you know what happened to your wife?

349. <S PF> At first I was worried for her. I could see them marching her back towards the flat, the back door where we came out, me first, her second. They shoved me in the car and that was it, until the hours passed and they were taking me backwards and forwards to this room upstairs. As I passed a room I could hear her voice. I said something like, "Are you all right Janet?" She said, "Yes Paul, I am all right", and I knew then that they got her, but they had not mentioned anything to me about that at that stage.

<P 15>

350. <S DP> Well, the record continues to the effect that you then spent from twenty-five past four to quarter to five in the cells and then the two - the big pros - came to see you, the Detective Chief Inspector and the Detective Inspector Wallace.

351. <S PF> I was seen by a few officers, sir, quite a few and it is very hard to remember faces. I had not seen these police officers before but I was being taken up and downstairs from this room, police officers come into the cell.

352. <S DP> Well you have seen now, some year later almost to the day, the Detective Chief Inspector and the Detective Inspector, did you actually recognise them?

353. <S PF> I think, if I am right, I remember the name. His name is Williams, I remember he came into one of the rooms but he did not actually assault me, he just told me to buck my ideas up and start talking, start talking, but he did not actually assault me.

354. <S DP> Did they tell you what the allegation was?

355. <S PF> While in the room, yes, they said that a gun had been shot, they wanted to know who was responsible. They kept asking me, "what was your part in the job?" That was mainly the most they were using.

356. <S DP> They say that you told them that it was Liam Scott who had been involved in the raid and done the shooting.

357. <S PF> Well, as I have said, I did not know what I had been arrested for. I had not committed any crime like what they said. I am not a violent man, I never have been. I did not name anybody because I had not done anything with anybody.

<S DP> Your Honour, I wonder if that might be a convenient point, I have not finished in chief but ...

<S JS> Very well, if this is a convenient stage in your examination in chief we shall certainly rise now.

[addressing the witness:] Very well. Now, Mr. Flynn, you understand you are a witness like any other witness so during the course of the adjournment you must not discuss this case with other people. Very well.

[ The court adjourned ]

[ Friday 2nd December 1988 ]

358. <S DP> Mr. Flynn, we were at the police station at the close of yesterday's proceedings, but I have just got to the stage where you were seen by the senior police officers, Detective Chief Inspector Williams and Detective Inspector Walters. I asked you about that. They gave evidence to the court that you answered their questions to the extent that you named Scott as being a man who was concerned in the robbery at Smethwick, did that occur?

359. <S PF> No, sir.

360. <S DP> They say that they saw you at interview for what must have been something well under ten minutes. It appears in the custody record and the jury know that it was at 16.45 that you apparently were taken away - according to Mathah's note - and it was 16.55 when you were returned,

so that it was in that time that that interview took place and you had been taken up to the third floor, they say. Do you remember being taken by them up to the third floor?

<P 16>

361. <S PF> I had been taken upstairs to the third floor on a few occasions, two or three, it is hard to remember the times exactly.

362. <S DP> Did you at any time there admit to them that you had taken part in the robbery?

363. <S PF> No, sir.

364. <S DP> Can you remember what they said to you, why did they take you up to the room to be with them?

365. <S PF> Well, when they took me into the room, first of all they repeated themselves: "what was your part in the job?", it was mainly the question. They did ask me a couple of questions which I answered.

366. <S DP> What was that?

367. <S PF> They asked me about a car I owned which I told them at the time was a BMW, how long I owned it, which had only been a matter of days. One of them left the room and came back and showed me a carrier bag. They asked me if I noticed that bag, had I seen it anywhere before? I told them, "yes, it is just like a carrier bag in a shop where my sister works".

368. <S DP> On the second occasion they say they came to see you - this is the senior officers - was it they who produced the carrier bag to you?

369. <S PF> I cannot remember exactly, I am not sure about that sir, I am not sure who produced what, but the carrier bag was produced.

370. <S DP> On the day of your arrest?

371. <S PF> That is right, yes.

372. <S DP> Apparently, after that episode, which they called an interview, you were taken back ten minutes later, just before five o'clock to the same cell and you were left there, I think, for twenty minutes, twenty-five minutes. You were taken out again, apparently at twenty-five minutes past five and on that occasion you were interviewed, according to the police officers, for some forty-eight minutes from 17.23 (twenty-three minutes past five) until eleven minutes past six before being sent back to the cell. At a quarter past six, that was half way apparently, Holmes and an officer called Bernstein who's given evidence, can you remember those three?

373. <S PF> Yes sir, when the three officers were in the room that is when they started to rough me up, throw me around a bit. It seemed like they were losing their temper, they wanted the answers from me.

374. <S DP> Can you remember what answers they wanted, what questions they put to you?

375. <S PF> Mainly they were just asking me what my part was in the job, where I was. They asked me my whereabouts. It was only a few days before and I told them where I was, who I was with.

376. <S DP> Did they write down anything that you said?

377. <S PF> There was no paper, no pens, it was mouth to mouth, it only lasted a couple of minutes, if that, actually talking, the rest of the time I was being pushed, I was roughed up, I was being thrown about the room.

<P 17>

378. <S DP> Was your wife mentioned, your girlfriend?

379. <S PF> Not at first, I think later on they might have, they mentioned that she was there. I did not reply to that. They said if I did not start talking that she would be charged and that they would put my child into care.

380. <S DP> According to the custody record, you are sent back to the cell at a quarter past six and your visit or detention is reviewed, as we can see, and in fact there is nothing really of importance until we get to half past ten when apparently you are given some tea. Then, at 23.58 you are charged by Detective Sergeant Wallis, can you remember that?

381. <S PF> I do not remember the tea, sir, because I do not drink tea, but I was charged, yes.
382. <S DP> And bail was refused apparently?
383. <S PF> Yes.
384. <S DP> Then at one o'clock you are checked and you are found to be in order and then later, at ten past, there is an entry that says, ["Talks D C Redford"]. I think by now you had been transferred, had you not, to another cell, and we can see that on the top of page 2 of the record, ["moved to MC4 in the night"]. Do you remember being changed over to another cell?
385. <S PF> Yes, they brought me round some time during the night, they brought me round to another section of the cells, I believe it was the male cells.
386. <S DP> Do you remember Redford coming to see you?
387. <S PF> Yes, I did not know the time, the door opened, I was asleep at the time. He opened the door and he came in with another officer who I had never seen before. He said that he just needed to see me for a few minutes and that did I know the whereabouts of a gun, to which I replied no.
388. <S DP> I remind you of what that officer's evidence was, he gave evidence to the effect that you blurted out to him, he said you said this, ["I am in the shit now" (... reading to the words "... myself" )]
389. <S PF> That is not true, sir, I never made no admissions because I hadn't done any crime at all. All what they were saying.
390. <S DP> Furthermore, he said that after you looked like blurring things out he cautioned you and said he reminded you you did not have to talk to him about the offence or answer any questions.
391. <S PF> No, I do not remember being cautioned sir, no.
392. <S DP> Did you make any sort of admission to him?
393. <S PF> No, sir.
394. <S DP> He said that he said to you, ["Did you know the gun was loaded?"] And you replied, ["Sort of, but I never thought he would fire at him."]
395. <S PF> I did not make any reply.
396. <S DP> You did not. That takes us through to ten past one in the morning. After that, were you taken back to the cell?
- <P 18>
397. <S PF> Yes I was. I think they took me round to do my fingerprints, or something like that. I was brought back to the cell within ten minutes, fifteen minutes, something like that.
398. <S DP> Were there any other people in the adjoining cells, do you know?
399. <S PF> Yes, I believe there were, a couple of people, I do not know how many, I heard a couple of people talking, the cells were very close to each other.
400. <S DP> The next entry as we go through the record comes at 10.21, the next day, the following morning when Sergeant Wallis came to see you before you went to court. Do you remember seeing the police officer before you went to court?
401. <S PF> I remember two officers coming to the cell.
402. <S DP> Had you asked to see them?
403. <S PF> No, I had not.
404. <S DP> What they say about that is that they came to see you and said, ["Paul, I believe you want to see us in relation to the notes you refused to sign."] You apparently said ["Yes, can I have another read through them."]
405. <S PF> No sir, I had not seen any notes, as far as I am concerned no interviews took place.
406. <S DP> They say that you were given photostat copies on that occasion of the notes to look at.



407. <S PF> Yes, when they came to the cell they had paper with them. They asked me to read the notes saying that there was a true record of what I had said. I knew no interview had taken place therefore I refused to read them. I told them, "I am not reading the notes because I have not made any statement. I had not had any interview".

408. <S DP> The interview was to this effect, that Detective Inspector Walters said, ["Paul, that is the note of what you have said, there is nothing different in that."] You apparently replied, ["No, they are right ..." (reading to the words) "... longer"].

409. <S PF> No, that is not true, sir. At that time the duty solicitor was making his way round to the cells seeing each individual who was waiting to be produced at court. As the duty solicitor approached my cell the officers left fairly quickly before he could come in to see me.

410. <S DP> Did they take the documents with them?

411. <S PF> Yes, one of them put the documents behind his back and said, "I will see you later" and walked past the duty solicitor as he was making his way to my cell.

412. <S DP> Apparently you were taken to court. We can see from the record that you went to court at 10.48, do you see - no, you do not see that - and it is at 10.21 that Walters and Wallis came to see you. That is, what, about twenty minutes before you leave the court, which is just around the corner, is it not?

413. <S PF> Yes, you go under a passageway.

414. <S DP> When you got to court I think there was an application by the police, was there not, that you should be further remanded [reminded] in the police station?

415. <S PF> Yes.

<P 19>

416. <S DP> For them to continue other enquiries?

417. <S PF> Yes, that is right.

418. <S DP> What application was made on your behalf?

419. <S PF> Well, I told the solicitor that I had been assaulted the night before. They tried to get me to sign false papers. He made a note of it, he took me to court. When he spoke to the magistrate, who was a woman, he told her that they would not give me a solicitor on the allegations I had made about being assaulted and she ordered that they have a solicitor within twenty-four hours, which was the next day when I eventually did see my own solicitor, which was on I think a Sunday, Sunday morning.

420. <S DP> We will go through it, that was the form with them. I think the police successfully applied for you to remain in their custody?

421. <S PF> Yes.

422. <S DP> You went to Smethwick Police Station. Going on through the day we can see that at, I think - has the jury got page 3, yes - from the record apparently at ten minutes past one - that is at the top of the page - you are given a drink and also requested Mr. Black [?] solicitor - I cannot read it, but it is clearly to the effect he - should come and see you to be informed. Then he 'phoned on Monday, later, you spoke to him. It is quite difficult to read. I think it says ["Wanted him to come to the station a.s.a.p."], as soon as possible, that's what the record said. You mentioned that gentleman's name to a police officer at that time.

423. <S PF> Mr. Black [?] I had asked for my solicitor several times.

424. <S DP> It was?

425. <S PF> As soon as I had been arrested.

426. <S DP> That, in fact, is apparently what happened, there is a note a little further down that we can see, at 15.30 to this effect, it is again in Mathah's writing, ["Mr. Black rang, he will not be coming to see, available only a.m. the 29th of the 11th"], which would of course in fact have been the next day, Sunday.

427. <S PF> Sunday, yes.

428. <S DP> But what the police officer goes on to say thereafter is that at ten minutes past eight that evening you went on out and showed them an address at which Scott could be found. Did you do that?

