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AN ANALYSIS OF POLICE INTERVIEW DISCOURSE

AND ITS ROLE(S) IN THE JUDICIAL PROCESS

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Abstract

This study analyses the current role of police-suspect interview discourse in the England & Wales criminal justice system, with a focus on its use as evidence. A central premise is that the interview should be viewed not as an isolated and self-contained discursive event, but as one link in a chain of events which together constitute the criminal justice process. It examines: (1) the format changes undergone by interview data after the interview has taken place, and (2) how the other links in the chain – both before and after the interview – affect the interview-room interaction itself. It thus examines the police interview as a multi-format, multi-purpose and multi-audience mode of discourse.

An interdisciplinary and multi-method discourse-analytic approach is taken, combining elements of conversation analysis, pragmatics, sociolinguistics and critical discourse analysis. Data from a new corpus of recent police-suspect interviews, collected for this study, are used to illustrate previously unaddressed problems with the current process, mainly in the form of two detailed case studies. Additional data are taken from the case of Dr. Harold Shipman. The analysis reveals several causes for concern, both in aspects of the interaction in the interview room, and in the subsequent treatment of interview material as evidence, especially in the light of s.34 of the Criminal Justice and Public Order Act 1994. The implications of the findings for criminal justice are considered, along with some practical recommendations for improvements. Overall, this study demonstrates the need for increased awareness within the criminal justice system of the many linguistic factors affecting interview evidence.

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Dedicated to the memory of my mum, Mary Haworth, who would have been very proud.

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Key to transcription

IR = police interviewer

IE = interviewee

SOL = solicitor

(.)   small pause

(-)   longer pause (number of dashes indicates relative length)

.hh   audible speaker in-breath (number of 'h's indicates relative length)

hhh   audible out-breath (as above)

.   stopping fall in tone

,   'continuing' intonation

?   rising/questioning inflection

!   animated/emphatic tone

under   speaker emphasis

" "   reading/quoting tone

[ ]   overlapping talk
[ ]

=   latching (i.e. no gap at all between utterances, but not overlapping)

-       sharp cut-off of prior word/sound

(guess) unclear fragment – best guess

(?)   unintelligible fragment

{ }   non-verbal feature

> <   faster pace

1. Introduction

1.1 Introduction

This study will analyse the discourse of police-suspect interviews conducted within the jurisdictional system of England and Wales (E&W). A central premise is that the interview should be seen not as an isolated and self-contained discursive event, but as one part of a much wider process. A significant aspect of this study is therefore to consider its role as a link in a chain of events which together constitute the criminal justice process. It will examine the physical course of the interview data after the interview has taken place, and also how the other links in the chain – both before and after the interview – affect the interview-room interaction itself. This study will thus examine the police interview as a multi-purpose, multi-audience and multi-format mode of discourse.

To elaborate, the interview is conducted as part of the initial information-gathering phase of a criminal case. The resulting data then become criminal evidence. As they subsequently pass through the criminal justice system, interview data are transformed into different formats and have several different functions for a variety of users, from the investigating police officers, to the Crown Prosecution Service (CPS), to the lawyers, judge and jury (or magistrates) of the courtroom. Interview data are thus of central importance to the judicial process, yet the effect on the data of these different audiences, the variety of purposes and the different formats has not yet been considered.

There are in fact some real causes for concern, both in aspects of the interaction in the interview room, and in the subsequent treatment of interview material. I will argue that it is (unintentionally) distorted and misinterpreted as it passes through the criminal

justice process, due to a lack of understanding of basic linguistic principles governing the production of spoken discourse, differences between spoken and written language, and the effect of context and audience on interaction.

In stark contrast to the strict principles of preservation applied to physical evidence, this study will show that interview data go through significant alteration and "contamination" along the route from interview room to courtroom. Further, analysis of interview discourse reveals "contamination" in the other direction: the existence of the future audiences and purposes affects the interaction in the interview room itself, adding a further level of unacknowledged influence over the evidence. It will be shown that there is a significant difference between interviewer and interviewee in their orientation to these future audiences and purposes, causing miscommunication in the interview room and leading to potentially serious consequences for the interviewee.

Data from a new corpus of recent police interviews, collected for this study, will be used to illustrate these previously unaddressed problems with the current process, mainly in the form of two detailed case studies. The implications of the findings for the criminal justice system will also be considered. Overall it is hoped that this study will demonstrate the many ways in which linguistics can inform, and hence improve, the judicial process with regard to the use of police interviews.

1.2   Research question

The overall broad research question to be addressed is:

- to assess the current role of police interview discourse in the E&W criminal justice process, with a focus on its use as evidence.

Within that broad remit, the following questions will be considered:

- To what extent, and in what manner, is the discourse addressed to the future audiences and their purposes, as opposed to those actually present in the interview room?

- What tensions are created by the institutional need to fulfil these several different goals at once?

- What are the differences between interviewer and interviewee in this respect, and how does this affect the dynamic of the discourse between them?

- To what extent are the original data transformed or distorted through the changes in its format?

- What are the evidential consequences of those changes?

- What are the tensions between the role of the interview as a means of evidence gathering, and its role as a piece of evidence in itself?

1.3   Rationale

The original impetus for the project comes directly from practical experience of the use of interviews in the criminal justice process. The researcher previously practised as a criminal barrister, and was therefore a regular end-user of police interview evidence. Even a (then) limited knowledge of linguistic principles was sufficient to trigger concerns about the appropriacy of some aspects of this use, particularly in terms of its presentation to the court as evidence against the interviewee. Given the stakes involved, a full-length study applying the analytical insights of linguistics to this most socially significant form of discourse was felt not only to be justified, but also necessary.

The inception of this study in a real-life professional context highlights the strong practical focus which will inform the whole approach to be taken here. An overriding

principle is that the findings should be of genuine use to the context which is being studied. Yet it must be emphasised that it is above all a linguistic study of a legal context, and not the other way round. Indeed alongside the practical focus, it is clear that police interview discourse is of substantial interest from a purely academic linguistic perspective. Institutional interviews have long been recognised as important sites of social interaction, and few have such significant consequences as the context to be studied here. Indeed a police interview may well constitute one of the most important conversations of an interviewee's life. This therefore represents a particularly fascinating and important area of linguistic study. Yet the police interview context has proved extremely inaccessible to linguistic researchers, especially in the UK. This study therefore represents a vital contribution to a very under-researched area.

The selection of the jurisdiction of E&W perhaps needs further explanation. Firstly, it is one consistent area of legal jurisdiction, and hence all interviews conducted within it are governed by the same laws and procedures. (Scotland and, to a lesser extent, Northern Ireland have different legal systems.) Given the practical focus of this study, and the fundamental importance of the legal context, this consistency is particularly important. Further, it is the jurisdiction in which the researcher is legally qualified, and hence of which I have practical knowledge and experience. Thus although many of the findings will be of wider relevance and application, this geographical and jurisdictional limitation of the scope of the study should be noted at the outset.

Finally, it is worth noting that this study is situated in the relatively new but growing field of forensic linguistics, which, in its broader definition, covers all aspects of the interface between language and the law. Considering that the legal process is based almost entirely on words, from the wording of the statutes that govern the everyday

behaviour of a society to the conviction of defendants based purely on what is said in a courtroom, the scope for linguistic research in this area is vast. But in fact relatively little such research has been undertaken to date. This study will contribute to the growing body of work being conducted in this field, and will hopefully help demonstrate that legal settings provide extremely interesting material for linguistic analysis, as well as illustrating the useful contribution linguistics can make to law in return.

1.4 Outline of thesis

Chapter 2 contains an overview of the relevant literature, and will situate this study in its research context. The following chapter (Ch.3) outlines the methodological approach taken, including the process of data collection, which is of particular interest here given the nature of the data involved. Chapter 4 will provide the legal and social context of the police interview, in order to situate and explicate the current interview process. The following chapter (Ch. 5) will consider the format of interview data, and, by tracing the passage of the data through the judicial process, will also provide a practical demonstration of the process set out in Chapter 4. Chapter 6 will set out the analytical approach to be taken in the case studies, which are contained in the following two chapters (7&8). These various elements and their relevance to the role of interviews in the judicial process will be brought together and discussed in Chapter 9. This will demonstrate that all these aspects are interlinked and in combination have potentially serious consequences for the current use of interviews as evidence. Finally, the study as a whole will be evaluated in Chapter 10.

2. Literature Review

2.1 Introduction

This chapter will review the relevant literature in the key areas relating to this study. It will begin by situating the study within its research context, beginning with general defining categories before moving to the specific police interview context. The second part will review the literature on particular concepts utilised in this study but which generally have no history of application to the England and Wales (E&W) police interview context.

2.2 Situating the present study

2.2.1 Language and Law: Forensic Linguistics

The present study is most readily categorised as belonging to the field of Forensic Linguistics (FL). This is a relatively new field, which is currently still growing and establishing its position. From early beginnings as a diverse handful of researchers in various countries being asked to provide linguistic expertise in individual cases, it has grown into a recognised field of applied linguistics with its own journal (The International Journal of Speech, Language and the Law), international conferences, association (International Association of Forensic Linguists, or IAFL) and several textbooks (e.g. Gibbons 2003, Olsson 2004, Coulthard & Johnson 2007). It has two definitions: the narrow definition refers to the provision of expert linguistic evidence in legal contexts, while the wider definition encompasses any research involving language and the law. This study is therefore an example of the wider definition. FL does not embody any one methodological approach; indeed it includes researchers with a wide variety of academic backgrounds from psychology to phonology (although it must be acknowledged that lawyers are currently under-represented). Its scope is therefore

broad. This is especially true given the overwhelming significance of language in legal contexts, as two of its leading practitioners attest:

> 'Our law is a law of words… Morality or custom may be embedded in human behavior, but law – virtually by definition – comes into being through language…Few professions are as dependent upon language.' (Tiersma 1999: 1)

> 'The law is an overwhelmingly linguistic institution. Laws are coded in language and the concepts that are used to construct the law are accessible only through language… [T]he contracts which regulate our relationships with partners, employers, and providers are mainly language documents… It is, therefore, not only the law that permeates our lives, but the language of the law, and it does so in ways that are not always problem free.' (Gibbons 2003: 1-2)

Given the immense importance of the legal system in society, and the equally immense importance of language within that system, it can be seen that FL is potentially one of the more significant, even urgent, areas to which the socially-minded linguist could be expected to turn their attention. It is therefore perhaps surprising that this is not already a prime flag-bearing site of applied linguistic research activity. However, the massive social and personal significance of legal contexts for those involved brings with it corresponding levels of sensitivity, confidentiality and ethical concerns which make access to those sites (reassuringly) restricted. The system is as open as it needs to be to maintain public trust in its operations, but access to the kind of data of interest to the linguist, especially permanent, researchable recordings of personal interactions, is fiercely protected.

That is not to say that the UK legal system is not open to the concept of research as a tool for bringing new insights and improvements to working practice. Psychology as a discipline, for example, enjoys a particularly good working relationship with the E&W police community (see further below). But in order to allow such research the legal community must be convinced of the potential benefit in return, and, unfortunately, linguistics has yet to attain sufficient status in legal circles to open the door to regular research access. This situation may hopefully be set to change, however, with increasing numbers of forensic linguists becoming involved from the early stages of UK police investigations.

The most effective way of raising the status of linguistics in the eyes of the legal community is by engaging more effectively with that community, and providing concrete demonstrations of the huge insights and benefits that linguists can bring to the legal arena. A key challenge for the present study, then, is not only to gain access to the necessary data, but also to use the opportunity to strengthen the bridges between the linguistic (FL) community and the UK legal world, to demonstrate how FL research can contribute positively to the legal system, and indeed to make such a positive contribution through its findings, in order to pave the way for future FL research.

2.2.2 Institutional Discourse

The present study can also be seen to belong to a tradition of research into interaction in professional/institutional contexts, or 'institutional discourse' as it has become known[1]. Defining 'institutional discourse' is by no means a straightforward matter. On an intuitive, common sense level there seems to be no difficulty in describing interactions

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[1] Sarangi & Roberts (1999b) propose a distinction between 'institutional discourse' and 'professional discourse' (13-19), but such fine distinctions are not, I would argue, necessary for the context being considered here.

between doctors and patients or police and public as 'institutional', but it is less easy to draw a meaningful boundary between institutional and non-institutional discourse, not least because both can occur within a single interaction. In the introduction to their seminal collection of work in this area, Drew and Heritage (1992) state that a common factor in the interactions analysed under the banner of 'institutional discourse' is that they 'are basically task-related and they involve at least one participant who represents a formal organization of some kind' (1992:3). Clearly there is no difficulty in treating the police interview context as falling within this category. However, they also state that 'the institutionality of an interaction is not determined by its setting. Rather, interaction is institutional insofar as participants' institutional or professional identities are somehow made relevant to the work activities in which they are engaged' (ibid.). This recognition that interaction which takes place in a setting such as the police interview room is not automatically and of itself 'institutional' is an important one. Indeed, work on institutional discourse has brought an appreciation that the 'professional' or 'institutional' nature of an interaction is in fact to large extent created through the interaction, rather than being a predetermined feature of it.

Drew and Heritage (drawing on Levinson 1992) propose that:

'1. Institutional interaction involves an orientation by at least one of the participants to some core goal, task or identity (or set of them) conventionally associated with the institution in question. In short, institutional talk is normally informed by goal orientations of a relatively restricted conventional form.

2. Institutional interaction may often involve special and particular constraints on what one or both of the participants will treat as allowable contributions to the business at hand.

3. Institutional talk may be associated with inferential frameworks and procedures that are particular to specific institutional contexts.' (1992: 22)

These are important observations and the questions of goal orientation, 'allowable contributions' and the particular inferences involved in police interview interaction, are all aspects which will be the focus of attention in the present study.

A further common feature identified in institutional interaction is the asymmetry of knowledge between participants. Drew (1991) suggests that 'unequal distributions of knowledge are a ... source of asymmetry in almost all institutional settings: and especially so in those settings in which members of the public or lay clients may not have access to the professional's specialized technical knowledge about relevant organizational procedures' (22) (although he goes on to illustrate how such asymmetries are also a feature of non-institutional interaction). This is a factor which is clearly of potential significance for the present study, particularly in terms of the participants' comparative knowledge of the wider role of the interview in the judicial process.

Of particular interest for this study is that a great deal of research in this area has focused on contexts which involve interview or question-answer formats, such as news interviews (e.g. Greatbatch 1988, Heritage & Greatbatch 1991, Clayman 1992), job interviews (e.g. Roberts & Campbell 2005), the courtroom (e.g. Atkinson & Drew

1979, Harris 1984, Cotterill 2003) and doctor-patient interaction (e.g. Silverman 1987, Wodak 1997; described by Sarangi & Roberts as an 'over-researched area', 1999b: 12), reflecting the prevalence of this format in institutional contexts. Such institutionally-controlled, often dyadic, professional-lay interactions form a useful parallel with the police interview context in many respects. However, the purpose of this study is not to consider the police interview as a specific genre of institutional interaction or to examine its particular interactional peculiarities compared to other formats, but instead to examine its institutional function in the criminal justice system. For that there are no comparative situations. Nevertheless, research such as that cited above has demonstrated the immense value of taking a detailed discourse-analytic approach to interaction in such contexts in order to make extremely valuable insights into the workings of those institutions. (The particular methodological problems posed by conducting research in such contexts will be considered in the following chapter.)

One further point to note with regard to research on institutional discourse is that it has often highlighted the generally highly unequal power relations at work. Professional-lay interaction has been shown frequently to be a manifestation of the control of individuals through specific organisations and organisational practices, with lay participants placed in a typically weaker position both institutionally and discursively (e.g. Fairclough 1989, van Dijk 1993). A key success of much literature in this area is not only in revealing those inequalities, but also in demonstrating how they are not just reinforced but often actually created and perpetuated discursively (e.g. Thornborrow 2002). This is especially true of the asymmetrical discursive dynamic of the interview. However, although this is extremely valuable research, and has been the focus of previous research by the author in the police interview context (Haworth 2006), it will not be a

focus of the present study, which has different research aims. However, an awareness of these issues as revealed through research such as that cited here will be necessary in order to maintain an appropriate critical stance to the very unequal power dynamics of the context under scrutiny here, and to ensure its impact as a factor in the discourse is not overlooked.

2.2.2.1 Legal contexts

Moving from studies of 'institutional discourse' in general to studies of specifically legal contexts, an important theme is the concept of a clash between legal and lay paradigms. Although the majority of such research concerns the courtroom context, this is certainly a factor which is likely to be equally applicable to the police interview. Conley & O'Barr (1990) propose a distinction between frames of 'rules' and 'relationships', with the legal system utilising a rule-based framework in its processes and hence also in its discursive organisation. They demonstrate that lay participants who orient to a more 'relationship'-based mode of reasoning generally have considerably less successful encounters with the legal process. Others have identified a legal-lay distinction in the use of narrative and non-narrative modes (Heffer 2002, 2005; Harris 2005, both drawing on Bruner's distinction between narrative and paradigmatic modes of thought: 1986, 1990). This can be seen as in essence a continuation of the concept of 'asymmetries of knowledge' discussed above, but rather than referring only to a body of knowledge shared by professionals, it refers to procedural and even cognitive frameworks which will be applied by them. Legal professionals are viewed as bringing a particular mode of reasoning and cognitive construction to a situation, based on their knowledge of the underlying legal principles and embedded through their professional training and experience, which is then reflected in their discursive behaviour. Lay people, without this familiarity with the

paradigmatic legal frames which will be applied, lack the necessary resources for structuring their discourse in a manner which matches those frames. Thus factual knowledge on its own (for example of the rules of court or of the elements of a criminal offence) is not sufficient for a lay person to successfully negotiate the discursive challenges they face in legal contexts. As someone with professional legal training and experience this is a particularly fascinating concept, and one which I feel intuitively to be correct.

This has two implications for the present study. Firstly, attention needs to be paid not just to asymmetries of knowledge between interviewer and interviewee, but also to their comparative awareness of, and hence orientation to, the underlying legal frameworks which govern the police interview context. This is therefore a factor which will be examined in some detail in the data. Secondly, from a methodological perspective this suggests that due to my own professional background I will approach the context being studied, and view the resulting data, in a way which may not be shared by other 'lay' researchers. The influence of the researcher's professional background on this research project is therefore a factor which merits further consideration and will be addressed in the following chapter.

2.2.3   Police Interviews

Police interviews are undoubtedly an under-researched area, particularly in the field of linguistics. Only one book-length study exists (Heydon 2005), with the rest of the literature made up of articles scattered across diverse journals or an occasional inclusion in a more general text, often using very dated or unrepresentative data (e.g. Fairclough (1995) and Thornborrow's (2002) use of an interview with a complainant (as opposed to a suspect) conducted in the presence of a BBC TV crew in 1980). It is difficult to

identify key themes across such scant material, but certain general observations can be made.

Firstly it should be noted that most of the research has been conducted in jurisdictions other than the UK, such as Sweden (Jonsson & Linell 1991, Linell & Jonsson 1991), Holland (Komter 2002), Australia (Heydon 2003, 2004, 2005), or the US (Watson 1983, 1990; Shuy 1998). These jurisdictions have different procedures for interviewing suspects compared both to the UK and with each other, meaning that the research site, although given the same institutional label, is in fact often quite different. For example, unlike the UK and US (Common Law) system, the continental (Roman Law) system is not adversarial, and is based on written documents rather than oral evidence. Thus the police interview with a suspect is intended to produce a written monologic summary drafted by the police interviewer, a process which is discursively managed during the interview and forms a considerable proportion of the interaction (Komter 2002). Clearly this will be interactionally different to the UK interview where an audio-recording of the interview forms evidence in itself. Other jurisdictions such as the US do not routinely record interviews, again providing a different discursive dynamic to the UK situation where participants' utterances are likely to be influenced by the fact that they are 'on record'. The extent to which this is the case will be examined in the present study. And the differences are not just procedural:

> 'At least in publications about police interviewing, there seems to be a cultural difference. British publications emphasise an 'ethical approach' to police interviewing that has 'open mindedness of the interviewer' as a core aspect (e.g., Williamson, 1993). American manuals, on the other hand, mainly

emphasise tactics that could be used to break a suspect's resistance in order to obtain confessions (e.g., Inbau et al., 2001)'. (Vrij, Mann & Kristen 2007)

Overall, then, comparisons across jurisdictional boundaries are problematic, and the findings of such studies are often not applicable outside their particular country's legal system, especially when the relevant judicial process and the practical consequences form part of the research agenda. This of course does not in any way invalidate such research; indeed the present study will take precisely this approach. In fact studies in other jurisdictions which do consider the role of the interview in the judicial process have powerfully demonstrated the value of such research. This indicates that similar studies of the UK context would be equally valuable.

Alongside such studies are those whose aim is more descriptive. Some (e.g. Heydon 2004, 2005) have focused on the typical discursive structure of an interview. Heydon (2005) uses conversation analysis and Goffman's 'footing' to propose a tri-partite structure for police interviews. However, although it identifies many interesting features of police interview discourse, the analysis often takes insufficient account of institutional and procedural aspects of the legal context which are likely to underlie some of the features identified. Other studies have focused on typical discursive practices employed in the police interview context, such as Watson's analysis of the elicitation of US murder confessions from a conversation-analytic perspective (1990), Johnson's analysis of 'so'-prefaced questions (2002), and Edwards' consideration of the use of the modal verb 'would' (2006). These last two studies are of particular interest for present purposes as they utilise data from the E&W context. Such descriptive linguistic studies make a valuable contribution, particularly in defining the police interview as a genre and in determining its distinguishing features when compared to

other interactions. However, they have a different research focus to the present study, which is interested in the interview not just as a type of isolated discursive interaction, but in its wider position as part of the judicial process.

Perhaps the most important work on police interviews for the purposes of the present study is that of Coulthard, whose work on the E&W police interview context is of very real and direct practical relevance to the justice system. In fact much of the research has been conducted as part of that system, in the form of expert evidence (thus situating it within the 'narrow' definition of FL). Of particular importance is his involvement in cases dealing with disputed confessions contained in written records of police interviews, such as Derek Bentley and the Bridgewater Four (1996, 2000, 2002). He convincingly demonstrates that in those records 'the police had unfairly concealed their own voice and/or represented what they had said as having been said by the accused' (2002:22).

Coulthard's work provides a fascinating insight into the police interview context and especially the prevalent organisational culture of the time. But, although this work is extremely valuable, it relates to cases which took place before radical changes to UK police interview procedure, which were in fact brought in mainly as a consequence of serious miscarriages of justice such as those referred to by Coulthard. (These procedures will be discussed in Chapter 4.) Once again, though, this work demonstrates the immense contribution that linguistic studies can make to this context, making the absence of any such research on current UK police interview practice all the more striking and undesirable. It is precisely this gap that the present study aims to fill.

Finally, mention should also be made of studies of cross-cultural communication and/or the use of interpreters in the police interview context (e.g. Cooke 1996, Russell 2000, Berk-Seligson 2002). Indeed this has been the deserved focus of much FL research, not just in the police interview context (exemplified by Eades' work on the treatment of Aboriginals in the Australian criminal justice system (e.g. 1995a, 2002). Again, although such work is immensely valuable, it differs from the present study in that it is designed to address a specific, 'non-standard' interactive situation. In fact, as noted by Heydon (2005: 30-2), the 'standard' police interview has received comparatively much less attention. Yet Cotterill's (2000) analysis of the comprehensibility of the caution, which is administered at the start of every E&W police interview, demonstrates that the question of comprehensibility is not just a cross-cultural or cross-language problem but much more fundamental (again linking back to issues of legal-lay communication).