429. <S PF> No I did not.

430. <S DP> It is said you showed them and took them on a guided tour. You showed them the address and that on the way to Smethwick Police Station you said, ["Can I have another read through the notes that you have done, when I was interviewed, as I am not happy about mentioning Lloyd."]

431. <S PF> That is not true, sir. As I have said, I have never been to Smethwick in my life, I do not know the area at all, I did not show them anything.

432. <S DP> They said they had that discussion with you on the way back. If we look at the record again we can see that it is recorded that at ten minutes past eight they came to see you. I think it is earlier than that, I think it is at 19.20. Again in Mathah's writing it says, ["To DC Holmes for enquiries"]. That apparently refers not to an interview but to your going out of the police station, although it does not actually say you go out of the police station. What is said is that when you got back they came to see you again and had a further discussion with you but prior to that you are asked yourself whether you wanted your solicitor to be present. You apparently signed the record to the effect you did not want your solicitor to be present.

<P 20>

433. <S PF> No that is not right, sir, I did sign the form – maybe on a couple of occasions, i.e. ...

434. <S DP> Would you like to look at the original? I wonder if you have it there. [HANDLED] I do not think we have been through this together so just familiarise yourself with it, would you. Can you see the timings on the left Hand side?

435. <S PF> Yes.

436. <S DP> And the dates, if you go to about the 19.20 - that is twenty past seven, do you see?

437. <S PF> Yes.

438. <S DP> That is on the day after your arrest and this will be the Saturday. What is said there, in Mathah's writing, is that at that time: ["To DC Holmes for enquiries"], it is no more than that. Then this is followed up, do you see, 40: ["To cell, PACE"] and, I cannot read it, ["a copy P.I." something or other and then there are some signatures from the police officers and someone says, ["Review, no change."] Then at ten past eight it says that your interview and, do you see, under that it says, ["Flynn does not wish a solicitor to be present during this interview"], and that is signed by him, and there is your signature, do you see, underneath?

439. <S PF> Yes.

440. <S DP> Do you remember signing that?

441. <S PF> I did sign the odd form once or twice, for property and things like that, yes.

442. <S DP> Do you remember signing that?

443. <S PF> On that Saturday night, sir, a couple of officers came to my cell. They told me I was being moved to West Bromwich Police Station. They Handcuffed me, took me back to the charge desk, they told me they would have to send the form to say I would be moved to that police station. I did sign the form. I was put back in the cell and within minutes they told me I would not be going then and that I would be going that Monday when they did take me to West Bromwich police station.

444. <S DP> We will be able to see from the record when you moved. It was in fact in the afternoon of the next day. But you say that is how your signature came to be on there is it?

445. <S PF> Yes sir, I am not having that, I did sign the form, yes.

446. <S DP> Can you remember them, though, offering you a solicitor, because there had been a discussion earlier in the day about a solicitor.

447. <S PF> I had asked several times. Every time I asked sometimes I didn't get a reply, sometimes I was told I would not get one until they finished with their enquiries.

448. <S DP> Do you remember if there was mention of a solicitor made to you that evening?  
 449. <S PF> No sir, I do not, no.

450. <S DP> Apparently, what happened according to the police officers is that they, again, had a photocopy of the notes, they say following the request from you, and that you read them through and you said, ["Look, I am not happy about anything in about Lloyd."]  
 <P 21>

451. <S PF> The only piece of paper I was shown was the Saturday morning before I went before the magistrates. I refused to read them because I know there was no interview taken place. I just refused to read them and they went as a solicitor was coming to the cell.

452. <S DP> Mr. Flynn, that completes the Saturday and we now come to Sunday and apparently at 11.30 on the Sunday - the jury do not have this, I do not think it matters - you saw a solicitor for the first time?

453. <S PF> Yes, that is right.

454. <S DP> Well, it is not quite accurate, that, because you had seen the duty solicitor at court.

455. <S PF> Yes, but I had seen my solicitor for the first time on the Sunday.

456. <S DP> You had an opportunity, I think, of taking advice?

457. <S PF> Yes.

458. <S DP> From the solicitor. And on that Sunday did you in fact see photostat copies of the alleged first three interviews that you had apparently [?] and refused to sign for?

459. <S PF> I think my solicitor showed me two sets of papers saying that the police had said that I had interviews with them. I told him that it was not true, I had not had any interviews at all and they docked it. He just said, leave it with me.

460. <S DP> He said leave it with him but did you in fact do anything to the notes - this is the photostat notes that you were shown?

461. <S PF> No, sir.

462. <S DP> Well, I said "notes", I had not realised when I first got them they were the originals, I had written on them, but I Hand you three photostats. Are these the three photostats that you were shown by your solicitor?

463. <S PF> Yes, they are, yes.

464. <S DP> They are?

465. <S PF> Yes.

466. <S DP> Did you date or write on them the date that you saw them? Would you look at the top of the first one I think.

467. <S PF> I think I did, yes sir.

468. <S DP> Can you see some writing at the top?

469. <S PF> Yes, I can see ["P Flynn, 30th of November"].

470. <S DP> ["30th of November"] I think it says.

471. <S PF> Yes, that is what it says, yes.

472. <S DP> Did you, in the presence of your solicitor, write something on the back of one set?

473. <S PF> I did, but I cannot exactly remember what.

474. <S DP> Turn it over and have a look.

475. <S PF> Yes.

476. <S DP> What did you write on the back?

477. <S PF> ["I have wrote these notes and I deny having any interview like this and I cannot understand some of the writing anyway"].

<P 22>

<S DP> Even though those notes in their original form, Your Honour, were not accepted, and quite properly, may I ask that they be put in?

<S SL> Your Honour, my learned friend knows quite well that self-serving statements made by a defendant to his solicitors are not admissible. I have not interrupted to prevent him from reading the evidence, it would be different if I was suggesting a reason. I have none and I have not done so and I object to the course that is being proposed. I have not objected to the evidence, although it is clearly inadmissible but is going too far to admit self-serving statements made by the defendant to his solicitor.

<S JS> Mr. Potter?

<S DP> Well, the fact is that I am leading evidence of the fact why he said he did that on that day, and that was the opportunity he had after seeing his solicitor.

<S JS> The jury have heard it anyway and about the matter, self-serving it may be but it is not inadmissible about that. He can say what he did. As I say, the jury have heard it anyway, they might as well have what he wrote on it. That will be Exhibit 37. [ MARKED EXHIBIT 37 ]

<S DP> Can I just explain that I have squiggled on them, but not to any great extent.

<S JS> Yes.

478. <S DP> I think we can get on quite quickly now. You saw your solicitor on that occasion and then the next day, Monday the 30th, at before midday, you were interviewed by the officers from Erdington about the Wirley Birch allegation.

479. <S PF> Yes.

480. <S DP> That is Exhibit 25 that the jury have got. And your solicitor was there present and it is right, I think, is it not, that you do not disagree with anything about that interview?

481. <S PF> No, not really, sir, no.

482. <S DP> That being so, and the jury have copies of that, we will not go through that, but did you at any time admit that you played any part in the Wyrley Birch matter?

483. <S PF> No sir, I have not.

484. <S DP> Were you able to tell the police where you were?

485. <S PF> Yes, when I was interviewed I told them where I was at the time they stated the robbery took place, which was at my mother's house.

486. <S DP> After that, going on in time, at five minutes to five, you arrived at West Bromwich police station, so that is the transfer that took place and, in order to put things into their historical perspective it may be the jury should be asked, your Honour, to bear in mind that it was at twenty-five past five that afternoon that Scott was arrested. So far as you are concerned, the record is then silent about anything that is relevant, until ten minutes to twelve when Mr. Johnson came over to see you. The police officer came over in the middle of the night. He said that he had a conversation with you - that we must deal with. He said that you made some admissions to him. It is said, ["This is all games, see, this is all games. I told them ... (reading to the words) police one thing, I told my brief another. That way nobody knows what is going on and I get off with it. Shall I do that with you?"]

<P 23>

487. <S PF> No truth at all whatsoever in that conversation, sir.

488. <S DP> Apparently, one of the other officers said, ["Look, you either want your brief or

we have got more important things to do"] and you allegedly said, ["OK, call my brief and I will tell him exactly where the gun is, call him out now."]

489. <S PF> No, that is not true sir, I did not know the whereabouts of any gun. When they came to the cell I was asleep. A man did wake me up and ask me if they could interview me without my solicitor. I said "no". It was then they said they would phone him and I spoke to him on the phone.

490. <S DP> He after a struggle managed to get there?

491. <S PF> Yes he did.

492. <S DP> Arriving at half past one, or just after, and then an interview took place. That is Exhibit no. 24. In that they are short, but we notice on its face that it is timed at 1.35 and Mr. Black and Mr. Jackson, from your solicitors, have arrived and you are asked about the gun. You take some advice. You have an opportunity to be advised and you allegedly say this: ["If I could help you with assistance to the gun I would, but I never touched a firearm or never owned one and do not know where one is at this moment."] Is that true?

493. <S PF> That is true, yes.

494. <S DP> The story then goes on to the 1st of December. It was on that day, just after four o'clock in the afternoon, that there was a long interview that was recorded with your solicitor present, exhibit no. 15. Again, I do not ask the jury to look at it, maybe so they can get the order right, because I am afraid it is not in the right numerical order. They had a long discussion about the police officer, about other matters that we have read out to the court and I think in that matter also, in that interview, you denied any robbery in Smethwick.

495. <S PF> I had not robbed anyone, sir, I denied all knowledge of it, yes.

496. <S DP> Let's complete the picture because the story then goes quiet until the day of the identification that took place, the confrontation that took place on 17th December. We have heard evidence about that. I think you had signed a form and consented to go in on an identification parade a fortnight or more before, had you not?

497. <S PF> I agreed to go on any identification because I knew I was not the one involved. I signed and agreed, yes.

<P 24>

498. <S DP> Come the day of the proposed identification, taken for some reason or another by arrangement.

499. <S PF> Yes, that is what I cannot understand, yes.

500. <S DP> You had your solicitor with you?

501. <S PF> Yes.

502. <S DP> Nevertheless you were a willing participant in the confrontation that took place, just you and a police officer stood in a room.

503. <S PF> Yes, although it was not a very fair idea to me, I agreed, yes.

504. <S DP> Why didn't you think it was a fair idea?

505. <S PF> I had got the impression that an identification parade was of ten or more similar men looking like me and I was told I would have to be confronted with the witness where I would be sitting in a room on my own with a police officer and the witness would come in and look at me. I agreed to that.

506. <S DP> Yes, apparently two of them recognised you.

507. <S PF> Yes, that is right.

508. <S DP> You remember that happening when you were there?

509. <S PF> I remember them coming into the room, yes.

510. <S DP> There was the late Mrs. Scott who said she saw you outside the Wyrley Birch Post Office.

511. <S PF> Yes, I remember.

512. <S DP> There was the postman who said he had seen you hanging about just prior to the robbery at Smethwick. Were they right?

513. <S PF> No sir, they was not right.

514. <S DP> Then I think, following that episode, there was a further interview with your solicitor present and that is exhibit 16. That was an interview that was conducted by Police Constable Mayer. Your solicitor was present, Mr. Redford was present, the police officer and Sergeant Hamsey was present. And in that matter various allegations were put to you and the motor cars were discussed. Did you in fact tell the officers the truth?

515. <S PF> Yes I did.

516. <S DP> That was quite a lengthy interview of forty minutes or so and then I think finally on the 26th of January officers came to see you and there was the further interview, exhibit 34, when you were further asked about the jewellery snatch that had taken place. Did you there tell the police the truth?

517. <S PF> Yes I did.

518. <S DP> Now, is it right, Mr. Flynn, that your tracksuit top has been produced in court?

519. <S PF> Yes, sir.

520. <S DP> I cannot remember the exhibit number I am afraid - oh, it is 36 - what make is it?

521. <S PF> It is a Puma, Puma make.

522. <S DP> So far as you know, are there many of them?

523. <S PF> Everybody wears them in the summer, they are very popular.

524. <S DP> Did you commit any of these offences?

525. <S PF> No, sir.

<P 25>

[ cross-examined by Mr. Linderman ]

<S SL> Your Honour, just before I cross-examine the defendant, it has occurred to me, one of the helpful side wings of my learned friend's successful application to exhibit those three interviews is that the jury, instead of having to try and remember the evidence, will have copies in front of them. What I propose to do, therefore, is to have typed copies prepared. When the jury examine the documents they will be able to have typed copies with them at the same time. It may also assist your Honour in summing the matter up.

<S JS> Certainly, yes, I do not object to that.

<S SL> I will see that is done for Monday.

[ addressing the witness: ]

526. <S SL> Just one or two general matters first, Mr. Flynn. Scott, I take it from what you have said, was no longer working at Driving You at this time. Is that correct?

527. <S PF> That is about correct, yes sir.

528. <S SL> When did he finish working for Driving You?

529. <S PF> I cannot be exact, sir.

530. <S SL> No, when?

531. <S PF> Two, three weeks before I was arrested, I would say.

532. <S SL> You were arrested 27th November: some time in early November?

533. <S PF> It could have been, it could have been, yes, about then.

534. <S SL> Had you seen him since he finished working for Driving You?

535. <S PF> Yes I had, yes.

536. <S SL> Where?  
537. <S PF> Around Handsworth, sir.
538. <S SL> I see, Now, he was no longer working with you and I take it from what you said that you knew nothing about the crimes that he was committing.  
539. <S PF> No sir.
540. <S SL> Is that right?  
541. <S PF> That is right, sir.
542. <S SL> The first time you learnt that he might be committing crime was when you were told by police officers that he had been arrested.  
543. <S PF> That is right, sir, yes.
544. <S SL> You were not told that until the 30th of November, I think, at West Bromwich Police Station.  
545. <S PF> I cannot be exact when I was told, sir.
546. <S SL> It was when Mr. Johnson came to see you at West Bromwich and told you Scott had been arrested and your solicitor came to the station in the early hours of that morning. There was an interview, do you remember the date?  
547. <S PF> I have been in the police station a good few dates.
548. <S SL> Come along, you have been preparing this case for nearly twelve months, you know perfectly well it was 30<sup>th</sup> November that your solicitor - forgive me, the early hours of the 1st of December - that he came to the police station and you were asked as to the whereabouts of the gun.  
<P 26>  
549. <S PF> Yes I remember that interview, yes.
550. <S SL> They followed up Sergeant Johnson saying ["we have arrested Scott"].  
551. <S PF> Yes.
552. <S SL> Well, that sticks as the date in your mind does it not?  
553. <S PF> Yes sir.
554. <S SL> Right, well, there is the picture the jury have got. You had been working with the man since early November, you knew nothing about any crimes he was committing, you did not learn that he was suspected of crime until 30th of November?  
555. <S PF> Not really, no sir.
556. <S SL> You agree with all that?  
557. <S PF> Part of it.
558. <S SL> Well, what do you not agree with?  
559. <S PF> Well, when I was arrested, sir, as I have said, on the first day I was arrested I was being taken to and from the interview rooms, so the police officers kept saying, "What was your part in the job?", "Who is the other man?" and so on.
560. <S SL> Yes.  
561. <S PF> This is one day in days, I cannot actually remember all the interviews. The police told me, like, Scott had committed crimes.
562. <S SL> You must remember that.  
563. <S PF> Sir, you are talking twelve months ago, it is not easy to remember everything.
564. <S SL> Do forgive me. Think how a dramatic piece of news it would be to you, just think about how dramatic it would be if you had no idea that Scott was an armed robber.  
565. <S PF> I did not.

566. <S SL> The moment they said "Scott has been arrested, he is your mate in these crimes", you could not forget a thing like that.
567. <S PF> Well, it is not so much as forgetting, this is just the times, days.
568. <S SL> Well, let me help you. Look, would you please, at exhibit 24 [HANDDED]. There is a typed copy. It is 1st December and it is early hours on the morning, 1.35 am.
569. <S PF> Yes.
570. <S SL> Sergeant Johnson is there, along with Mr. Halyard, do you see, and the first question is, ["We have now arrested Liam Scott in connection with the same incident."]
571. <S PF> Yes.
572. <S SL> Well, you will remember that interview?
573. <S PF> Yes.
574. <S SL> And not long before then the Sergeant had come and told you that and asked you if you wanted your solicitor present and you said you did.
575. <S PF> That is right, yes sir.
576. <S SL> That reminds you, does it not, of the first time you ever heard that Liam Scott was part of this armed robbery?
577. <S PF> Maybe it was the first time, yes.
- <P 27>
578. <S SL> What do you mean, maybe?
579. <S PF> Well, sir, it is hard to be precise, we are talking a long time ago.
580. <S SL> Mr. Flynn.
581. <S PF> I had plenty of interviews.
582. <S SL> Mr. Flynn, if you were an innocent man -
583. <S PF> I am, sir.
584. <S SL> - Who had been kept in a police station and accused of a crime which you had not committed, the moment you were told that a workmate and friend of yours was the other half would be a very dramatic moment indeed, would it not?
585. <S PF> I was quite surprised, yes sir.
586. <S SL> You must remember if you are an innocent man, Sergeant Johnson coming in - and innocent - Scott had been arrested.
587. <S PF> Yes, I am not saying I do not remember that.
588. <S SL> Right, well now just bear that in mind because we will come back to it in due course but I would like to go into a little detail, please, the Rover car, the one that was hired from Hallway in Oak Street by you on the 23rd of October.
589. <S PF> That is right, yes.
590. <S SL> The prosecution say you hired that car intending to keep it and use it under false plates, do you understand?
591. <S PF> I understand but that is not true, sir.
592. <S SL> You say you hired the car innocently intending to go to Derby.
593. <S PF> I had hired other cars over the month, sir.
594. <S SL> Just answer me the question please.
595. <S PF> Yes sir.
596. <S SL> We will get along better. You say you hired the car innocently intending to use it to go to Derby.
597. <S PF> That is right sir, yes.



598. <S SL> Why did you lie to the hire company about the reason for your hiring the vehicle?  
599. <S PF> I did not lie, sir.

600. <S SL> Let me remind you of the evidence of Mrs. Ingram who hired it to you, which is at page one, your Honour, this is the statement which was read to the jury. ["He gave me the reason for the hire of the car as his mother was ill and that he wanted to visit her."] Now, why did you lie about the reason for the hiring of the vehicle?

601. <S PF> Sir, when I hire vehicles, not on this occasion, but on several occasions, there was hardly - they are asking why are you hiring the car - the reason I hire the car is because we used to go shopping, Sheffield and other places.

602. <S SL> Are you going to answer my question, are you going to answer my question?  
603. <S PF> What is it, sir?

604. <S SL> Why did you lie about the reason for hiring the vehicle?  
605. <S PF> I did not lie.

<P 28>

606. <S SL> But you told Mrs. Ingram you wanted it because your mother was ill and you wanted to visit her.  
607. <S PF> Sir, I cannot remember making any suggestion like that at all.

608. <S SL> She is lying, is she, about that, you say? That statement was read to the jury, you will remember.

609. <S PF> I am not saying she is lying, I just cannot remember saying anything like that, they do not usually ask you when you hire a car what you want it for.

610. <S SL> I suggest the jury make up their mind about it, you deliberately lied to her about the reason you hired the vehicle.

86. <S PF> I did not, sir, no.

611. <S SL> The jury will make up their mind about that. Let me ask you this please. The same vehicle, 26th October, the day it was reported stolen by you.

612. <S PF> Yes sir.

613. <S SL> You told the jury you go to Ladywood to visit a friend during your lunch hour.

614. <S PF> That is right.

615. <S SL> Is that right, but the friend was not in?

616. <S PF> No sir.

617. <S SL> That you parked it outside their address.

618. <S PF> Close to it, yes sir.

619. <S SL> Within a few yards of it?

620. <S PF> Maybe, yes sir.

621. <S SL> Yes or not, never mind maybe.

622. <S PF> Well, not far from the address.

623. <S SL> Tell the jury, you remember the day the car was stolen?

624. <S PF> Yes, I went, if you recall sir, to see a friend at Morrow Street, I cannot remember precise, he was not in.

625. <S SL> Answer my question. How far from his address did you park it?

626. <S PF> If his house was where the jury was, maybe parked here, within walking distance.

627. <S SL> That is good enough. Very close to. He was not there and you went to the fish and chip shop.

628. <S PF> That is right, sir, I went round to the fish and chip shop, yes.
629. <S SL> You were away no more than five or ten minutes, that is what you told the jury, you were at pains to tell the jury you were only away a brief time.
630. <S PF> Yes, that is about right.
631. <S SL> What was your intention when you came back, to get in the car and report to work?
632. <S PF> That is right, yes.
633. <S SL> How would you describe that trip, the visit to the friend, were you going to see him for a chat?
634. <S PF> We had a drink together now and again, we were going to see if he wanted to come with a couple of lads to Derby for the weekend.
635. <S SL> You were then going to visit him to see if he wanted to go out the following weekend?
636. <S PF> Yes, I see him every week now and again in the pubs and in the clubs.
- <P 29>
637. <S SL> Why did you lie about the purpose, about what you were doing at the time the car was stolen?
638. <S PF> I did not lie, sir.
639. <S SL> Look at exhibit 2, we have not seen this yet. The original is not with us at the moment, Mr. Scott, but it will be. [ Addressing the Clerk of the Court: ] Have you got a Photostat copy of it? May he? Yes, a photostat for the moment.  
[ Addressing the witness: ]
640. <S SL> These are papers, of course, you and your solicitor have been in possession of for months. [HANDLED] Is it headed, ["Avon Insurance plc"]?
641. <S PF> It is sir, yes.
642. <S SL> What it is, is, it is a form made out by Hallway when they were going to claim from their insurance company in respect of their stolen vehicle.
643. <S PF> Yes sir.
644. <S SL> But the part that concerns us is the part that you entered on the form. Go to the second page, would you please. You see the paragraph, Address of Accident, and someone has crossed that out and written ["Theft"]?
645. <S PF> Yes.
646. <S SL> Then it says, ["Please explain exactly how the accident"] - in this case the theft - ["occurred"], etc., and then in your writing is a description. It is your writing is it not?
647. <S PF> Yes it is, sir.
648. <S SL> You wrote down there, ["I left the car locked at about one o'clock Monday afternoon by a road facing Rushton Street in Ladywood and everything was in order at the time. I returned at 1.30 when I discovered the car was missing and nobody seen anything at all."] Why were you telling the insurance company you had been away from the car for half an hour when you were careful to tell the jury you were only away for five or ten minutes?
649. <S PF> Maybe I am mistaken in the times, sir.
650. <S SL> Or maybe you are wrong about it.
651. <S PF> No, I am not wrong sir, it seemed about ten minutes to me.
652. <S SL> But think about it, this version cannot be true, on your present account, because you were only as far as the jury is from the front door of your friend.
653. <S PF> Yes.
654. <S SL> And the fish and chip shop is no more than two or three minutes from there.
655. <S PF> [no reply]