By contrast with the linguistic position, there is a comparative wealth of psychological studies of police interviewing. Much of the research interest is in detecting deceit (e.g. Vrij 2000, Vrij et al. 2007), and confessions (e.g. Gudjonsson 2003). It is also generally very practitioner-focused (e.g. Clarke & Milne 2001, Bull & Milne 2004, Shepherd 2007), and enjoys excellent access to the research context: it is interesting to speculate as to whether this is as a consequence of this research focus, or the other way round. However, it often uses experimental methodology (e.g. Akehurst & Vrij 1999, although this acknowledges the problem), and is usually quantitative (see also Leo 1996 in the US). Further, although interested in interviewer behaviour, or interviewee behaviour, what the psychological approach often lacks is detailed consideration of the interaction between the two (Milne, personal correspondence). This strongly indicates that linguistic discursive analysis is much needed to complement this work.

A final point to note is that the police interview was also subject to some research scrutiny from a criminological perspective around the time of the introduction of the PACE requirement to tape-record interviews (e.g. Baldwin 1985, 1992, 1993, McConville et al. 1991), and again due to the changes to the 'right to silence' in the Criminal Justice and Public Order Act 1994 (e.g. Mirfield 1997). This was largely concerned with the impact of such legislation, either at the time of its proposal or shortly after its implementation. Thus this cluster of research interest peaked in the early 1990s. Police interview practice has undergone such significant transformation since then that these studies are now not likely to be at all representative of current practice. Thus, although they produced many fascinating findings and statistics, and provide interesting historical insight into the E&W police interview context and will be utilised for that purpose in Chapter 4, I do not propose to draw on their findings in the present study. However, they do make certain general observations which are still relevant. Of particular interest for the present study is the following comment by Baldwin:

> 'It is evident ... that the idea that police interviewing is, or is becoming, a neutral or objective search for truth cannot be sustained, because any interview inevitably involves exploring with a suspect the detail of allegations within a framework of the points that might at a later date need to be proved. Instead of a search for truth, it is much more realistic to see interviews as mechanisms directed towards the 'construction of proof' or, as McConville et al. (1991: 79) put it, as 'social encounters fashioned to confirm and legitimate a police narrative'. (Baldwin 1993: 327)

This signals several of the key aspects of the police interview which will be considered in the present study: the question of interviewer neutrality, the relevance of an

underlying legal framework, the eye on the later stages of the criminal justice process, and the 'construction of proof'. Yet in the work of Baldwin and his criminological colleagues such observations are only ever subjective and impressionistic. By comparison, linguistics offers a powerful set of tools for unpicking exactly how something as socially significant as criminal proof can be 'constructed' through verbal interaction. Once again this illustrates that a linguistic approach to the E&W police interview context, informed not only by the wealth of linguistic research on similar contexts but also with a sound grounding in the socio-legal significance of the police interview, is long overdue.

2.3   Further concepts

This section will involve discussion of some additional aspects which are considered to be of great interest for the E&W police interview context, but which have hitherto not been applied to it (or rarely). They have, however, been the focus of research in other areas which I believe demonstrates their potential relevance and applicability to this context. The first two relate to the analysis of the format of the interview data, and the second two to the discursive interaction in the interview itself.

2.3.1   Transcription

One of the aspects of the E&W police-suspect interview process to be considered in the present study is the production of a written transcript which is intended to be an accurate representation of the original spoken dialogue in the interview room (albeit sometimes edited). The differences between spoken and written modes of language are long established in linguistic research (e.g. Biber 1988; Halliday 1989; Biber et al. 1999). Of course this is by no means a clear-cut distinction since, as identified by Biber and Halliday, the mode is only one of several factors which will determine language

choice in any situation. It is not pertinent to delve any deeper into the wealth of

literature on this topic here; for the present study it is sufficient to note that it is entirely

accepted within linguistics that the mode is a significant factor affecting language use.

This therefore presents a particular set of problems when attempting to convert any text

from one format to another. This difficulty is (not surprisingly) fully appreciated by

linguists conducting research on spoken language who need to convert data to a written

format in order to render it accessible to their readers, and hence has become an

important methodological consideration in this field (e.g. Ochs 1979, Edwards &

Lampert 1993; Leech et al. 1995). This has led to the development of specific

transcription conventions within certain linguistic traditions, such as Jefferson's for CA

(e.g. 1984).

However, despite the fact that written transcriptions of spoken data are widely used in

the criminal justice process, there is no recognition whatsoever of these issues within

the legal system. This is clearly of some concern given the high stakes involved, and

has been given some attention by linguists with a particular interest in the legal system.

Walker, an ex-court reporter, has highlighted problems with the process of producing

contemporaneous 'verbatim' transcripts of courtroom proceedings (1986, 1990), an area

also addressed by Tiersma (1999: 175-9) and Eades (1996). Others, most notably Shuy

(1993, 1998) and Fraser (2003), have considered the transcription of covert recordings

such as intercepted telephone calls. Gibbons (2003: 27-35) describes the difficult

representational choices facing those transcribing spoken data for use in legal contexts,

highlighting the many inadequacies in current practice and the potential seriousness of

the consequences.

It is important to note that much of the literature on the transcription process in the police interview context deals with a slightly different process to that just described. For example, Eades (1995b), Gibbons (1995) and Coulthard (1996, 2002) examine cases where formal written records were produced of police-suspect interviews by the interviewers themselves, which are shown to be poor representations of the interaction which actually took place. Similarly Rock (2001) examines the current E&W process of producing a written statement from spoken interviews with witnesses, highlighting the disturbing amount of transformation and omission this entails. However, in such cases no real attempt was being made at producing a faithful, unbiased representation of the exact words used in the original context, nor was there a recording available of the original interaction. Thus these are not examples of transcription or format conversion as such, but of an even more problematic and transformative process.

Although this process of producing a monologic statement or précis of a spoken interaction is no longer utilised in the E&W police-suspect interview context, it is still used in the continental Roman Law system. In a useful study of the same process in the Swedish police interview context, Jonsson & Linell (1991) compare the version of a story produced orally by a suspect during an interview, with the written report produced by the interviewer from their contemporaneous notes. They highlight the substantial differences between these versions which go well beyond simple format or register conversion, but which they equate with differences between spoken and written language. They make the important further observation that the differences may also be a consequence of the written version being a secondary 'generation' of the same message (438, drawing on Aronsson 1991). This idea of 'messages travel[ling] across

sequences of communication situations' (422) links well with the concept of 'trans-contextuality' which will be used in the present study (see below).

However, all the above-mentioned studies are directed at slightly different processes to the one under scrutiny here, either in terms of the actual process being examined or the context in which it occurs. Little attention has been paid to the E&W system of recording and transcribing police interviews, and the implications for the use of the resulting transcript as evidence against the interviewee. This study aims to remedy that situation.

2.3.2   Trans-contextuality

A related feature to the transcription process, and a significant focus of attention in this study, is the trans-contextual nature of police interview discourse. This refers to the fact that interview interaction does not simply occur in the interview room, but is reproduced and recontextualised in several other contexts, most notably the courtroom. In fact its evidential role in those contexts is perhaps its most important function. Yet this is an aspect of police interview discourse which has received little academic attention. Indeed it has received little attention in any context, with the exception of the following studies.

Walker (1986) investigates the process of taking original data out of context and putting it to a slightly different legal use, namely by judges assessing transcripts of witness evidence when determining appeals. However, although this makes important observations about the significance of the representation of certain contextual language features in the transcripts (e.g. pauses, 'ungrammatical speech': 418) and their influence

on the judges' decision-making process (cf. Coulthard 1996), it does not address the effect of the context change per se.

As mentioned above, Aronsson (1991) considers the 'recycling' of information in various institutional processes, but is focused on the resulting misinterpretation and 'miscommunication' which can result from the various 'generations' of the original information. Although it provides an innovative perspective on the institutional use of language events, it is focused on the transformation of the message itself rather than the effect of the recontextualisation per se.

Komter (2002) examines the use at trial of 'the suspect's own words' from their earlier statements made to the police. The article concentrates on issues of accountability and on the interaction in the courtroom between suspect and judge. Although Komter raises a number of points which are pertinent to the present study, the differences (noted above) between the Dutch and E&W legal systems are such that the findings unfortunately have little bearing on the context under consideration in the present study. In the Dutch system, trial judges make their decisions largely on the basis of written, not oral, evidence. Given our interest here in the spoken discourse of the interview room, and its subsequent oral presentation in court, this is a significant difference. Much of Komter's attention is (rightly) on the process of statement construction whereby spoken interaction is converted into a monologic written statement by the police interviewer (cf. Jonsson & Linell 1991), something which is not a feature of E&W police interviews. However, the basic point of highlighting the transformation of the suspect's original words between their utterance and their presentation to the court as evidence is clearly an important one, which has direct parallels with the E&W

system. Komter's study is therefore important in demonstrating the potential significance of this as a factor worthy of further study in the E&W context.

A further important point raised by Komter is the 'speakership and recipiency' of the suspect's words. She notes that:

> 'The original recipient of the suspect's story was the police interrogator; after the transformation of the interaction at the police station into a legally relevant document [i.e. the written statement], the recipients of the suspect's story are the legal professionals who read the dossier in the later stages of the criminal law process, and ultimately the judges who adjudicate the case; now in the courtroom, the suspect is the recipient of what appear to be his own words, and this text, as written down by the police interrogator, is re-enacted by the judge.' (2002: 176)

I believe that this question of 'recipiency' is a crucial factor in this context and worthy of further investigation. However, Komter deals only with the suspect as recipient of their own words. I would argue that far more interesting, and of greater research potential, are the other much more significant audiences for the interview data in the courtroom, namely the jury and magistrates who will decide on a verdict based on the evidence they hear in court. Further, rather than concentrating on the presentation of the data at that ultimate court stage, it is intended in this study to consider how the existence of those different audiences actually affects what is said in the original interaction. (This will be considered further below.)

In the studies mentioned so far, 'trans-contextuality' is raised implicitly but not as a direct research focus. However it is an aspect which has been addressed explicitly in

other studies, along with the particular methodological challenges it presents (more on which in the following chapter). Briggs (1997) traces elements of a 'confession statement' supposedly made by a young woman in an infanticide case, examining its relation to statements made by others connected with the case and official documents produced in relation to it. A key aspect of his analysis is the consideration of intertextuality; of the wider judicial sequence and social situation in which the relevant interaction occurred, and of what Briggs describes as the 'circulation of discourse' (538), in particular the way in which the statement was subsequently used within the judicial process which ultimately convicted the woman.

However, Briggs' study suffers from an acknowledged limitation in that the only available data are the official case records. Thus he does not have access to the original interaction which produced the "confession" statement, but only the formal official written version. This does not invalidate the type of research undertaken, but overall the study would have been significantly strengthened by the inclusion of an analysis of that original interaction in order to uncover the discursive construction of the "confession". In particular the absence of any consideration of the role of the questioners and statement-takers in the production of the texts analysed can only be seen as a weakness. The present study will therefore seek to incorporate the crucial and often overlooked aspects of the wider context identified by Briggs, along with detailed analysis of the original context of production.

Blommaert (2001a, 2001b) addresses similar processes involving narratives of African asylum seekers in Belgium. Along with several other important aspects, he examines the 'textual trajectories' (2001a: 437) of the asylum seekers' stories as given in their original interview with immigration officials. He notes that these original stories

generate considerable further documentation through various official processes 'in which fragments of the narrative are being quoted and interpreted' (ibid.), citing this as another instance of Briggs' 'circulation of discourse' (Briggs 1997: 538ff.). He adds:

'This textual complex, in which an oral 'original' narrative is the input for a long series of generically differentiated replications of that original is characterized by an ideology of 'fixed text'..., in which the difference between the 'original' and its 'copies' are assumed to be minimal ... because 'procedurally correct' text (i.e. text produced or collected according to standard procedures) is supposed to be a transparent, unambiguous set of signs. The story of the asylum seeker is remoulded, remodelled and re-narrated time and time again, and so becomes a text trajectory with various phases and instances of transformation.' (2001a: 438)

In terms of the significance of this process, he states that:

''Cases' (administrative, legal, welfare, medical, educational and probably far more) are formed in the textual trajectories outlined in this article rather than in single instances of communication and single texts. We need to follow the process of text-making-as-social-and-political-process: it is here that people and subjects are constructed, cases are judged and individual lives are being influenced' (2001a: 445-6).