656. <S SL> So you would have been away for half an hour.
657. <S PF> Maybe. I was not, sir, no, but it seemed like about ten minutes to me.
658. <S SL> The problem is, Mr. Flynn, that when you make up stories you may not always remember what it is you have made up.
659. <S PF> It was not made up sir, it was an accurate account of what I can remember at the time.
660. <S SL> If you were telling the truth you have told it from your memory what you remember happening.
661. <S PF> That is right.
- <P 30>
662. <S SL> But when you make something up, it is difficult to remember, is it not?
663. <S PF> What I have said, sir, from what I can remember I said.
664. <S SL> Well, now, we will see as we go on, but I suggest to you whenever we check your story we can find that it is not true and I am going to show you some more examples as we go along. Now, still with the car, the jury know that that was used under false plates. Can we have exhibit 4 please, the registration plates. These are the very plates that somebody had made up and put on the vehicle.
665. <S PF> I do not know nothing about that, sir.
666. <S SL> Let us just think about that. That car, the true Rover 213, bearing that registration, was kept at a garage called the Pacific Ocean garage in Bell Road in Perry Barr from the 12th October onwards. Is it a mere coincidence that you were a customer at the Pacific Ocean garage?
667. <S PF> It is not so much a coincidence, sir, I have hired cars from several places in town and in Perry Bar, I am not denying that.
668. <S SL> It is very striking, is it not, that the man who is alleged to have stolen the car and changed the plates did go to the garage where that number would have to be obtained after the 12th October.
669. <S PF> Sir, to be honest, I do not know nothing about them plates or that car. I have hired cars from Pacific Ocean cars same as other places.
670. <S SL> I know you have. Why did you not hire the car, or a similar car, from Pacific Ocean when you wanted to go to Derby?
671. <S PF> Well, you look around to see which is the cheapest option, the best rates at the time.
672. <S SL> Did you have any guilty feelings about Pacific Ocean Garage after you were arrested?
673. <S PF> Not really, no sir.
674. <S SL> Did you think Pacific Ocean garage might connect you with E128 AOL?
675. <S PF> I did not know anything about plates.
676. <S SL> Did you not? Look at exhibit 16 please. Have you got the first page of that?
677. <S PF> [ no reply ]
678. <S SL> Your solicitor is with you on that occasion. It is 17th December, right?
679. <S PF> That is right to say, yes.
680. <S SL> Various questions are asked of you and you gave your answers. Then they turned to questioning you about the Rover, bottom of page 28 in our copy, at the bottom, and they are talking about the Rover, which is the Rover that was hired from Hallway. All right, go to page 29. Have you got it?
681. <S PF> Yes sir.
682. <S SL> About two thirds of the way down the page they suddenly ask you about Sandy Cliff garage.
683. <S PF> Yes.

684. <S SL> ["Do you remember the Rover ... (reading to the words) ... is it true that you have hired motors from Pacific Ocean motors, Bell Road?"] And you said no reply.

685. <S PF> That is correct, sir, yes.

<P 31>

686. <S SL> ["Well let me tell you that you have hired vehicles ..." (reading to the words) "...interrupted you to say no reply."]

687. <S PF> That is correct.

688. <S SL> ["That you have seen a Rover on the forecourt of Pacific Ocean?" Answer: "Yes, same model and colour." Question: "And the same registration number, E128..." (reading to the words) "...right?" No reply. "What are you worried about?"] And then you paused to think and you said ["no reply"] and then the subject changed and you picked up and answered questions again.

689. <S PF> Yes sir.

690. <S SL> What was it that you were afraid of?

691. <S PF> Sir, I was not afraid, I had been in the police station a long time, I had questions fired at me non-stop for hours at that period, I just got a bit weared off with the police coming at me all the time.

692. <S SL> Forgive me, this was the 17th of December?

693. <S PF> That is right, yes.

694. <S SL> This was an interview with your solicitor?

695. <S PF> Yes.

696. <S SL> You were answering the questions where you chose to but when they asked you about Pacific Ocean garage you had some reason for choosing not to answer those questions, I want to know what it was.

697. <S PF> As I have said, sir, it was not some reason, I just got fed up of being asked about something that I had not done.

698. <S SL> Well you see -

699. <S PF> At that time I did not reply, I had had enough.

700. <S SL> You see, if you look through exhibit 16, and it is quite lengthy, I think I am right in saying those are the only questions in the course of that interview that you would not reply to.

701. <S PF> That is right sir, yes.

702. <S SL> Well now, let us just think about your answer. "I was fed up with answering questions." This is not correct, you chose not to answer, only about one topic - Pacific Ocean garage. You went on to continue answering other questions, explain to the jury what was the subject about Pacific Ocean garage?

703. <S PF> There was nothing subject in it, sir, it might have been any other question at that time, maybe I would have said "no reply", I was fed up of being questioned and being arrested for something I had not done.

704. <S SL> Mr. Flynn, there is only one explanation for you not answering about Pacific Ocean and E128 ROL, which you knew you had taken from a car that was on the forecourt.

705. <S PF> I did not.

706. <S SL> Can you offer any other explanation, apart from the one I am putting forward?

707. <S PF> There is plenty of cars at Pacific Ocean, I do not go round looking at cars. I went there to enquire about hiring a car.

<P 32>

708. <S SL> I think you have the point about the question Mr. Flynn, but I will move on now.

709. <S PF> Yes sir.

710. <S SL> Let us just stay with the Rover for a minute. On the 10th and 11th of November a Rover bearing those plates was seen at the Windmill precinct, that is the evidence, is it not?

711. <S PF> That is what they say, yes sir.

712. <S SL> Of course, it was during the course of the working day, it was about lunchtime. Is it just a coincidence that you were not at work at that time, on the 10th and 11th of November?

713. <S PF> I could have been, I may not have been.

714. <S SL> Do forgive me. Twelve months this case has been in preparation. We have seen your lawyers here, there has never been any suggestion made in this case that you were at work at the time that car was seen on the Windmill Precinct because there would have been nothing easier for the defence to prove.

715. <S PF> Well sir, I am not saying I was at work, I am not saying I was not at work, it is hard to remember everything.

716. <S SL> But you know perfectly well because, you see, in the preparation of your defence that question about whether it could be proved that you were at work that day would have been looked into, so you know absolutely clearly that you were not at work, do you not?

717. <S PF> I did know what I would be looked into, I did not know that.

718. <S SL> Oh come along, look, look at it, this is the defence team, are you really wanting to pretend to the jury you may not have been at work and no-one has troubled to demonstrate that, do you really want to pretend that to them?

719. <S PF> I am not pretending anything, sir, I am telling the jury the truth.

720. <S SL> Mr. Flynn, you see, on the 12th November, think about it, a crime was committed in the course of the working day, at Golden Sun and, again, is it some coincidence that you were not at work on that occasion?

721. <S PF> I cannot say if I was at work or I was not, sir, I am not taking that.

722. <S SL> In that case, Mr. Flynn, you have served an alibi notice on the prosecution which states that you do not know where you were on that day at that time.

723. <S PF> That is correct sir.

724. <S SL> It is, is not it?

725. <S PF> Yes, that is correct.

726. <S SL> If you had been at work, there are rosters, are there not?

727. <S PF> Sir, when I was interviewed about the theft of the jewellery they asked me where I was on that day, four weeks back. It is very hard to remember where you were when you are talking about weeks or months and to the day.

728. <S SL> Do not be silly, do not be silly, you simply go back to your employers, these people, and say to them, get the work sheets out, let us see where he was at lunchtime on the 12th November because if he was driving at Driving You for us a document will show it. Please do not be silly about it, you know perfectly well on this occasion you were not at work, do you not?

<P 33>

729. <S PF> Well, I am answering these questions to the best of my knowledge, sir.

730. <S SL> Oh really. It has never struck you has it, as a workman, when accused of a crime in the working day, that you might wonder to yourself, "can my employers help?", it never occurred to you?

731. <S PF> Sir, as I have said, when I was arrested and they spoke to me about the jewellery they asked me where I was because about four weeks ago I could not - I cannot remember every day, thinking four weeks back.

732. <S SL> Do not be silly, and I am not talking about the time of your arrest, it is December 1988, you have been preparing this case for twelve months.

733. <S PF> I have not been preparing, sir, I will tell the jury the truth, sir, I have not prepared anything.

734. <S SL> An alibi in this case was served on the prosecution in March of 1988 in which it states ["between twelve midday and ..." (reading to the words) "...Old Street"]. It follows, does it not, that you were not at work?

735. <S PF> I cannot be precise about that, sir. As I have said, I cannot offer an alibi, I am not going to make excuses up about it, I cannot remember.

736. <S SL> Mr. Flynn, there it is, the jury have listened to what you say about it, the point I make is this, that when the Rover appears in Smethwick, watching those premises, it is very odd that on two days a working man, it coincides, has time off from work and when the jury look at this case they will find that every time you are alleged to be in Smethwick, committing [missing] a crime, it coincides with the time that you are not at work.

737. <S PF> It does not mean I have committed a crime, same if I was not at work.

738. <S SL> Well, it is one brick after another. Let us go, please, to the 12th November, to Old Street in Hockley. We know the Rover car was being used on that crime because Scott has told us so. He has also told us that you were one half of the team, being the driver. Now, Mrs. Tessa Barker had her statement read to the jury and - they may not recall the detail of it - but she told them that at around midday on the 9th November two men came to the shop and she described them, ["A West Indian male with a dark complexion, another West Indian youth with a light skin, almost like a half caste."]

739. <S PF> Yes.

740. <S SL> You have read her statement, have you not?

741. <S PF> I have heard it in court.

742. <S SL> You have heard it while you have been waiting in prison for this case.

743. <S PF> No, sir, I have not been prepared, I have heard what was said in court.

744. <S SL> But you know the prosecution allege you were in the jewellery quarter at around midday on the 9th of November, do you not?

745. <S PF> Sir, if what you are trying to say, I took part in any taking of rings, I did not steal any rings.

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746. <S SL> Mr. Flynn, pay attention to the question, you know the prosecution have alleged that you were in the jewellery quarter at midday on the 9th of November, which is again a time that you were not at work, is it not?

747. <S PF> I do not know, sir.

748. <S SL> You see, you are sighted on the 9th, the 10th, the 11th, and I suggest the 12th - four opportunities for an alibi to be produced, are there not?

749. <S PF> Sir, I am not going to produce an alibi if I cannot remember where I was. I am not going to bother writing and making excuses.

750. <S SL> It's [if] the precise occasion for an innocent man to prove where he was.

751. <S PF> I know I did not steal any rings, sir.

752. <S SL> And it so happens, listen to Mrs. Barker's description, ["about five foot ten inches tall, slimmer build than the first, maybe younger, about twenty-two to twenty-three years old ..."] (reading to the words) "...jewellery."] You used jewellery, did you not, when you were at liberty?

753. <S PF> Yes I did, sir, yes.

754. <S SL> ["He almost had an Asian appearance. He was wearing a leather bomber jacket, he was wearing two half-sovereign rings on his right hand."] She said you had nice teeth. It is a description of you, is it not?

755. <S PF> I wore three sovereign rings on my right hand, sir, not two.

756. <S SL> We will come to this, not before the 12th November you did not.

757. <S PF> I did, sir.

758. <S SL> Two half-sovereigns, I suggest.  
759. <S PF> No. The full sovereign, sir.
760. <S SL> We will come to the rings in a moment. Do you agree that description fits you?  
761. <S PF> Yes, close to me, yes.
762. <S SL> It is a grave misfortune, is it not, that you are not only linked to the car, you cannot prove where you were and then a witness describes you to a tee.  
763. <S PF> Sir, just because the lady says I am light-skinned, there is more people than me around who look like me.
764. <S SL> But it is height and weight and hair.  
765. <S PF> Well, I can show you hundreds of half-castes with my height, weight and hair.
766. <S SL> But they did not hire that Rover, did they?  
767. <S PF> I did hire a Rover, I am not denying that.
768. <S SL> They did not go to Pacific Ocean Garage where the Rover E128, which we know now to be stolen.  
769. <S PF> Sir, I do not know anything about any 128.
770. <S SL> You see, this just eliminates all the other people bit by bit, do you follow?  
771. <S PF> I follow, yes, sir.
772. <S SL> About the rings, since you were keen to mention them. Is it mere coincidence, bearing in mind all the other features, that when you are arrested fifteen days after the theft, you have in your possession three rings of identical description?  
<P 35>  
773. <S PF> Four, sir.
774. <S SL> Forgive me, I am only dealing with three of them, I know you had another ring of your own.  
775. <S PF> Yes, that is right.
776. <S SL> All three identical with the three stolen in theft, albeit two of them had sovereigns, is that mere coincidence?  
777. <S PF> That is not correct, sir, there is three full sovereigns, they was not stolen.
778. <S SL> Let us have the rings, please, exhibits 9, 10 and 11. [HANDDED] Thank you. You do understand the picture that has developed, Mr. Flynn, do you?  
779. <S PF> Yes I do.
780. <S SL> Right. Well here is another piece of bad fortune for you. On the 12th November, the day the prosecution say you were not at work but were with your friend Scott stealing rings, three rings like this I am now holding up, exhibits 9, 10 and 11 [displayed] were stolen from Golden Sun.  
781. <S PF> I can show you thousands of sovereigns, sir.
782. <S SL> Of course you can, I am not suggesting they are unique. Just take your time about it. One is a Jones signet ring, oblong, divided in half, with diamonds, little diamonds down one half, rather a triangular appearance, all right?  
783. <S PF> Yes.
784. <S SL> Another is a sovereign mount, now with the sovereign in it.  
785. <S PF> It always has been.
786. <S SL> It has got a hexangular look to it, another is round, is it mere coincidence that three like that were all on the drawer that was stolen?  
787. <S PF> Sir, I do not know about coincidence, the sovereigns are all the same to me and

they would be to a lot of other people.

788. <S SL> Never mind the sovereigns, think about the rings from Hercules Koch.

789. <S PF> I am thinking about sovereigns, you are asking about sovereigns.

790. <S SL> You see how odd it appears for these three coincidences: in the hands of the man who hired the vehicle that was used for the theft, to have the same appearance as one of the thieves, and he cannot prove where he was on the 9th, 10th, 11th or 12th of November.

791. <S PF> The rings are not stolen, sir.

792. <S SL> Mr. Flynn, you would not make any admission in this case, would you now?

793. <S PF> Because the rings are not stolen, that is why.

794. <S SL> Well, we will deal with that. When and where did you purchase them, pick them one by one, the signet ring first. So we can understand what evidence is right. When and where?

795. <S PF> I think it was purchased from Adrian Goldman or Adrian Goldman and King.

<P 36>

796. <S SL> What do you mean, you think it was purchased, how much jewellery did you possess in November 1987?

797. <S PF> That was a latest ring of the four.

798. <S SL> Quite. How long before your arrest did you buy that ring?

799. <S PF> A month, five or six weeks maybe.

800. <S SL> It is just a rough nuisance that a fortnight before the theft you happened to buy a ring that was identical to the one that Mrs. Herbert lost.

801. <S PF> Sir, I do not know about identical, it was my ring, I did not steal it.

802. <S SL> How much did you pay for it?

803. <S PF> £70.

804. <S SL> And where from?

805. <S PF> Adrian Goldman or Adrian Goldman and King, I cannot be precise.

806. <S SL> Adrian Goldman and King is a firm of solicitors in Birmingham, I do not think they would be selling jewellery. I do not know, but I suspect not. Maybe you are confusing.

807. <S PF> No, I think that is the name of the jewellers where I bought the ring.

808. <S SL> All right, what about this one, the one with the hexangular cut to it, where did you buy that?

809. <S PF> The corner of [inaudible] Lane, Erdington High Street.

810. <S SL> All right. How much?

811. <S PF> I think it was about £170.

812. <S SL> And when?

813. <S PF> I think the first of the many I had about five months before I was arrested.

814. <S SL> £170?

815. <S PF> I think so, yes.

816. <S SL> I am sorry, I did not hear the name of the shop.

817. <S PF> The Jewel I think it is called.

818. <S SL> Do you forget so easily where you spend £170?

819. <S PF> No, it is months ago, sir, it is hard to remember everything.

820. <S SL> But these rings have been in your mind for the last twelve months, ever since your arrest. They must have been then because you were asked where you bought them. Where



did you buy this last one, exhibit 11? I have referred to 9 and 10.

821. <S PF> I have got all the sovereigns from Fred off The Jewel while I was being interviewed.

822. <S SL> How much?

823. <S PF> I think that was œ130 or œ145, something like that.

824. <S SL> And when?

825. <S PF> And when?

826. <S SL> When?

827. <S PF> About two months before I was arrested.

828. <S SL> If I have got it right, in the five months prior to your arrest.

829. <S PF> I had all the rings, yes.

830. <S SL> You spent œ370?

831. <S PF> Yes sir.

<P 37>

832. <S SL> On jewellery, which was what, equivalent to just over a month's earnings?

833. <S PF> Sir, I am a very good saver, I am careful with my money.

834. <S SL> You must be to spend 20% of your income on jewellery.

835. <S PF> I do not smoke, I only drink once a week.

836. <S SL> And what about trips to Derby and the hiring of cars?

837. <S PF> That is once a week, five of us chip in, it is only about œ15 each between us.

838. <S SL> Now I want to turn from Golden Sun to Park Drive and the Wirley Birch estate. This time the crime was committed, not at midday but at around five o'clock. Once again, unfortunately, you were not at work. That is right is it not?

839. <S PF> Maybe I was not, sir, I cannot be precise.

840. <S SL> It seems that Scott had an uncanny habit of committing his crimes when you were not at work, but he was not working with you at the time.

841. <S PF> Sir, I did not commit any crimes with Scott.

842. <S SL> No, Scott committed his crimes when you were not at work.

843. <S PF> I do not know when Scott committed his crimes.

844. <S SL> Now the only people on that occasion who can tell us where you were are your relatives, your mother or your girlfriend, is that right?

845. <S PF> Sir, when I was being interviewed -

846. <S SL> Is that right?

847. <S PF> Yes. I want to explain myself if you would let me.

848. <S SL> Certainly.

849. <S PF> While I was being interviewed, I told the police I went to my mother's, which is correct. Within a few hours of making that interview I realised on that Monday I did not take my girlfriend and my baby, it was the day before I took them. We visited my mother's very often and on that Monday I went to my mother's on my own. I admit I did make the mistake while being interviewed, yes.

850. <S SL> We will not trouble with that for the moment, let us just consider what was happening at Wirley Birch. Forgive me, I have been amiss pronouncing it. While you say you were at your mother's, two women, Mrs. Henson and Mrs. Scott, finished work at about five o'clock and went to get to Mrs. Henson's car. Do you remember seeing them in the witness box?

851. <S PF> I have seen a few people in the witness box, sir, I do not know.

852. <S SL> Can you not remember the ladies?  
853. <S PF> I cannot remember names, sir, no.
854. <S SL> Can you not remember two ladies, never mind their names, who were very fearful of what two men were planning. Do you not remember them as you sat there listening to this case?  
855. <S PF> I remember it being said.
856. <S SL> Did it not make any impact on you at all, the thought of that woman going down the pavement, worrying that she was going to be attacked, did that not strike you as something rather dramatic in this case?  
<P 38>  
857. <S PF> What, when I was listening to it? Yes, it did, I have never been a mugger, I have never been a violent man.
858. <S SL> So I take it you do remember the evidence?  
859. <S PF> I do remember hearing it, yes, sir.
860. <S SL> Now those two women were very struck, were they not, by the two men they saw skulking across the road from the post office.  
861. <S PF> That is what she said, yes, yes sir.
862. <S SL> Did you not believe her?  
863. <S PF> Yes, she has given evidence on oath.
864. <S SL> Never mind the oath, you are giving evidence on oath too. Let us not trouble about that for the moment. Did you not believe her?  
865. <S PF> What do you mean, believe her?
866. <S SL> Because, was she not obviously telling the truth?  
867. <S PF> Maybe she was, sir, I mean it seems she was.
868. <S SL> Maybe she was?  
869. <S PF> I could not dispute what the lady said.
870. <S SL> Dear me. It is obvious to everybody in this court, including you I suggest, that those two women were particularly struck by the two men, they were frightened of them, one much more than the other and it worried them.  
871. <S PF> That is what she said, yes sir.
872. <S SL> Later, on the 17th December, Mrs. Scott had no doubt that one of the men she watched was you.  
873. <S PF> Sir?
874. <S SL> Is that a mere coincidence?  
875. <S PF> I was not the man she seen, I am not a white man with straight brown hair. She is mistaken. It was not me she has seen.
876. <S SL> Mrs. Henson said that she was not sure.  
877. <S PF> No, she said I was not the man.
878. <S SL> The jury remember her evidence. She told them that when she said to the police officer ["no"], she was meaning to say "I am not sure".  
879. <S PF> It is there in the statement, sir.
880. <S SL> I know. Well, the jury will decide her evidence.  
881. <S PF> If you show the jury they can see what she said.
882. <S SL> Is it a mere misfortune that once again, not only a man, who's described like you, but a man who is identified as you, was Scott's companion on this crime?  
883. <S PF> Sir, I am not a white man with straight brown hair as she described, it was not me

who committed the crime.

884. <S SL> Let us leave Wirley Birch and come to the Windmill precinct. On the 25th of November there was a Ford Cortina used in that attempted robbery, was there not?

885. <S PF> Yes, sir, that is what they say, yes.

<P 39>

886. <S SL> Have you not been persuaded by the evidence, look at the picture of the Cortina, would you, you will find it at exhibit 29. There it is, the brown Cortina car with Mr. Lincoln (?), do you remember the young man who chased it in his Mini, with his baby on the back seat?

887. <S PF> I do not remember being chased, sir, because it was not me who was driving.

888. <S SL> Forgive me, from the evidence you will remember, Mr. Lincoln (?).

889. <S PF> From the evidence, yes, sir.

890. <S SL> Right. He took the numbers HSS 171V, right?