This is clearly comparable with the situation of the E&W police interview, and hence indicates the potential usefulness of analysing this same process at work in that context.

Blommaert highlights that these processes go further than simply questions of transcription and format change, emphasising the significant ramifications of the recontextualisation of the asylum seekers' narratives, while also raising important

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questions of ownership and control over their stories. Although issues of power and institutional/state control will not be addressed in this study, it is nevertheless important to recognise the inequality in access to the transformative processes undergone by police interview data. Just as with Blommaert's asylum seekers, police interviewees lose all control over the subsequent 'trajectory' of their own words as soon as they have been uttered.

All of the above studies demonstrate, either implicitly or explicitly, the significance of the trans-contextuality of certain types of institutional discourse, especially in judicial processes. Yet the paucity of such studies indicates the need for this factor to be addressed much more widely, and in considerably more detail. It is intended that this study will develop these concepts further, in particular by contributing to developing rigorous ways of analysing their influence on the discourse itself. The methodological challenges of this task will be discussed in the next chapter.

2.3.3 Audience

A feature closely related to the trans-contextual nature of police interview discourse is the question of audience. It is a well-established principle that speakers adapt their talk according to the intended audience. But with a change in context comes a change in audience, with the consequence that for police interview discourse which recurs in multiple contexts there will therefore be multiple sets of recipients. This is a rather unusual discursive situation, and therefore of great potential interest in terms of how it is negotiated by participants. Yet it has, as yet, received very little academic attention, and represents a significant gap in the current literature on the E&W police interview context. Once again an exception is Coulthard (1996, 2002), who does bring in audience as a factor in the now obsolete practice of compiling an official police

interview record from the interviewers' handwritten notes, focusing on 'examples where what was recorded and the ways in which it was recorded have introduced bias that could have affected the judge and jury's general impression of the character of the police officers and the accused' (1996: 168). He observes that these records:

> '... are, on the one hand, factual records of interaction, but on the other texts whose function is to represent this interaction at a later time to a different audience for a different purpose. ... Indeed, the police participants were certainly aware, at the time of the primary interaction, that the record was intended for, and therefore could be specifically designed for, another audience – and certainly some of these records appear to be consciously constructed with the future audience in mind.' (2002: 20)

Interestingly, in a study of a similar example of 'verballing', Eades (1995b) cites the observations of an earlier researcher who, in support of his conclusion that the disputed 'confession' document could not have been produced by the Aboriginal interviewee, commented that: 'It is a completely damning document which sets out in their logical order only those facts and details which would be of use in a Court of Justice, and even here only to the police and to the prosecution' (Eades 1995b: 158, citing Inglis 1961: 55).

These observations indicate the interviewers' orientation to the subsequent court audience – and, more particularly, the prosecution audience – as vitally important recipients of their written records of police interviews. However, this aspect is not the subject of any extended scrutiny, and of course these studies could not consider corresponding features of the original discourse since it was not recorded at that time.

Thus the question of whether, and to what extent, the actual discursive interaction in the interview room is 'specifically designed for another audience' has yet to be addressed.

There is, in fact, relatively little literature on the question of audience as a whole, given its potential importance as an influence on spoken discourse. The exception to this is in the field of sociolinguistics, where the effect of the intended recipient (most commonly an interlocutor) on speaker style has long been of interest. In the early sociolinguistic studies audience was generally viewed as just one of several factors influencing speaker style, alongside for example the topic, setting or genre (e.g. Hymes 1974). A shift towards the centrality of audience occurred with Giles and Powesland's influential 'accommodation theory' of style variation (1975), which in essence posits that features of intra-speaker variation are a consequence of speakers altering their speech style to resemble that of their intended audience in order to gain social approval ('speech convergence'). Following on from this, Bell (1984) placed audience as the primary factor in style variation, arguing that all other factors are essentially subordinate to it. He proposes a model of 'audience design' which accounts for the existence of various categories of audience, from the more obvious direct addressee to overhearers and eavesdroppers, with the influence over the speaker diminishing in what is described as a fairly straightforward correlation with distance from the speaker. Although intended to account for features of stylistic variation well below the discourse level, this model is clearly of great interest for the present study. Its potential adaptation and application to police interview discourse will therefore be the starting point for the investigation of this factor in the present study (see Chapter 6.2).

Bell's categorisation of audience roles in fact relates closely to similar categories of hearers identified by Goffman in his development of the concept of 'footing' (1981:

131ff.). He notes that '[t]he relations among speaker, addressed recipient, and unaddressed recipient(s) are complicated, significant, and not much explored' (133), and proposes a 'participation framework' for any instance of spoken interaction, by which a hearer's position is allocated according to their relation to a given utterance (e.g. 'addressed/unaddressed', 'bystander', 'eavesdropper').

However, although this represented a significant advance in problematising the role of the hearer, it focuses on the individual's involvement in the interaction taking place, rather than their effect on the discourse they witness. It is also, as he acknowledges, restricted 'to something akin to ordinary conversation' (137). He differentiates this from 'stage events' such as political addresses or lectures, which have what he describes as an 'audience' as opposed to 'a set of fellow conversationalists' (137), and further identifies 'still more difficult cases' where 'neither a stage event with its audience, nor a conversation with its participants, is taking place. Rather, something binding is: court trials, auctions, briefing sessions, and course lectures are examples' (139-40). He notes that '[w]hether one deals with podium events of the recreational, congregational, or binding kind, a participation framework specific to it will be found' (140). However, although Goffman's notion of footing has received considerable attention and application regarding the role of speakers (e.g. Heydon 2005 in the police interview context), far less interest has been shown in the roles of hearers. Although it is not necessarily an aim of this study to identify such a framework for the police interview context, this nonetheless indicates the potential usefulness of exploring the various hearer/audience roles involved.

Although the police interview context is certainly unusual in terms of the configuration of its audiences, parallels with other contexts do exist, most notably broadcast

interviews. There, the presence of an overhearing, non-present and often temporally remote audience is an essential feature of the context, and hence has been the focus of some research, most notably Heritage (1985), Greatbatch (1988), and Clayman and Heritage (2002). Their specific findings on the effect of the overhearing audience on broadcast interviews will be considered in more detail in Chapter 6.2. However, although such research provides useful insights for the present study, a fundamental difference between broadcast interviews and police interviews is in the ratification of the overhearing audience and the primacy of its role. Broadcast interviews exist solely for their overhearing audience and, although certain fictions are occasionally maintained in recreating the illusion of a 'private chat' between interviewer and interviewee, the participants are under no illusion regarding the purpose of the interaction or the primary intended audience. It is less clear whether that can truly be said of police interview participants. The question of who is in fact the primary intended audience for police interview discourse – those present at the initial interaction or those who will subsequently use it as evidence – is certainly worthy of further critical examination.

2.3.4   Narrative

Thanks to the 'narrative turn' in many academic disciplines the literature on narrative is now vast and multi-disciplinary, and so it is not intended to conduct a review of such an extensive topic here. Further, this is by no means intended to be a full narrative study of the police interview context. Yet it does borrow certain important concepts from narrative studies, which therefore need brief introduction.

Firstly, it is worth noting that narrative approaches have been shown to lend themselves particularly well to the legal context, where metaphors of 'storytelling' and 'competing

stories' abound, as illustrated by studies such as Heffer (2002, 2005) and Harris (2005) discussed above, and Cotterill's analysis of the O.J. Simpson trial (2003). The majority of such studies apply narrative frameworks, especially the classic Labovian narrative structure (Labov 1977: 362-70), to the courtroom context. In fact narrative analysis has not yet been applied to any extent in the police interview context. The extent to which it can effectively be applied to this context will be considered in Chapter 6.3 when outlining the approach taken in the present study.

Secondly, one particular aspect of interest in recent studies is a focus on the construction of identity through narrative (e.g. Holmes & Marra 2005, Mullany 2006). In an influential study, Schiffrin proposes that:

> 'identity is neither categorical or fixed: we may act more or less middle-class, more or less female, and so on, depending on what we are doing and with whom. This view forces us to attend to speech activities, and to the interactions in which they are situated, as a frame in which our social roles are realized and our identities are displayed – and even further, as a potential resource for the display (and possible creation) of identity.' (1996: 199)

This view of identity as multi-faceted and transmutable, especially according to the context and audience, is followed in the present study. Further, police interview interaction is considered to be an especially promising site for examining the creation of particular identities to suit its specialised purposes. Schiffrin observes that:

> 'telling a story allows us to create a "story world" in which we can represent ourselves against a backdrop of cultural expectations about a typical course of action; our identities as social beings emerge as we construct our own

individual experiences as a way to position ourselves in relation to social and cultural expectations.' (1996: 170)

The 'social and cultural expectations' at play in the police interview context involve considerably more than mere social judgement: if an interviewee is deemed to have transgressed the fundamental societal expectations codified in law, the consequences will be severe. The kind of 'social being' police interviewees portray themselves as being is therefore a vitally important matter.

However, unlike the situation envisaged by Schiffrin, in the police interview the creation of the "story world" is not entirely in the hands of the interviewee. Watson (1990) makes a useful distinction between an 'invited (recipient-initiated) story' and a '"volunteered" (teller-initiated) story' (274). Describing the interviewee's account in a police interview as an example of the former, Watson notes that:

> 'In volunteered stories, the teller has a considerable margin of control over the content of the story, whereas in invited stories the recipient has an increased margin of control than would be the case were he/she a recipient of a volunteered story. ... In a sense, ... the teller of an invited story has to tell the story the recipient wants, and has asked, to hear.' (1990: 276)

Alongside important considerations of interviewer control over the "story world" invoked in the interview, this adds a fascinating dimension to an interviewee's narrative construction of identity, in that it suggests that control of that identity lies partly in the hands of the police interviewer. One would imagine the interviewer is likely to see that identity rather differently. The discursive negotiation of identity construction in this context is therefore likely to be an extremely interesting process.

This also highlights the influence of the intended recipient on the story being told and on the display of identity it contains. This can be seen to link extremely well with the above discussion of audience design, yet it is an aspect which has tended to appear only implicitly in narrative studies to date. This is possibly because in most situations the audience generally consists unproblematically of the interlocutory recipient, but, as we will see, that is not necessarily the case in the rather unusual audience configuration for police interviews. This is therefore an aspect which will receive further consideration in the present study.

Overall, then, what this study takes from the wealth of literature on narrative is a focus on the construction both of 'stories' and of the identity of 'characters' within those stories, but what it seeks to add is an attention to the discursive processes through which they are not just constructed but co-constructed by participants in police interview interaction, and to link this with a consideration of the various audiences which are being oriented to by both interviewer and interviewee.

3. Methodology

This chapter will set out the multi-methodological, interdisciplinary approach taken in this study, including the process of data collection and selection. It will describe the approach taken both to the examination of police interview discourse and to the format changes it undergoes, aspects which require different analytical treatment.

3.1 Methodological position

3.1.1 Linguistics applied vs. applied linguistics

It will already be clear from the research questions to be addressed and the positioning of this study in the previous chapter that it is intended to be practically-oriented as opposed to theory-based. It is thus an example of 'applied linguistics' rather than 'linguistics applied' (Roberts 2003, Sarangi & Roberts 1999a, Sarangi 2006), which positions the application first rather than the method. It is worth considering the particular challenges and responsibilities which 'applied linguistics' research entails, and particularly the often problematic relationship between the researcher and the research site, a factor which is of particular relevance to the present study.