891. <S PF> Yes, that is not the number of this car.

892. <S SL> I know it is not. But Scott has told us this is the car. What other brown Cortina car would Scott have had access to other than this one?

893. <S PF> Sir, he did not have access to my car.

894. <S SL> Oh, I thought you were at pains to explain to the jury that you had returned that car.

895. <S PF> That is right.

896. <S SL> To the garage, Car Choice, on the morning of the 25th of November.

897. <S PF> That is right, sir, yes.

898. <S SL> That is your case, is it not?

899. <S PF> That is what happened, sir.

900. <S SL> What you are saying to the jury is this: "Well, if the car was used in a robbery, it was no longer in my possession."

901. <S PF> Sir, any car I ever owned has never been used in a robbery.

902. <S SL> That is what you are saying to the jury?

903. <S PF> That is the truth.

904. <S SL> Just listen to the question, never mind protesting your innocence for the moment. If it was used you are saying it was not in your possession.

905. <S PF> Sir, as far as I am concerned while I drove the car it was not used in any robbery.

906. <S SL> Think about this. The evidence in this case proves that you returned the car to that garage on the day after the robbery, does it not?

907. <S PF> No sir, I returned that car on the Wednesday, I only had it seven days.

908. <S SL> Face up to this would you. Just take a look at exhibit 6, it is the used car invoice from Car Choice. Have you got it?

909. <S PF> Yes sir.

910. <S SL> Do you see the date on it? ["26th November"]. That is the date the witness said that he filled that form out, swapped the BMW for the Cortina.

911. <S PF> On what day would that be, sir?

912. <S SL> That is the day after the robbery, which is the Thursday, the day before your arrest on the Friday. I do not suppose you have forgotten your arrest on the Friday, the 27th, that must be a red letter day for you.

<P 40>

913. <S PF> It would be, sir, if you had gone bashed on the head.

914. <S SL> Of course it would. This is why I am puzzled why you say it was the 26th.  
 915. <S PF> Dates are very hard to remember, sir.
916. <S SL> Never mind that. You have been told it is the day after the robbery, all right. Your counsel put to the witness that he might have misdated that document.  
 917. <S PF> He must have done, sir.
918. <S SL> I quite agree with you, it is easy to misdate a document.  
 919. <S PF> It is.
920. <S SL> I do accept that, indeed we have had examples in this case, the police putting the wrong dates on these documents, but you have said that is sinister. But in fact the police collected that vehicle, Mr. Morris told us, the very next day, he was not mistaken about that, was he? ["I had it in one day and the police took it away the next."]  
 921. <S PF> I do not know anything about the police collecting that car.
922. <S SL> You heard him say that, did you not?  
 923. <S PF> I heard him giving evidence, yes sir.
924. <S SL> We know the police took it away on the 27th, no-one disputes that. Now, you think about it. If they took it on the 27th, it is not disputed, and it came in the garage the day before, the 26th is right on this document is it not?  
 925. <S PF> Sir, the reason I know I part-exchanged the car on the Wednesday is because that morning my shift of work from three to eleven, that is how I know I took that car back that morning.
926. <S SL> Mr. Flynn, the problem in this case for you is that you simply refuse to accept any piece of evidence that is not consistent with your innocence.  
 927. <S PF> Sir, I am refusing because I have not done the crime.
928. <S SL> That is not the reason, I suggest.  
 929. <S PF> It is the reason, sir.
930. <S SL> That is for the jury to judge.  
 931. <S PF> Yes, sir.
932. <S SL> You explain this to them, please. Have exhibit 5 available. Whoever bought that Cortina - we know who it was, it was you was it not?  
 933. <S PF> Yes, that is right sir.
934. <S SL> But the person buying it gave a false name and [named] address - Mr. Roy Smith of 55 Sandy Road, Great Barr.  
 935. <S PF> That is not me, sir.
936. <S SL> I know it is not but it is you who gave it, is it not?  
 937. <S PF> Sir, as I explained, when I bought the car he did not have any log book, it did not have any MOT, or anything at all. We arranged for me to go back within a couple of days then hopefully he would have all the forms and I would sign them.
- <P 41>
938. <S SL> Now look, the fact that there was no log book or MOT -  
 939. <S PF> Yes.
940. <S SL> - is endorsed on this document, is it not, you have got the original.  
 941. <S PF> Yes, I have found mine now. Where does it say that, sir?
942. <S SL> ["Chassis number"], ["the book to follow"] or ["log book to follow"], they have put it down on the receipt they gave to the purchaser.  
 943. <S PF> All I can see is ["No MOT, sold as seen"].

944. <S SL> Now look here, ["chassis number"], got it? ["Log book to follow."]  
945. <S PF> It does not say that here, sir, it does not say that here.
946. <S SL> Forgive me, let me have the document, it may be that he has been given exhibit 6.  
[HANDLED] [addressing the Court:] It does say it, he has got the right document.  
947. <S PF> Well, where is it sir?
948. <S SL> Just lift the label up and look underneath, the jury will look at the originals themselves, look at it, I have pointed it out to you, read it out now, opposite chassis number. It is much clearer on your copy than it is on mine.  
949. <S PF> Yes, my mistake.
950. <S SL> What does it say?  
951. <S PF> ["Log book to follow"], yes.
952. <S SL> Very clearly. Furthermore the garage have not got the top copy of this document any longer.  
953. <S PF> They have.
954. <S SL> To whom do you think they gave -  
955. <S PF> Sir, when I bought the car they did not have any document, I did not sign any form, I tried to get my solicitor to trace the signature for R. Smith, but apparently it could not be traced because it was photocopied, or something like that.
956. <S SL> Do not be silly, you cannot trace a false signature.  
957. <S PF> I know, but that is not my signature, sir.
958. <S SL> Are you suggesting, because the jury can see it is signed by the purchaser, the garage have gone in for a bit of forgery themselves?  
959. <S PF> I am not making a suggestion like that, I am just telling the jury what happened.
960. <S SL> Flynn, your problem is you do not understand logically where your answers lead. This document has been produced by a garage who simply say "our purchaser gave us those details and our purchaser signed it." Are they lying when they say the purchaser signed that document?  
961. <S PF> It is not possible for me to say he is a liar, sir, but I did not sign any forms.
962. <S SL> You did not and you are saying someone has forged the signature?  
963. <S PF> I agree, I had the Cortina, I did not sign any forms.
964. <S SL> Think about it, if you are telling us the truth.  
965. <S PF> I am.
- <P 42>
966. <S SL> Just have forged a signature on the document.  
967. <S PF> Well, that is why I asked my solicitor if they could try and take on an expert.
968. <S SL> Who did you suggest has forged that signature?  
969. <S PF> I am not suggesting, or framing anybody.
970. <S SL> But I think you must make an effort at it.  
971. <S PF> I cannot make an effort, I did not sign any document, I am not framing anyone else.
972. <S SL> What it means is, Mr. Morris or his partner Mr. Osborne for some reason forged the signature on the document.  
973. <S PF> I am not framing anybody, sir.
974. <S SL> Do you not recognise the importance of your position?  
975. <S PF> What do you mean, sir?

976. <S SL> What you say, Mr. Flynn, cannot possibly be true.  
977. <S PF> It is true, sir, it is true.
978. <S SL> Well now, I am going to leave the Cortina, we have dealt with it but the Cortina we know was used on the Windmill precinct robbery, attempted robbery.  
979. <S PF> My car was not used on a robbery.
980. <S SL> Just look at exhibit 18 and we will see what the robbers carried in the vehicle. It was not just your car the robbers took. That was a plastic bag, that came I suggest from your flat.  
981. <S PF> No it did not, sir.
982. <S SL> Your sister at this time worked at that shop Harveys, did she not?  
983. <S PF> That is correct, sir, yes.
984. <S SL> And you had Harveys plastic bag [sic] available in your flat, did you not?  
985. <S PF> I did, sir.
986. <S SL> Is it just a coincidence, then, that the robbers not only were in your car but, of all the plastic bags available to them, by chance alighted upon one that could be connected to you?  
987. <S PF> Sir, the carrier bag which the police said was left at the post office, did not come from my house, or not from me anyway.
988. <S SL> It is just another misfortune that you suffered in this case?  
989. <S PF> It is not a misfortune, no sir.
990. <S SL> It may turn out to be. Now, I am going to move, please, from those matters to the interviews. I understand your case and it is this, is it not, "I never at any time admitted involvement in the attempted robbery at Windmill precinct"?  
991. <S PF> That is right, sir, yes.
992. <S SL> The police, large numbers of them, at Smethwick police station, have falsified their evidence?  
993. <S PF> Sir, what I told the jury was the truth.
- <P 43>
994. <S SL> I just want to repeat it so we understand it, do you see?  
995. <S PF> Yes, sir.
996. <S SL> "They roughed me up".  
997. <S PF> That is right, sir.
998. <S SL> "And threatened me to get admissions."  
999. <S PF> Yes.
1000. <S SL> "But I never made any".  
1001. <S PF> I never made admissions because I had not done anything wrong.
1002. <S SL> Right. "I knew nothing about who was involved in this crime."  
1003. <S PF> No sir.
1004. <S SL> Did you know Scott's address?  
1005. <S PF> I knew Leicester Road but I did not know the actual number, no sir.
1006. <S SL> Did you know the Port Road address?  
1007. <S PF> No, sir.
1008. <S SL> Did you know the Penguin Court address?  
1009. <S PF> No, sir.

1010. <S SL> Did you ever discover how, by the evening, by the time the 27th November was over, the police had written down not only Scott's name but those two addresses in the notes the jury are going to see in due course? Do you know where they got the information from?

1011. <S PF> No, I do not, sir.

1012. <S SL> It is perfectly clear that they had managed somehow to find out the name and two addresses of the man who subsequently turned out to be the gunman.

1013. <S PF> Sir, I do not know who was the robber. At the time I did not mention any addresses or show them anything.

1014. <S SL> Mr. Flynn, they could only have it from you.

1015. <S PF> Sir, I did not even know what I had been arrested for, at first.

1016. <S SL> And by the 28th November, the Saturday, they had obtained and written down the 5 Penguin Court address, do you know where they got that from?

1017. <S PF> No, sir.

1018. <S SL> Now just think about this, I will come back to it again I suspect. That it was put by your counsel to Scott that he was lying in this case and lying because he believed you had informed upon him.

1019. <S PF> Me, that is right.

1020. <S SL> That is what was put to him, but if you are innocent Scott knows that you have never informed upon him, does he not?

1021. <S PF> Scott believes I informed on him, from what the police had told him.

1022. <S SL> How can he believe that if you were not his co-robber?

1023. <S PF> I was not the robber, sir.

1024. <S SL> Just think about it, if Scott knows that you were not there, and he knows you knew nothing about the crime or crimes.

1025. <S PF> Yes sir.

<P 44>

1026. <S SL> How can he believe that you have informed upon him? [This question appears twice in transcript]

1027. <S PF> I do not know, sir, I cannot answer those kind of questions. I did not rob anywhere.

1028. <S SL> Mr. Flynn, there is no answer to it otherwise than you are guilty.

1029. <S PF> I am not guilty, sir.

1030. <S SL> Can you not see the difficulty you have in your way?

1031. <S PF> It is not a difficulty.

1032. <S SL> Scott must believe you are an innocent man who has been framed by the police.