Sarangi & Roberts 'believe that discourse analytic and sociolinguistic studies of workplace communication should be grounded in an ethics of practical relevance' (1999b: 2). They further 'argue that researchers' claims of practical relevance only have force if their studies actually contribute to greater understanding of workplace problems by those who have to tackle them' (399). It is felt that the best contribution which the present study can make is by providing insights from linguistic analysis which will illuminate aspects which have hitherto not come to the attention of those within the criminal justice system, let alone been considered as 'problems'. This includes not just

police interviewers and their colleagues, but also defence and prosecution lawyers, judges, and potentially even juries, all of whom will use police interview data in their duties. It is, however, important not to over-stress the intended practical applications of this research. Although it is a primary aim to ensure that any findings are directly relevant to, and applicable to, the context being studied, this project is also intended to be of serious academic interest in not only revealing more about this unique discursive context, but also in furthering our understanding of the nature of discursive interaction in institutional contexts more generally.

This leads to a potential tension for academic researchers 'between continuing access to the institution and displaying relevance to its members on the one hand, and their responsibility to the research community, the standards it demands and the inevitable scrutiny that any publications arising from the research will be subject to, on the other hand' (Sarangi & Roberts 1999b: 43). It further brings questions about who controls the research agenda.

An important consideration at the outset of the present study, then, is to determine the most appropriate relationship between the researcher and the research site. In order to gain access to data it will be necessary to engage directly with the site of study, rather than remaining entirely disconnected from it (as with much work in CDA, for example). However, it is felt that no further involvement is necessary, or indeed desirable, in order to retain the maximum research (and researcher) integrity. Even this limited level of involvement brings with it certain dangers, especially given the privileged nature of any access granted to such sensitive material. The awareness that those providing me with data may ultimately read the findings could place subconscious pressure on the researcher to produce 'police-friendly' results, particularly given the wish to pave the

way for further similar research in the future. However, awareness of this potentially adverse influence on the impartiality of the research should ensure that it can be put to one side, in order to ensure that the findings are not softened in any way to appease the data providers. Balanced research will produce more accurate, and hence more relevant, findings, which will ultimately be of the greatest benefit to all concerned.

3.1.2   The position of the researcher

The question of the relationship between the researcher and the researched has a further dimension in the present study given the author's legal background. During my time as a barrister I practised criminal law. It is a distinction of UK barristers that, unlike UK solicitors and lawyers in most other jurisdictions (including the US), we may work for both the prosecution and defence. This gives us an almost unique insight into both sides of the criminal judicial process. Thus prior to commencing this research I already had experience of handling prosecution case files and evidence (including interview tapes and transcripts), of liaising with the police, and of presenting interviews as evidence in court. But I also had the benefit of having used exactly the same evidence from a defence perspective to undermine the prosecution case and bolster my client's defence. Thus I approached this research project with a strong background in terms of my knowledge and experience of the context being studied – at least in terms of the role of the interview in the judicial process, if not of the interview room itself.

It must be acknowledged that this background could also bring disadvantages. It was mooted in the previous chapter that my legal training could cause me to approach the context being studied, and view the resulting data, with a certain perspective and even mode of reasoning which may not be shared by other researchers, effectively skewing my research focus. It further could affect my objectivity. However, overall I would

argue that it is a tremendous advantage. Much of the literature on researching professional discourse advocates an ethnographic approach in which researchers 'immerse' themselves (Sarangi & Roberts 1999b: 2) in the (usually) unfamiliar research context in order to 'com[e] to an understanding of the 'communicative ecology' of the workplace or institution' (Roberts & Sarangi 1999: 392, citing Gumperz 1999). However, it is debatable whether any researcher can truly be said to have gained the level of insight and understanding sometimes claimed from simply being present in a context as an external observer, however 'embedded' and accepted they believe they became. It further raises the problem of the 'observer's paradox', in that the mere presence of the researcher may alter the very thing being researched. The author, however, can claim a true 'insider's perspective', and in areas where no researcher is ever likely to gain access. It is arguable that I may therefore not be sensitive to the aspects which may be most striking, and most salient, to a non-lawyer – including lay participants such as interviewees as well as fellow researchers. However, I would argue that is not the case. My professional background will give me extra insight which may not be available to others, but does not take away the ability to make other observations at the same time, particularly given my research training.

3.1.3   Legal aspects of this study

This is a convenient moment to consider how legal aspects will be incorporated into this study. As with all 'applied linguistics' research, it is vital to ensure that the linguistic analysis is sufficiently grounded in, and related to, the context to which it is being applied. An essential task for this thesis is therefore to marry the legal and linguistic elements in a way which enhances both. In terms of their respective roles, the legal element provides the background and the framework for the context; the linguistics provides the tools for analysing that context from a discourse perspective. The approach

adopted here is that it is not possible to separate the two if this study is to result in meaningful, relevant findings. A key task will therefore be to provide sufficient background legal information for the reader to be able not merely to understand but to critically evaluate the claims being made. But it must be emphasised that this is above all a linguistic study, albeit of a legal context. It is for this reason that the study assumes a predominantly linguistic, not legal, audience.

3.2 Multi-method Discourse Analysis

Corder proposes that:

> 'The application of linguistic knowledge to some object – or, applied linguistics, as its name implies – is an activity. It is not a theoretical study. It makes use of the findings of theoretical studies. The applied linguist is a consumer, or user, not a producer, of theories.' (1973: 10, cited by Sarangi 2006: 200)

This approach to theory is shared in the present study, and so it is not intended to undertake rigorous debate on underlying theoretical or epistemological positioning, nor to dissect basic tenets of the chosen approach such as 'discourse' or 'discourse analysis'. Familiarity with such matters will to a large extent be assumed in the reader.

That is not to say that the theories to be applied are not of considerable importance. However, they are a means to an end as opposed to the end itself. The present study takes the approach of seeing the various linguistic theories and frameworks as a 'toolkit', from which the most appropriate tool for the particular task in hand will be selected. Thus the problem comes first, and then the best method of solving it is selected. This differs from the approach of theory-driven studies where a methodology

is pre-selected and then set to a chosen task, in order (generally) to assess its performance and suitability in completing that task. The latter may reveal highly useful information about the tool, and perhaps about the nature of the task, but the former is clearly more promising if our priority is ensuring our shelves remain fixed to the wall.

Further, this study will be very much data-driven. Although the overall research question predetermines an analytical focus on certain factors such as the various audiences, it does not presuppose how they will be manifest in the data. The specific linguistic features to be analysed and the analytical framework(s) to be used will therefore be determined only after the data have been gathered and considered.

This approach allows for the possibility, or probability, that more than one tool will be needed to complete the overall task. Thus different analytical methods will be applied according to the particular aspect being considered. However, although this multi-method approach promises much in terms of the potential results, it is important to bear in mind the dangers of 'methodological eclecticism' (Sarangi & Roberts 1999b: 26). The selected approach must always be methodologically justifiable, and it is also important to be aware of potential epistemological inconsistencies or even clashes. The treatment of 'context' is a classic example of such a contested site, and will be considered further below.

It must not be overlooked that the selection of the discourse of police interviews as the subject of inquiry, and hence the toolkit of discourse analysis, is an epistemological choice in itself. The underlying position which informs that choice is that interaction, or 'talk-in-action', is a central defining activity rather than a neutral and transparent medium; that it is socially constitutive and not merely reflective of its environment. It is

therefore considered that discourse-level analysis is the ideal level at which to unpick institutional contexts, especially one as heavily based on spoken communication as the UK criminal justice system.

It should be noted that 'discourse analysis' is being used here as an 'umbrella' definition to position the level of linguistic analysis as of the text as a whole, without necessarily implying any particular methodological approach within that broad, ambiguous term. The particular approaches which will be drawn upon here are:

- conversation analysis (CA), for its fine-grained analysis of the sequential organisation and structure of talk;
- pragmatics, for its focus on implicit and situated meaning;
- critical discourse analysis (CDA), in foregrounding the importance of the wider social context and the embedding of ideology in language;
- and from sociolinguistics an interest in the social construction of identity through language use.

The types of linguistic features to which these approaches draw attention are, for example:

- turn-taking (Sacks, Schegloff & Jefferson 1974),
- topic selection and control (Greatbatch 1986),
- pauses, interruption and overlap,
- the form and function of question types (Harris 1984),
- terms of address and personal reference,
- formulations (Heritage & Watson 1979),
- lexical choice (Drew & Heritage 1992: 29-32),
- transitivity and tense use (Halliday 1985).

These features will be of particular interest in the data analysis, although this list is intended to be illustrative rather than prescriptive or exhaustive. As already stated, the precise analytical framework to be used in this study will only be determined after consideration of the data itself, and will therefore be set out in a later chapter (Chapter 6). However, it is worth now considering some aspects of these methodologies which do need to be addressed at this stage, firstly in terms of their influence on the data collection process, and secondly in problematising the pre-selection of context as a relevant factor.

Firstly, then, the intention is to take a predominantly CA approach to data collection and analysis, using naturally occurring data and undertaking a close analysis of detailed transcripts. Thus it will be necessary to collect 'real' spoken data, recorded in a format which can be repeatedly observed and analysed, and externally verified, in as close as possible to its original form. Ethnographic field notes or participant observation would produce data which would not be analysable in the same depth and micro-detail, and which would be considerably more impressionistic. However, it is recognised that there is still inevitable subjectivity in the proposed approach, both in the transcription process, especially in the choice of features to transcribe, and of course in the subsequent analysis.

A further important epistemological consideration is the treatment of context, especially given the intended use of multiple methodologies which hold rather different positions on this matter. It has already been established that consideration of 'context', especially the wider judicial process in which the interview is situated, is expressly considered to be of paramount importance in the present study. Although this can be seen to fit well

with the principles of CDA, it presents a potential epistemological clash with adopting a CA approach (although, despite fairly radical position statements by leading practitioners such as Schegloff (e.g. 1997) the oft-cited hard-line approach taken by CA to the allowability of context as a relevant factor is often exaggerated). This has been addressed by those whose work, discussed in the previous chapter, has recognised the significance of trans-contextuality as a phenomenon.

Briggs (1997) takes issue with the traditional CA approach of attending only to the immediate context of production and what is made demonstrably relevant by participants:

> '... CA researchers generally place the boundaries of their analysis at the [sic] what they deem to be the beginning and the end of the interaction, rendering anything that takes place before, after, or otherwise of it as "exogenous to the interaction" (Drew and Heritage 1992: 53). Here I point to the need to trace intertextual links between utterances that are produced in a particular interaction and ones that emerge in a range of other settings. To assume that categories and modes of reference are "inherently locally produced" and can be adequately analyzed without making reference not simply to other contexts but especially to how talk circulates between settings would be particularly dangerous in this instance in that it would place researchers squarely within the frame of reference constructed by the judicial police and the court.' (522)

I agree that the self-imposed limitations of CA can result in potentially significant aspects being omitted. However, I would argue that this largely depends on the particular research question being addressed. CA has a considerable amount to offer in

terms of revealing aspects of the structure and organisation of spoken interaction and communication. It is perhaps not the right tool for the job – at least on its own – if the researcher's interest goes wider than that and into broader questions of the social and institutional function of a particular interaction, as with Briggs' study and the present one. Nevertheless, I would also argue that those wider functions are likely to have an influence over the interaction itself, which CA is likely to assist in unearthing. This necessarily involves a trade-off in that the researcher needs to begin by identifying those external factors in order to know what to look for in the data (as also advocated by Roberts & Sarangi 1999, Gumperz 1999). I would argue that this is not a methodological weakness, but merely a matter of common sense. One cannot learn all the rules of a game simply by observing it. By contrast, learning the rules and strategies in advance makes future observation considerably richer and more rewarding.

Further, the final words of the above quotation raise a very important point. It is only the more powerful institutional bodies who have access to, and potentially even knowledge of, those other contexts. They are therefore able to appeal to them in their discourse and in a sense move between them, as and when they choose. By limiting the other participant, the interviewee, to only the immediately present context for their talk they thus shut down a highly significant aspect of the interaction to them, and hold it beyond their discursive reach. Briggs thus makes an extremely important observation here in encouraging researchers to open up that access and bring those aspects back into the original context, rather than allowing them to remain institutionally hidden.