1033. <S PF> Sir, I am innocent of the crime, I did not rob anybody.

1034. <S SL> Scott has been served, we know, with the same papers that you have had.

1035. <S PF> I do not know about that.

1036. <S SL> He must know that those confessions on your account are fabricated.

1037. <S PF> I did not make any admissions, sir.

1038. <S SL> What motive would Scott have to injure a man who the police have framed?

1039. <S PF> I do not know sir, what motives Scott would have.

1040. <S SL> I am discussing the motive put by your counsel, do you see?

1041. <S PF> Yes sir.

1042. <S SL> Let us just think about it. I quite accept, do you understand, that Scott does

believe that you informed on him to the police.

1043. <S PF> He must have done, sir, to say I was with him.

1044. <S SL> He must believe it but he could only believe it if you were guilty.

1045. <S PF> I am not guilty, sir.

1046. <S SL> There it is, in that case he cannot believe it.

1047. <S PF> I do not know what he believes, sir, but I did not commit the crime.

1048. <S SL> Mr. Flynn, now you have had a rough time, you have told us, at the hands of the police officers?

1049. <S PF> Very rough, yes.

1050. <S SL> Certainly by the end of Friday evening you must have been in a mood to say "I want nothing to do with any of these police officers at all."

1051. <S PF> I have got no choice, sir, when I was in a room with three of them being knocked about.

1052. <S SL> They were treating you dreadfully?

1053. <S PF> Yes they was.

1054. <S SL> It must have been a considerable relief when, on the Saturday morning, that duty solicitor popped into your cell.

1055. <S PF> It was a big relief, I told him what had been going on.

1056. <S SL> Nobody tried to stop him coming into your cell.

1057. <S PF> They could not, sir, because he was making his way round to everybody with the custody sergeant.

<P 45>

1058. <S SL> Forgive me, it was put on your behalf that the police have power to deny access to a solicitor.

1059. <S PF> That is right.

1060. <S SL> Nobody denied the duty solicitor access.

1061. <S PF> The reason why, sir, is because they had to produce me in court that morning with some kind of solicitor to ask for [inaudible].

1062. <S SL> Let me make this clear to you. I do put to you that you never told the duty solicitor the account you are now giving to the police.

1063. <S PF> I did, sir.

1064. <S SL> I do suggest that that is an invention.

1065. <S PF> It is not, sir, I told the duty solicitor exactly what happened to me the night before.

1066. <S SL> I put it in those clear terms so that your defence is enabled to call that solicitor if they choose, do you understand?

1067. <S PF> Yes, sir.

1068. <S SL> Because having alleged that is an invention it can, if that allegation is not correct, be disproved.

1069. <S PF> Sir, that is exactly what happened that morning.

1070. <S SL> All right, that is perfectly clear. Let us have this. Having returned from court you asked, did you not, I suggest, to see those two police officers.

1071. <S PF> No I did not.

1072. <S SL> Mr. Wallis and Mr. Redford, forgive me, Mr. Holmes.

1073. <S PF> No, no, I did not plea [?], sir, I did not ask to see any officers, no sir.



1074. <S SL> On our custody record we can see - have you got a copy of it?  
 1075. <S PF> No sir.

1076. <S SL> You have the original because it is easier to follow.  
 [HANDED]

<S JS> Which page?

1077. <S SL> I think it is the second, it is 28th November that I am dealing with, page three. You see an entry, ["19.20: to DC Holmes for enquiries"], signed by Mr. Holmes and the custody officer.

1078. <S PF> Yes sir.

1079. <S SL> Were you in fact taken out of the cells at that time?

1080. <S PF> Sir, the only part I can remember of being taken out of the cell round about that time I was told I was being taken to West Bromwich police station. I signed the form, I was put back in the cell and Handcuffed and then I was told I was not being moved until Monday.

1081. <S SL> Just think about that, Mr. Flynn, would you please. You see, you had refused to sign anything when you went into that police station, had you not?

1082. <S PF> At first, yes, sir.

1083. <S SL> You had then been dreadfully treated.

1084. <S PF> Yes, sir.

1085. <S SL> You had been beaten up.

1086. <S PF> Yes, sir.

<P 46>

1087. <S SL> You had been threatened.

1088. <S PF> Yes.

1089. <S SL> You had interview records forged.

1090. <S PF> There was no interview taken place without my solicitor.

1091. <S SL> Interview records forged. You had been shown the forgeries that Saturday morning before you went to court.

1092. <S PF> I had been shown two papers, yes sir.

1093. <S SL> You knew they were forgeries.

1094. <S PF> Sir, no interview took place and that is why I refused to read them.

1095. <S SL> Just answer a straight question with a straight answer please. Is it not your case that the police produced to you what you believed to be forged interviews, is that your case?

1096. <S PF> Yes, sir.

1097. <S SL> Right. You would not sign anything then?

1098. <S PF> No, sir.

1099. <S SL> You are taken up to court, remanded, back to the cells with a signature here I suppose?

1100. <S PF> Yes, I was informed by the duty solicitor, sir, that he may need to contact my solicitor from what the magistrate had said to me.

1101. <S SL> You must have thought, "good grief".

1102. <S PF> I felt relief.

1103. <S SL> "I wonder what is going to happen now I am back in these cells".

1104. <S PF> Yes I did.

1105. <S SL> Are you saying that man coolly - you happily had that man - at ten minutes past eight put your name to this document without asking and looking to see what it was you were signing?

1106. <S PF> I put my name to the document before then as well, signing property, or Handing some money out to my girlfriend.

1107. <S SL> No, no. When your property was removed and money given to your girlfriend, you signed, you knew what you were signing for, what does it say above your signature?

1108. <S PF> Above 20.10, ["Flynn ..." (reading to the words) "... interviewed.]" Underneath on the next line is my signature.

1109. <S SL> You knew perfectly well what was written there from when you signed it.

1110. <S PF> When I signed it there was nothing written there.

1111. <S SL> Mr. Flynn, were you in your state of mind signing a document with two blank lines above it in the presence of police officers you loathed and distrusted?

1112. <S PF> It was not so much two blank lines, there was already things written there, I signed on an empty line.

1113. <S SL> Let us just question this please, let us all have clear the nature of the man who is making these allegations. You took this document in your Hand.

[addressing the Judge:]

My learned friend has said he does not require me to make an application to your Honour.

[ to Flynn: ]

That is the record of your previous convictions, is it not?

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1114. <S PF> Shamefully, it is, yes sir.

1115. <S SL> Never mind whether you think it is shameful or not.

1116. <S PF> It is, sir.

1117. <S SL> They start - let us see when you were born - 1966.

1118. <S PF> Yes, sir.

1119. <S SL> So you would have been, what? Sixteen by 1982.

1120. <S PF> About that, yes sir.

1121. <S SL> Well, I think it adds up, sixty-six and sixteen is eighty-two. In February of 1982 you were a sixteen-year-old, missing before that any convictions before you were sixteen. Dealing with your first conviction. Convicted date on your sixteenth birthday and in July 1982 before the Juvenile Court for taking a motor vehicle, interfering with a motor vehicle and being in breach of a conditional discharge for an offence of burglary and Handling stolen goods.

1122. <S PF> That is correct, sir, yes.

1123. <S SL> You were placed under supervision, were you not?

1124. <S PF> Yes.

1125. <S SL> Three months later, in October 1982, for taking another motor vehicle and a burglary you were sent to a detention centre.

1126. <S PF> On what burglary? Yes, sir, that is right.

1127. <S SL> November 1983, before the Magistrates Court for theft of a motor car: detention again.

1128. <S PF> Yes sir.

1129. <S SL> That was an appeal and on appeal varied to probation. October 1985: your first appearance before the Crown Court, this time at Warwick for attempted burglary, one hundred hours community service.

1130. <S PF> Yes, sir.

1131. <S SL> If we can go down to November 1986 before the Crown Court at Birmingham for attempted burglary the court deferred sentence on you.

1132. <S PF> Yes, sir.

1133. <S SL> By the time you appeared for sentence you had committed more offences had you not?  
1134. <S PF> Yes.

1135. <S SL> So in September of that year you were dealt with for attempted burglary, burglary, Handling stolen goods, making a false instrument and using a driving licence with intent to deceive.

1136. <S PF> That is correct.

1137. <S SL> And you were sent to youth custody for fifteen months.

1138. <S PF> Yes, fifteen months, yes.

1139. <S SL> November 1986 before the Crown Court for theft, another twelve months' youth custody.

1140. <S PF> It is to run concurrent with the term I had served.

1141. <S SL> With the term you were then serving?

1142. <S PF> Yes.

1143. <S SL> So you are the man who alleges that in this case it is the police who are lying and fabricating evidence.

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1144. <S PF> Sir, I have been a man of dishonesty in the past, yes, I am not denying that. When I came out of prison I turned over a new leaf, I got myself a job, Handling money, working with disabled people, I was making a go of things until I am arrested for these series of offences of armed robbery which I never done.

1145. <S SL> Mr. Flynn, Scott, who had his record put to him, got the same job Handling money and helping old people, he was the man who had the gun.

1146. <S PF> His job, sir, was more just riding on the bus, sir. My job was to take care of the patients, the money, help them in and out of their houses and drive them around.

1147. <S SL> You, Mr. Flynn, when the police told you on the 30th of November, late that night just before midnight, that Scott had been arrested, you never expressed any surprise at all, did you?

1148. <S PF> I cannot remember exactly what my expression was, sir, then.

1149. <S SL> Oh, I think you probably could.

1150. <S PF> In all honesty I cannot, sir.

1151. <S SL> Just picture the situation, imagine, try and imagine, you are innocent and there you are in the cell, all these terrible things have happened to you and the police come in and they say the other man is Scott. What would your reaction have been?

1152. <S PF> Quite surprising.

1153. <S SL> But you never expressed any surprise.

1154. <S PF> I did not express it, sir, because I had been put through enough over this. I was in the police station and that is why.

1155. <S SL> Shall I tell you what you did do and you think about it and think whether you wonder if it is odd, now, looking back. You see, they told you they had arrested Scott, ["nicked him"] was the words they used, but Scott had told them untruthfully that you had got rid of the gun.

1156. <S PF> Sir, I have never owned a firearm.

1157. <S SL> Listen to your reaction: ["Scott says that, fuck me he got rid of that."]

1158. <S PF> That is not true, sir, I did not make any admissions like that at all.

1159. <S SL> Think about this, they did tell you that Scott was alleging you had got rid of the gun.

1160. <S PF> They might have done, I cannot be precise about that.

1161. <S SL> They asked you if you could help to recover the gun.  
 1162. <S PF> In the presence of my solicitor I did answer this question.

1163. <S SL> Just think about it, because we will look to see what happened. There you are, it is late at night. They are saying to you, "can you help us get the gun back?"

1164. <S PF> Is this before my solicitor is here, or afterwards?

1165. <S SL> Yes, before he is there.

1166. <S PF> They woke me up when I was asleep, about ten to twelve.

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1167. <S SL> What was the point of getting your solicitor over if you could not give them any help about the gun?

1168. <S PF> The point was I wanted to be interviewed truthfully and when my solicitor was there, I know everything was taken down, all correctly signed and it was a truthful interview.

1169. <S SL> Let us just look at that and see what it was you said, it is exhibit 24. May I just have the custody record from you for the moment. Just forgive me for a moment, would you?