Blommaert (2001b) considers the traditional treatment of context by both CDA and CA, finding both wanting, and cites 'text trajectories' as a ''forgotten' context' (24) which is not (and indeed in the case of CA cannot be) accommodated in their methodological

approach. He states that '[t]he problems I have identified with treatments of context in both CDA and CA all revolved around the centrality of the text in both traditions: the ultimate ambition still remains explaining text, not explaining society through the privileged window of discourse' (28). For Blommaert, who describes his approach as 'derived from ethnography' (26), consideration of 'text trajectories' offers an analytical link between discourse and social structure which is missing from current modes of discourse analysis, and promises much in terms of insights into issues of power and control.

Whilst not disagreeing with this position, the present study proposes to take a slightly different approach to 'text trajectories'. The analytical focus of this study is not ethnographic, nor is it focused on power relations. This study is, unashamedly, centred on the text, yet it also aims to encompass the social function of that text and its wider role, and it is argued that the two are by no means mutually exclusive.

This study will therefore investigate the discourse of the police interview as a primary aim, but with a specific focus on its trans-contextuality and its 'text trajectory'. In what may at first appear to be a rather contradictory position, it is intended to examine this feature precisely through a close analysis of the text itself. The premise of this approach is that if the text trajectory of the interview, if its trans-contextual nature, is indeed a significant factor, then it will (somehow) be manifest in the data. In this sense it does not depart so far from the principles of CA, in that it assumes that if a feature of the context is relevant it will be manifest in the interaction. The point of departure from CA is the view that that feature can only be fully identified and its relevance understood by looking wider than the interaction itself and the discursive context in which it is created. Further, in line with Blommaert's and Briggs's views it is considered that, despite the

overall emphasis on textual analysis, a purely CA-type approach alone will not be methodologically sufficient to meet these research aims. A rather different, and indeed innovative, multi-method approach is therefore required.

To summarise, then, this study will examine discourse produced in police interview rooms, focusing on the spoken interaction while also sensitive to aspects such as the institutional context in which it takes place, incorporating not just the physical environment but the wider function of such interactions in society. Methodological and epistemological considerations have informed the overall approach and the type of data to be analysed. In establishing an analytical framework for the data, selection will be made from the broad spectrum of methods employed to analyse discourse, from CA to pragmatics to sociolinguistics. The selection will be determined by the data themselves, rather than pre-selected due to methodological primacy. So, having set out the broad methodological approach, the next step is to consider the data collection process.

3.3 The Data

3.3.1 Data access

In order to conduct the type of research just outlined, access was required to recorded spoken interaction in authentic police interviews. In most contexts it is necessary for the researcher to make their own recordings, but a significant feature of the police interview context is that it is routinely audio-recorded; indeed this is of course an aspect of particular interest for the present study. Further, due to their status as evidence those audio recordings and the accompanying official transcripts are preserved as part of the case file, meaning that a substantial pool of potential data was already in existence. It was therefore decided to seek access to that pre-existing data source rather than seeking to make new recordings specifically for this project.

This has a number of advantages, the most obvious being the lack of any possible influence on the data by the research, either through actual presence of a researcher in the interview room, or through participants' awareness that research was being conducted. Although others have argued persuasively that such influence is negligible (e.g. Leo 1996: 269-72), it was felt that given the specific research interest in the effect of the different audiences on the interaction, the addition of an extra audience for those interactions in the form of the researcher would have been severely detrimental. A potential disadvantage is that data selection would be largely controlled by the police, but it was felt that this would still be the case if access were granted to the researcher to record individual interviews as they took place. However, it must be acknowledged that a potentially greater degree of 'censorship' might take place with the provision of pre-existing tapes. In fact this seems not to have been the case given some of the material received, some of which contained highly sensitive material and one tape actually being blank.

A further, less easily surmounted objection is that by only having access to audio tapes and not to the original interaction, a considerable amount of contextual information and non-verbal behaviour is lost to the researcher. However, given the paramount interest in spoken discourse it was considered that this disadvantage is heavily outweighed by the benefits. Further, it was felt that there were certain advantages to sharing the same limited viewpoint as the other future audiences for police interview interaction, in that it would be easier to identify those features which are most likely to be lost on those audiences by sharing their perspective.

A factor which was initially considered to be of potential relevance to this study is interviewer training. However, the nature of the data to be collected presented a problem in this respect, in that the training undergone by each interviewer would not be ascertainable. There is no uniform national training model, and the structure of the police force as a set of autonomous regional bodies has led to each force developing its own practice in this respect. Further, even within a single force there is no consistency of training experience. More recent recruits are likely to have received interview training as part of their induction. Higher level training is also available, but not all officers will receive this. On the other hand, some senior officers I spoke to had received next to no formal interview training since the introduction of the PACE changes in 1992. There is therefore considerable variation in training from one interviewer to another. However, this information is not recorded in case files, nor will it be ascertainable from the interviews themselves, even by deduction from the force, the date or the rank of the interviewing officer. Thus it will not be possible to include this as a specific factor affecting the discourse of the interviews studied.

However, it is ultimately felt that this does not represent a difficulty. This study is intended to produce findings which reflect E&W police interview practice as a whole, and to identify features which are fundamental and genre-wide. They should thus apply regardless of particular local practices or training programmes. The data collection process has therefore been designed to produce a data set which is representative of all current practice, precisely in order to minimise the influence of such factors. But given the large degree of autonomy enjoyed by E&W police forces, especially in developing their own training and guidelines, it was therefore important to collect data from a number of different forces, and similarly to collect data across a reasonable time span.

The data collection process was therefore as follows. All 43 police forces in E&W were approached by a letter to their Chief Constable (who would ultimately be responsible for granting permission for data access), requesting access to tapes of interviews conducted on a variety of offences in the previous ten years. In order to consider the transcription process (more on which below), copies of the accompanying transcripts were also requested. Although the specified time span may have resulted in some data being slightly older than perhaps desirable, it was wished to allow maximum flexibility for the forces in selecting data which they would be happy for me to use. For the same reason it was left up to each force to decide whether to let me select my own data from their archives or for them to make the selection themselves. Although it would clearly be more desirable from a research perspective for the researcher to be able to select a broadly representative sample, it was necessary to be realistic about the level of access likely to be granted and not to make too many restrictive demands, which may have resulted in access not being granted at all. In a further attempt to maximise the chances of data access, the forces were approached in batches, with the approach letter being modified as a consequence of the initial responses received. This resulted in the addition of a section explicitly addressing concerns about the Data Protection Act 1998, a factor commonly cited in the first batch of forces when declining access. This appeared to lead to an increase in success, although the numbers concerned make it difficult to draw firm conclusions.

3.3.2   Responses

Several forces responded positively to the approach letters, and in each case requested that I visit their headquarters for a meeting. Every force I met with did agree to grant me access. It must be noted that in a couple of cases this never actually materialised, but

given the amount of data already received it was decided not to pursue what had already become lengthy and time-consuming negotiations in order to secure further data. Although retrospectively this is regretted, the process of data collection took nearly two years to complete and it was felt not to be viable to dedicate further time to this process once sufficient data for the study had been received.

The five forces which did provide data represent a reasonable spread in terms of geographical location, force size, and type of area covered (i.e. mainly rural or urban). The amount of data provided varied considerably, from 11 to over 150 interview tapes per force, with an overall total of 276 interview tapes being provided – significantly more than expected. They range in date from February 1996 to July 2005. For each force the data came from a number of different police stations, and contained considerable variety in interviewer, interviewee, length, and subject matter, from failing to pay for all items at a checkout to the murder of a one-year-old child. Overall, then, it is argued that this data set is sufficiently representative of current practice. A potential proviso is that one force's data came entirely from cases which had for some reason come to the attention of the force solicitor (my point of contact), indicating that something had gone awry in those cases. However, it was felt that unless any glaring breaches of procedure were observed in the interview itself (which did not occur), then the data could be treated as representative nonetheless.

It must also be noted that all the participating forces are in England, leaving Wales unrepresented in the data. This is unfortunate, although since the legislative framework and procedures are identical for England and Wales I would argue that findings based on the English data will also be representative of Welsh practice. Indeed having conducted cases myself in both England and Wales I would strongly contend that there

are in fact no relevant differences. Reference will therefore still be made to the E&W system in this study, as that is what applies to the data, but should regional or national differences be of interest (which they are not in this study), this should be borne in mind when considering the findings here.

One further point to note is that considerably fewer transcripts than tapes were provided. This seemed surprising, especially given that it is the transcript which is normally used as evidence in court. However, on a visit to one force's data archives it became apparent that tapes and transcripts are often stored separately, with tapes being kept in their own separate archive. Thus it would have been a simple matter to select a sample of tapes, but considerably more difficult to then cross-reference each tape to its original case file and locate the transcript within. Although practice in data storage certainly varied across the forces involved, this appears to be the most likely explanation for this discrepancy.

The provision of any data at all, let alone in such amounts, represents a considerable success. The resulting corpus of interview data is a significant research resource, and virtually unique at least in linguistic circles. The reasons for this success appear to be several. Initially it seemed likely that the willingness to grant me data access was due to my legal background, which differentiates me from the vast majority of researchers in this academic area. However, it became clear during my access negotiations that many police officers are in fact fairly hostile to lawyers in general, and therefore my professional status had not directly been a factor which had made them more inclined to help me. In fact, they treated me primarily as a researcher who happened to have good legal knowledge. The factor which appears to have had the greatest influence on the decision to grant access was in fact their interest in the potential practical applications

of this research, which I had emphasised heavily. They could thus see clear practical benefits for themselves in taking part, ensuring they would see a return on any effort (and indeed risk) expended by them in providing me with data. However, it must not be underestimated that I was also able to show very thorough knowledge of the context and the practical realities involved, and of issues of ethics and confidentiality, which reassured them I was a 'safe pair of hands', in the words of one officer. This was, of course, largely due to my time in professional legal practice. However, although this provided me with a significant 'head-start', I also undertook considerable further background preparation before making requests for data access, which ensured that my approach was as persuasive and attractive as possible.

3.3.3   Data selection

It became clear very quickly that it would not be possible to utilise all of the data provided, especially given the qualitative discourse analytic approach to be taken. It was therefore decided initially to listen to as much of the data as possible, and to make a record of basic details such as the offence(s) and length of the interview, along with notes of any particular observations made while listening, in order to gain an overview of the data set and to begin to form an analytical framework based on my observations. Tapes involving minors, or the presence of an interpreter or 'appropriate adult', indicating some form of communicative difficulty with the interviewee, were removed from further consideration, in order to ensure that only 'standard' interviews with adults remained. (The law and procedure for minors differs from the treatment of adults in the criminal justice system.) The next step was to select a few tapes from each force to form a representative data sample for analysis, taking into account the offence involved, the length of the interview, the number of participants and (to a lesser extent) their

gender. The selected tapes were converted to digital format and anonymised using Audacity software, then transcribed.

Through the process of considering these selected interviews in more detail, it became apparent that the particular offence involved and the legal framework being applied by the interviewers were highly significant factors in structuring the discourse. However, the applicable legal framework in any given case depends not only on the criminal offence, but also on the individual set of facts even where the offence is the same. For example, two interviews may both concern the offence of criminal damage, but in one the disputed issue may be whether the interviewee was the person who caused the damage, but in the other the interviewee may accept that they caused the damage but claim that it was accidental. This would result in a different legal framework being applied in each case, one perhaps concerning identity and the other criminal intent. Thus one of the factors which appeared to be most interesting and promising to analyse would, although based on the same generic principle of applying legal frames, be largely dependent on the particular circumstances of each case.

This presented a problem for the analysis, in that it would be necessary to ascertain the applicable law and legally relevant factors for each case in order to examine their discursive significance, yet it would not be possible to do this in any depth for more than a handful of interviews. It was therefore decided to conduct case studies. This will allow a thorough consideration of the underlying legal framework of each interview along with a full analysis of its influence over the discourse, in specific terms rather than having to make less meaningful generalisations across a wider data set. Further, there is felt to be a distinct advantage in examining a complete interaction as a whole, in

order to ensure the full interactive significance and function of any selected part can be properly understood.

It was decided to conduct two such studies. This will allow extended analysis in considerable depth, while also allowing certain variables to be differentiated in order to ensure that the findings are as representative as possible. The selected interviews are therefore from different forces, concern different offences, were conducted over four years apart, and have different configurations of participants, one involving a single interviewer, the other having two interviewers and a solicitor present. Both are of sufficient length to contain extensive interaction on the matters concerned and to provide a large amount of linguistic data. Further, the analytical approach to be taken is still very much informed by having considered the whole corpus of data, especially in selecting the linguistic features and themes which appear to be most significant.

3.4   Consideration of Format

The present study will also consider the various format changes undergone by interview data after the initial interaction has taken place. This of course is strongly interlinked with the concept of 'text trajectories' and trans-contextuality, but clearly necessitates a different kind of analysis, and indeed data, to the approach just described.

The most effective way of examining this process is considered to be by tracing interview data right through the criminal justice system, from interview room to courtroom. However, it is extremely difficult to collect data from all relevant stages of an individual case. Although data in the form of tapes and accompanying transcripts have proved accessible, albeit in limited quantities in terms of matching pairs, it would be virtually impossible to gain access to data from the corresponding trials, if indeed a

trial had ever taken place – a fact which could generally not be ascertained from the data received. An alternative possibility would be to attempt the data collection process in reverse, by first observing and recording trials, and then requesting access to the interview evidence used. However, aside from requiring immense time commitment with only limited prospect of coming across useful data, securing access both to the court context and then to the individual case files would have been extremely challenging.

However, a solution is available in the form of one particular case, namely that of Dr. Harold Shipman. Shipman was a local doctor who was convicted in January 2000 of the murder of 15 of his patients. A subsequent inquiry found that he probably murdered 260 of his patients in total, over a 23-year period. Consequently the case has attracted a considerable amount of public interest and media attention, which in turn has led to a large amount of material connected with the case being made publicly available. The police released audio recordings of two interviews conducted with Shipman in the early stages of the investigation[2]. Further, the Shipman Inquiry made public the full transcript of the 58-day criminal trial[3]. It is almost unprecedented in the UK for this amount of original data to be available from the course of one criminal prosecution, and it provides the researcher with an excellent opportunity to observe several stages of the same case. This therefore makes it ideal for the present study. It is of course arguable that such a case is atypical, and I would not disagree in terms of the content of the investigation. However, in terms of examining the criminal process I would argue that it makes entirely appropriate research material. One would expect that such a high-profile case would reflect a higher standard of accuracy and efficiency than most. If basic

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[2] http://news.bbc.co.uk/1/hi/in_depth/uk/2000/the_shipman_murders/the_shipman_files/613627.stm
[3] http://www.the-shipman-inquiry.org.uk/trialtrans.asp

problems can be found even in the publicly released material relating to this case, it seems reasonable to conclude that the problems are endemic in the process.

It had initially been intended to supplement analysis of the Shipman data with a comparison of the audio tapes received and their accompanying official transcripts. However, this would only have addressed one part of the process. Further, simply analysing a police-produced transcript and pointing out its inadequacies compared to the recording was ultimately felt to be rather unfair, indeed arguably meritless, without being able to situate that interview evidence in the case as a whole. The subsequent trajectory of a case post-interview will often determine the type of transcript produced, especially in terms of the level of detail included. If a guilty plea will be entered or the case not proceeded with, a brief summary of interview might well be sufficient. Thus it is not possible to assess the adequacy of a transcript without this knowledge.

But above all, having completed the analysis of the Shipman data it became clear that this was more than sufficient to illustrate the processes being examined here, and thus further lengthy analysis of numerous other interviews and transcripts would not advance the point or the conclusions any further. It is thus intended to deal with this aspect relatively succinctly, with the majority of the study being devoted to detailed analysis of the discourse in order to uncover aspects which are perhaps less obvious and clear-cut, and hence more innovative and worthy of much more detailed study.

4. The Police Interview Context

4.1 Introduction

This chapter will situate police interview discourse in its social and institutional context. This will cover several aspects. It will include practical matters relating to the physical context of the interaction, including a description of what actually happens in the interview room (4.3). It will also provide an overview of the wider context, with a description of the role the interview will go on to play in the legal process, tracing the data through from their original production to their appearance in court as evidence (4.4). However, the chapter will begin with a consideration of a vitally important but often overlooked factor in police interview discourse, namely the underlying legal framework (4.2).

4.2 Legislative Framework

Police interviewing is governed by a strict framework of legislation, rules and guidance. This complex, but invisible, set of restrictions and requirements is responsible for shaping every police interview. It is thus impossible to form any accurate picture of police interview discourse without knowledge of these underlying rules. This section will therefore set out the key legislative provisions, including the rationale behind their implementation and their impact on the police interview context. This will therefore also form the backdrop for the suggested improvements to current police interview practice which conclude this study.

This framework is entirely familiar to police interviewers, and will guide their behaviour at all times during the interview as part of their institutional function. But it should be borne in mind that the suspect interviewee is highly unlikely to have any such

knowledge. They are thus to some extent unaware of the 'ground rules' of the interaction. As we will see, there is an obligation to provide interviewees with certain information about this framework, particularly in the form of the 'caution', but whether this can be adequately understood, processed and acted upon by an interviewee during the interview, is another matter.

4.2.1 Police and Criminal Evidence Act 1984 (PACE)

The most important piece of legislation in the police interview context is the Police and Criminal Evidence Act 1984 (PACE). This introduced wholesale changes in police procedure across the board. At that time the reputation of the police force, and public trust in its integrity, was at a low point, amid allegations of beatings and fabrication of evidence by police officers. It was recognised that there needed to be fundamental change in the way the police conducted themselves. A Royal Commission was set up, which led to the introduction, in England & Wales, of PACE. As Brown reports,

'[PACE] is the direct outcome of the Royal Commission on Criminal Procedure's recommendations for systematic reform in the investigative process. The provisions of the Act are designed to match up to principles of fairness (for both police and suspect), openness and workability. Overall, they are intended to strike a balance between the public interest in solving crime and the rights and liberties of suspects.' (1997: ix)

Several provisions had a significant impact on the interview setting, summarised by Brown as follows:

'First, there are procedures designed to prevent prolonged holding without charge for questioning. Detention may only be authorised where this is strictly necessary to secure or preserve evidence or obtain evidence by questioning ...

Secondly, there are safeguards relating to the presence of third parties at interviews. All suspects are entitled to have a legal adviser present at interview. In the case of juveniles and the mentally disordered or mentally handicapped, an adult (referred to as the appropriate adult) must be present unless there are exceptional circumstances. Thirdly, there are provisions designed to improve the accuracy of recording of interviews, in order to avoid disputes about their content. Lastly, the Codes contain measures which are intended to reduce the stress of the interview situation. They provide for breaks for refreshments and overnight rest, and they lay down standards relating to the physical conditions of the interview setting.' (1997: 123)

Arguably the most significant change was in the way in which interview evidence is recorded. Prior to PACE, the practice was for the official interview record to be written by the interviewing officer(s) some time after the event, based on their memory of the interaction. Needless to say such a system was entirely likely to lead to inaccuracy and distortion, if not intentional abuse. (For a detailed consideration of the flaws of this system from a linguist's perspective, see Coulthard 1996, 2002.) PACE sought to change this, by including a requirement for the tape-recording of police interviews with suspects. However, the introduction of this change was far from smooth and straightforward.

Prior to PACE the tape-recording of interviews had been the subject of much debate, and fierce resistance by the police. In 1985, Baldwin commented on 'the intransigent opposition to the idea that has been evident for many years in all levels of the police service' (1985: 695-6). But he also observed an 'extraordinary volte-face on the part of the police service on the tape recording question' (695) at that time. He cites several

reasons for this marked shift in favour of the use of tape-recording, including the results of successful field trials. Many of the fears which had been expressed in police circles, such as suspects being less willing to talk, failed to materialise, and, perhaps more significantly, it was observed that 'tape-recording is rapidly coming to be viewed by officers involved in the field trials as of greater assistance to the prosecution than it is to the defence' (Baldwin 1985: 702). This observation is of particular interest for the present study, as we shall see.

Consensus was thus reached in principle, and consequently provision for the mandatory tape-recording of police interviews with suspects was included in PACE 1984 (s.60). However, decades of argument and resistance were not to be overturned lightly. There were still sufficient reservations about this change that it was not brought in with immediate effect. In fact, in a continuation of the decades of wrangling on the issue which preceded PACE, the requirement for the tape-recording of interviews with suspects did not become mandatory until 1992. This prolonged legislative procrastination, and the convoluted, complex nature of the provisions which brought the requirement into force, reflect the controversy and resistance which surrounded the introduction of this reform. It is easy to forget this troubled history, given that the tape-recording of suspect interviews now has full support in criminal justice circles, and has become such a firmly established part of police practice. But it is vital to keep such history in mind when considering any prospect of future reforms.

It should be noted that the requirement to tape-record interviews has certain limitations. For example, it only applies to interviews with people suspected of indictable offences – that is, any offence which may be tried in a Crown Court, and not those less serious offences which can only be tried in a magistrates' court, such as minor motoring

offences[4]. It also only applies to interviews conducted at police stations[5]. In addition, exceptions exist for terrorism offences[6], which are often subject to special procedures. However, the vast majority of interviews with suspects are covered by the tape-recording requirement.

Several Codes of Practice have been issued under PACE. These are fairly lengthy documents, setting out the day-to-day procedural requirements for police operations, and are subject to fairly regular revision[7]. The position set out here is therefore that which applied at the time of the interviews to be studied rather than at time of writing, although there are not believed to have been any significant changes. The relevant Codes for interview procedure are Code C and especially Code E, the provisions of which will be discussed in section 4.3 below.

In addition certain other PACE provisions, although not directed exclusively at police interviewing, also have an extremely important influence on this context. Section 76 provides that a confession shall not be given in evidence against a person if that confession:

'… was, or may have been obtained –

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession

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[4] The Police and Criminal Evidence Act 1984 (Tape-recording of Interviews) (No. 1) Order 1991 (SI 1991/2687), art.2;
Police and Criminal Evidence Act 1984 (Tape- recording of Interviews) (No. 2) Order 1992 (SI 1992/2803), art. 2.
[5] ibid.
[6] SI 1991/2687 art. 3(2); SI 1992/2803 art. 3(2).
[7] Current and previous versions of the Codes are available at:
http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/ (last accessed 28/9/08).

which might be made by him in consequence thereof.' (s.76(2) – my italics)

'Oppression' is not strictly defined, and it is ultimately open to interpretation depending on the specific circumstances of each case. Ultimately this section means that a confession can be excluded even if it is only a possibility that it was obtained through some kind of inappropriate treatment, and even if the confession was in fact true.

Section 78 provides a further safeguard against potential police malpractice. It allows the court to exclude any evidence 'if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it' (s.78(1) – my italics). This is an extremely wide-ranging provision. Unlike section 76, it is not limited to confessions but extends to evidence of any kind. Its potential application for the exclusion of police interview evidence is obvious.

The combined effect of these provisions is to place a significant onus on the police not only to act fairly, but also to ensure that they are seen to be acting fairly at all times. Of course, the introduction of the requirement to tape-record interviews has been extremely helpful to the police in this respect. Indeed, despite the initial resistance, it is now widely regarded within the force as a vital safeguard to protect the police themselves from accusations of malpractice under these sections.

This focus on the audio-recording of interviews as a tool to avoid both deliberate malpractice, and false accusations of malpractice, has unfortunately drawn attention

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away from potential problems with the recording process. Although audio-recording is indeed a successful solution to the original problems PACE was intended to overcome, it nevertheless raises new problems of its own which have not been adequately recognised. Although a vast improvement on prior practice, it nonetheless gives rise to another type of potential 'corruption' of interview evidence: distortion of the interview data through the current process of recording, transcribing, summarising and presenting the data as evidence in court. This process, and the potential for 'corruption' of evidence, will be scrutinised in depth in this study.

4.2.1.1   Future developments

As with all legislation, PACE is subject to constant review and amendment. Although we are primarily concerned with the legislative framework extant at the time of the specific interviews analysed in this study, it is nonetheless worth noting a few more recent developments.

Firstly, the use of video-recording of interviews is on the increase, especially with the most serious cases. A new PACE Code of Practice, Code F, relating to video interviewing was first issued nationally in 2004, but as yet the Act still does not make video recording mandatory in any circumstances. Code F merely has the force of guidance in cases where video recording is used. The discretionary use of video recording varies considerably from force to force, often due to financial constraints. However, as the technology becomes increasingly more accessible, it seems likely that there will be further developments in this direction.

Another interesting change occurred in the 2005 version of PACE Code E. All references to 'tapes' were removed, and replaced with references to 'recording media'

and 'audio recording'. 'Recording media' is defined as 'any removable, physical audio recording medium (such as magnetic type, optical disc or solid state memory) which can be played and copied' (Code E 1.6; 2005 version). Clearly this change was made to reflect technological advancements. However at time of writing it still remains standard practice to use tapes rather than any more modern recording media. All the interview data provided for this study were supplied in tape format.

4.2.2   Criminal Justice & Public Order Act 1994, s.34

Alongside PACE another piece of legislation is of great relevance to the present study, namely section 34 of the Criminal Justice & Public Order Act 1994 (s.34 CJPOA). This significantly altered the way in which interview data are interpreted in the judicial process. It also illustrates once again how the link between the interview stage and the future court context is fundamentally built into that process.

The relevant part of s.34 CJPOA for the purposes of this study is as follows[8]:

'(1)   Where, in any proceedings against a person for an offence, evidence is given that the accused –

(a)   at any time before he was charged with the offence, on being questioned under caution by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; …

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, …

(2)   …

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[8] In addition, section 35 makes similar provision for silence at trial, and sections 36-37 relate to failure to account for objects, substances or marks, and presence at a particular place.

(c)   the court, in determining whether there is a case to answer; and

(d)   the court or jury, in determining whether the accused is guilty of

the offence charged,

may draw such inferences from the failure as appear proper.'

In other words, if a suspect fails to mention a 'fact' during their police interview, and this fact is later relied upon as part of their defence, the court or jury is entitled to 'draw inferences' as to why they did not mention this sooner. As Bucke, Street & Brown comment with regard to these 'inferences', '[w]hile the legislation does not specify that these need be adverse to the defendant, the likelihood is that they would be' (2000: 1).

Although much of the discussion surrounding this provision has related to the effect on the 'right of silence', it is important to remember that this provision does not just affect the suspect who decided to make 'no comment' in response to police questions. It equally affects every suspect who answered questions but, for whatever reason, 'failed to mention any fact relied on in his defence'. It should be noted that the question of what a person 'could reasonably have been expected to mention' has been left open to interpretation. It is thus now extremely important to ensure that every significant part of a person's defence is mentioned at the interview stage, in order to avoid potentially triggering the effects of s.34 CJPOA.

This of course presupposes that, at the point of the interview, the interviewee is fully aware of what their defence at a subsequent trial is going to be. This may not seem unreasonable, if a person is innocent. But is a lay person's idea of what amounts to a defence the same as a police interviewer's, or a defence lawyer's? Some defences are rather technical in nature, and many relate not to the actions but to the state of mind

('mens rea') of the perpetrator. Will an interviewee necessarily express themselves in terms which fit with a legally recognisable defence? These are questions which the present study will seek to examine.

In addition, there is another more significant, and dangerous, assumption at work here. It presupposes an ideal scenario where a police interviewer asks questions about an incident, and in replying to those questions the interviewee is given full opportunity to say whatever they may wish about that incident. If that were the case, then it would be reasonable to assume that if an interviewee does not mention something at that interview, but subsequently brings it up in their defence, the earlier omission is somehow suspicious.

However, from a linguistic perspective it is highly unlikely that such an ideal scenario exists. The very nature of interview interaction, where one participant is prescribed the role of questioner and the other that of respondent, combined with the highly unequal power relations between the participants in a police interview, mean that the police interviewer has considerably more control over what is said in the interview than the interviewee. This is particularly true of determining factors such as topic and relevance. This raises questions about the fairness of a provision which has created very serious consequences for any defendant who fails to mention certain facts at interview. Is it reasonable to sanction an interviewee for something which is, at least to some extent, out of their control? Again, this is a question which this study will seek to address.

Finally, it is worth noting that for s.34 to operate successfully it is essential to be able to establish exactly what was said at interview, in order that a valid comparison can be

made. This is entirely dependent on the adequacy of the police interview transcript. The adequacy and accuracy of those transcripts will be considered in the following chapter.

4.2.2.1   The Caution

As a result of the introduction of s.34 CJPOA, the wording of the 'caution' was altered. This is the warning which must be given at the opening of every E&W police interview, in order to advise interviewees of the consequences of what they subsequently say (or fail to say). It is as follows:

> 'You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.' (PACE Code C, para.10)

It can be seen that this includes an attempt to explain the effect of s.34 CJPOA. If it is for some reason omitted, the entire interview will (almost certainly) not be admissible as evidence, on the basis that the interviewee was not given adequate warning of the consequences. For the same reason, it is also incumbent on interviewers to establish that the interviewee has actually understood the meaning of the caution. This is clearly not the easiest of tasks, and, as demonstrated by Cotterill (2000), there is room for considerable doubt as to whether an interviewee is sufficiently capable of absorbing the full import of the caution in the circumstances, and manner, in which it is relayed to them. The analysis of interview data to be undertaken in this study will shed light on the extent to which interviewees do in fact take heed of this warning when putting forward their position during interview.

4.3   The Interview Context

Having described the legal framework underlying the police interview context, we will now consider the everyday practical reality of police interviewing. As noted above, the

details of the procedure to be followed are set out in the PACE Codes. This section will describe the institutional processing to which a suspect is subject before actually reaching the interview room, as well as setting out practical aspects of the interview room itself. This will enhance understanding of the situation in which interviewees find themselves at the point at which the interview commences. We shall begin right at the start of the process, by considering the circumstances which must exist in order to bring a person to the position of becoming a suspect interviewee[9].

4.3.1   Pre-interview Procedure

The first point to note is that a person suspected of committing a criminal offence can only be arrested and brought in for questioning if sufficient grounds exist for that suspicion. In other words, the police must be sure that they already have enough information to justify the arrest, well before any interview takes place. A consequence of this is that there is no set time-span in which interviews will be conducted. Although the majority will occur in the immediate aftermath of an offence being committed, they may also take place months, or even years, later. This is clearly less desirable, but an interview can only be conducted once the trigger point is reached and the police have sufficient evidence to arrest, no matter when that occurs.

Once arrested, the suspect will be taken to a police station. Several procedural requirements must then be fulfilled before an interview takes place. The suspect is initially presented to the station's custody officer, who will from that point onwards have charge of the suspect's detention. This includes having the final say as to whether at any point the suspect should remain in custody or should be released, which is of particular importance when they are being held for prolonged periods for repeated

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[9] It should be noted that the procedure for interviewing witnesses is different, and beyond the scope of this study.

questioning. This is another change introduced by PACE, in order to remove decisions about the suspect's detention from those directly investigating the offence, and hence to avoid any possible abuse of that power by an interviewer. In any event, the maximum period of detention without charge is 24 hours (PACE s.41 – although in some circumstances authorisation may be given to extend this further: ss. 42-44).

The custody officer will open a record in which everything that happens to the suspect at the station is recorded (Code C 2.1). They must also ensure that suspects are told 'clearly' about their rights (C 3.1). The most important of these are the right to have someone informed of their arrest, and the right to free, independent legal advice in private. The detainee must also be given two written notices setting out their rights and certain other information (C 3.2). Two elements of these notices are of particular interest for this study. Firstly, the first notice, which contains the key rights, must also include the full, exact wording of the caution. Interviewees will therefore have had their own written copy of this vital warning before they reach the interview room. Secondly, they must also be given 'an additional written notice briefly setting out their entitlements while in custody'. The accompanying 'Note for Guidance' states that 'the notice of entitlements should … mention the provisions relating to the conduct of interviews' (C Note 3A). It does not specify which provisions precisely, nor the wording to be used. This provision is therefore very heavily 'hedged': the information relating to interviews is to be contained in an 'additional' notice separate from that containing the most important rights; this notice need only 'briefly' set out their entitlements; the contents of this additional notice are not prescribed at all in the Code itself, but 'guidance notes' state that the notice 'should' 'mention' the provisions relating to the conduct of interviews. The effect of such wording is that a failure to

provide a detainee with any information about the conduct of interviews would be a very minor breach of procedure, and would be unlikely to have any consequences. It is thus institutionally defined as 'low-priority'. The detainee therefore generally has little idea of what to expect from an interview beforehand.

The requirements of the custody record ensure that from the moment the detainee enters the police station virtually all their actions will be monitored and recorded in some form, even while they are asleep. This is also true of communications (with the exception of communications with a lawyer, which are protected by 'legal professional privilege'). For example, the detainee is allowed to make a phone call to one person, and can request writing materials (C 5.6), but anything they say 'may be read or listened to and may be given in evidence' (C 5.7). Further, the custody officer has a duty to record any comments made by the detainee in response to the arresting officer's version of events, or to being told that they are to be detained – although the custody officer is explicitly prohibited from actually inviting such comment (C3.4). Custody officers are also not allowed to put any questions to them, as this 'is likely to constitute an interview as in paragraph 11.1A and require the associated safeguards' (C3.4).

It can be seen that interaction between the detainee and police representatives is heavily circumscribed and to a large extent predetermined, with a set list of information that must be imparted, and significant limits to what can be said. Further, although the detainee is welcome to talk freely, they will not receive a reply or any engagement in interaction, but instead the institutional response will be to record their words in a formal written record. The detainee will thus very quickly become aware that they are no longer in a 'normal' interactional environment.

It is also worth noting that the custody officer has the power to physically search the detainee, and to take any property or clothing from them if 'necessary' (C 4.2). If clothing is confiscated, the detainee will be given 'replacement clothing of a reasonable standard of comfort and cleanliness' (C8.5). Such actions not only have the effect of further emphasising the position of power which the officer holds over the detainee, but may also have a 'depersonalising' effect on a detainee deprived of their personal belongings and/or clothes. Factors such as these are important to this study, in that they form part of the overall 'package' of experiences undergone by a detainee in the lead-up to an interview. They are thus likely to have a significant influence on the interviewee's view of both the situation in which they find themselves in the interview room, and of the interviewing officers as members of the institution.

Before a detainee is taken for interview, an assessment will be made as to whether they are 'fit enough to be interviewed' (C12.3). The main body of the Code describes this in terms of 'risks to the detainee's physical and mental state if the interview took place' (C12.3), but the accompanying Annex G puts a slightly different spin on this. It adds the following:

> '2. A detainee may be at risk in an interview if it is considered that:
>
> (a) (…)
>
> (b) anything the detainee says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed **might** be considered unreliable in subsequent court proceedings because of their physical or mental state.' (bold in original)

It is difficult to see how the fact that evidence gathered against them might subsequently be ruled inadmissible can be described as a 'risk' to the detainee. Rather,

this seems a clear nod to section 78 of PACE, which allows the court not to admit evidence if the circumstances in which it was obtained would adversely affect the 'fairness of the proceedings' (as discussed above). This is another example of the way in which the introduction of PACE fundamentally shifted police attitudes, and also how vital it is to police interviewing practice to be seen to be acting fairly at all times. Further, it illustrates once again that at the interview stage the police institution has one eye fixed firmly on the future court context.

4.3.2   In the Interview Room

We have now reached the stage of the interview itself. The detainee has now been 'processed', assessed, searched, possibly had personal belongings removed, may now be wearing 'police issue' clothing, and may have been held in custody and constantly monitored for anything up to 24 hours (or longer if further detention has been authorised). Their communications with friends and family will have been limited, and monitored. The only person they will have been able to see in private is their legal representative, if they have chosen to consult one. We know that they are (or at least certainly should be) medically fit to be interviewed. We also know that there is enough evidence to reasonably suspect them of having committed the offence about which they