[PAUSED]

<S JS> It is exhibit 24, members of the jury, if you are looking for it.

<S SL> Right, so we can set the scene, 30th November, the early hours. ["Can we get the gun back?"] You told the police -

<S JS> I am sorry, you are saying 30th November, this is dated the 1st.

1170. <S SL> Late hours, 30th November, then the solicitor comes, the 1st December, thank you your Honour. This was getting to be a bit of a farce, was it not?

1171. <S PF> What do you mean, sir, a farce?

1172. <S SL> Well, you are an innocent man.

1173. <S PF> I am, sir.

1174. <S SL> You know nothing about a gun, nothing about a robbery and here is Mr. Black (?) and Mr. Jackson.

1175. <S PF> Yes.

1176. <S SL> It must have been very difficult, they are doing their best for you, to help the police about this recovery.

1177. <S PF> I just wanted a true interview, sir, that is why I wanted my solicitor present.

1178. <S SL> The odd thing is, the police know that you never admitted being on this robbery, they all know it, that you are taking it and saying you are innocent.

1179. <S PF> I have never been on a robbery.

1180. <S SL> I know this, think about it. Tell the jury. The plot must have been known to senior officers, "we will get him or we will forge the interviews." They must have known what was going on, they knew that you are protesting you're [your] innocent.

1181. <S PF> Yes, that is right.

1182. <S SL> Well, Sergeant Johnson thinks it is worthwhile going to West Bromwich to say, "Can you help us get the gun back?" What on earth reason would the Sergeant have to think you would help get the gun back?

1183. <S PF> Sir, I have never owned a firearm.

1184. <S SL> Flynn, think about it.

1185. <S PF> I am thinking about it, sir.

1186. <S SL> If what you said is true, there would be absolutely no point in coming to see you in West Bromwich to say ["Can we get the gun back?"] because your reaction is that would need to be, "Do not be silly, you know I am innocent [interested]".
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1187. <S PF> I do not know the whereabouts of the gun, sir.
1188. <S SL> I do not think you are even ready to face up to the point of the question.
1189. <S PF> I am facing up to it, sir.
1190. <S SL> Look what happened. We are in the interview in the presence of your solicitor. Do you take the opportunity of saying, "I am not guilty of that attempted robbery?"
1191. <S PF> They did not ask me if I was guilty of the robbery, they asked me if I knew the whereabouts of the gun.
1192. <S SL> This was in the presence of your solicitor where you could take the opportunity, with relief, of saying "I want to say what has been happening to me, I am not guilty, they have been forging my statements."
1193. <S PF> I told my solicitor what was happening to me.
1194. <S SL> Look at this, ["We have now arrested Liam Scott in connection with the ..."  
(reading to the words) "... Listen to your solicitor, are you in a position or are you prepared to ..."  
(reading to the words) "...Liam Scott"]. Those things were produced, you read them, you read and your solicitor said, ["Do you want to read any more?"] and then ["Do you want to speak to me now?"]
1195. <S PF> This is my solicitor acting on my behalf.
1196. <S SL> You said ["Yes I do"] and then when the police officer came along after you had spoken to him -
1197. <S PF> I answered them the truth.
1198. <S SL> But look at it.
1199. <S PF> Answer -
1200. <S SL> Look at it. This is your carefully phrased answer. It does not say yes and it does not say no.
1201. <S PF> It is just the way I said it.
1202. <S SL> Oh, it is not, it has been very carefully thought out.
1203. <S PF> I could not have thought it that much, it was within seconds, the police came into the room.
1204. <S SL> Look at it, ["If I could help you with assistance to the gun I would."]
1205. <S PF> That is right, yes.
1206. <S SL> ["But I have never touched a firearm, or never owned one and do not know where one is at the moment."]
1207. <S PF> Yes, that is right.
1208. <S SL> You have been very careful in that neither to admit being on the robbery nor do you deny it.
1209. <S PF> They did not ask me if I had been on the robbery, sir. I answered their questions about the gun, it was truthful.
1210. <S SL> You kept your options open.
1211. <S PF> I answered the question as truthfully as possible.
1212. <S SL> Oh, Mr. Flynn, just think about it, here is an innocent man in the police station and after three days, with his solicitor present, he has a chance to say, "How on earth could I help you about the gun, I have been telling you for the last three days I am innocent."

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1213. <S PF> I answered the question as best I could.

1214. <S SL> That was your best effort of protesting your innocence, was it?

1215. <S PF> I do not know the whereabouts of the gun.

1216. <S SL> You see how devious it is?

1217. <S PF> It is not devious, sir.

1218. <S SL> Is it not?

1219. <S PF> It is a correct answer I gave.

1220. <S SL> Look at it, can you not recognise the deviousness of it, you planned it.

1221. <S PF> It was not planned, sir, it was the truthful answer at the time.

1222. <S SL> Really?

1223. <S PF> Yes, sir.

1224. <S SL> That was your protest after all that had happened to you?

1225. <S PF> I told my solicitor what had been happening to me during those days in the police station.

1226. <S SL> So you told us.

1227. <S PF> No, not what I told my solicitor, not -

1228. <S SL> So you told us. Mr. Flynn, you were and are a dishonest man, are you not?

1229. <S PF> I am not, sir. I was a dishonest man -

1230. <S SL> You demonstrated that this morning over and over again.

1231. <S PF> I have committed petty crime in the past, I have never been a violent man, I never will be, I have not robbed anyone.

1232. <S SL> The jury can see an example of, I suggest, your devious and cunning nature in the answers to the police.

1233. <S PF> I answered the question to the best I could.

1234. <S SL> I suggest that though you do not mind plotting to rob people -

1235. <S PF> I did not rob anybody.

1236. <S SL> - Though you do not mind hanging about outside post offices, frightening people by your very appearance, and although you do not mind going in with loaded shotguns, you have not got the guts to admit it, have you?

1237. <S PF> If I committed the crime I would admit it, sir. As you can see from my petty crime in the past I have admitted my crimes, if committed. I did not rob anybody.

[ The witness withdrew ]

## APPENDIX 2

### **RULES OF EVIDENCE**

#### **ARTICLE I. GENERAL PROVISIONS**

Rule 100. Adoption and Effective Date; Effect Upon Common Law.

Rule 101. Scope.

Rule 102. Purpose and Construction

Rule 103. Rulings On Evidence.

Rule 104. Preliminary Questions.

Rule 105. Limited Admissibility.

Rule 106. Remainder of or Related Writings or Recorded Statements.

#### **ARTICLE II. JUDICIAL NOTICE**

Rule 201. Judicial Notice

#### **ARTICLE III. PRESUMPTIONS**

Rule 301. Presumptions.

#### **ARTICLE IV. RELEVANCY AND ITS LIMITS**

Rule 401. Definition of "Relevant Evidence".

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion or Waste of Time.

Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes.

Rule 405. Methods of Proving Character.

Rule 406. Habit; Routine Practice.

Rule 407. Subsequent Remedial Measures.

Rule 408. Compromise and Offers To Compromise.

Rule 409. Payment of Medical and Similar Expenses.

Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements.

Rule 411. Liability Insurance.

Rule 412. Evidence of Prior Sexual Activity.

#### **ARTICLE V. PRIVILEGES**

Rule 501. Privileges Recognized Only as Provided.

Rule 502. Lawyer-Client Privilege.

Rule 503. Patient's Privilege.

Rule 504. Husband and Wife Privilege.

Rule 505. Religious Privilege.

Rule 506. Reserved.

Rule 507. Trade Secrets.

Rule 508. Reserved.

Rule 509. Identity of Informer.

Rule 510. Waiver of Privilege by Voluntary Disclosure.

Rule 511. Privileged Matter Disclosed Under Compulsion or Without Opportunity to Claim Privilege.

Rule 512. Comment Upon or Inference From Claim of Privilege: Instruction.

#### **ARTICLE VI. WITNESSES**

Rule 601. General Rule of Competency.

Rule 602. Lack of Personal Knowledge.

Rule 603. Oath or Affirmation.

Rule 604. Interpreters.

Rule 605. Reserved.

Rule 606. Competency of Juror as Witness.

Rule 607. Who May Impeach.

Rule 608. Evidence of Character and Conduct of Witness.

Rule 609. Impeachment by Evidence of Conviction of Crime.

Rule 610. Religious Beliefs or Opinions.

Rule 611. Mode and Order of Interrogation and Presentation.

Rule 612. Writing or Object Used to Refresh Memory.

Rule 613. Prior Statements of Witnesses.

Rule 614. Interrogation of Witnesses by Court.

Rule 615. Exclusion of Witnesses.



**ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

- Rule 701. Opinion Testimony by Lay Witnesses.
- Rule 702. Testimony by Experts.
- Rule 703. Bases of Opinion Testimony by Experts.
- Rule 704. Opinion on Ultimate Issue.
- Rule 705. Disclosure of Facts or Data Underlying Expert Opinion.
- Rule 706. Reserved.

**ARTICLE VIII. HEARSAY**

- Rule 801. Definitions.
- Rule 802. Hearsay.
- Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial.
- Rule 804. Hearsay Exceptions; Declarant Unavailable.
- Rule 805. Hearsay Within Hearsay.
- Rule 806. Attacking and Supporting Credibility of Declarant.

**ARTICLE IX. AUTHENTICATION AND IDENTIFICATION**

- Rule 901. Requirement of Authentication or Identification.
- Rule 902. Self-authentication.
- Rule 903. Subscribing Witness' Testimony Unnecessary.

**ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS**

- Rule 1001. Definitions.
- Rule 1002. Requirement of Original.
- Rule 1003. Admissibility of Duplicates.
- Rule 1004. Admissibility of Other Evidence of Contents.
- Rule 1005. Public Records.
- Rule 1006. Summaries.
- Rule 1007. Testimony or Written Admission of Party.
- Rule 1008. Functions of Court and Jury.

## ARTICLE XI. MISCELLANEOUS RULES

Rule 1101. Applicability of Rules.

Rule 1102. Amendments.

Rule 1103. Title.

**Some examples of each rule are provided as follow:**

### **Rule 103. Rulings On Evidence**

(a) *Specific objection.* A general objection shall not be sufficient to raise or preserve an issue for appeal.

(b) *Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a contemporaneous objection appears of record, stating explicitly the specific ground of objection; all other grounds for objection shall be deemed waived; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the record indicates that the substance of the evidence was contemporaneously made known to the court by offer of proof.

(c) *Record of offer and ruling.* The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(d) *Hearing of jury.* In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(e) *Exceptions unnecessary.* Taking of exceptions is no longer necessary in matters of evidence.

### **Rule 401. Definition of "Relevant Evidence"**

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

## **Rule 611. Mode and Order of Interrogation and Presentation**

(a) *Control by court.* - The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of cross-examination.* - A witness may be cross-examined on any matter relevant to any issue in the case, including credibility. In the interests of justice, the judge may limit cross-examination with respect to matters not testified to on direct examination.

(c) *Leading questions.* - Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his 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.

## **Rule 701. Opinion Testimony by Lay Witnesses**

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the testimony or the determination of a fact in issue.

## **Rule 702. Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

## **Rule 801. Definitions**

The following definitions apply under this article:

(a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Statements which are not hearsay.* A statement is not hearsay if -

(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty or perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving him or her; or

(2) *Admission by party-opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the party's agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

## **Rule 802. Hearsay**

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority.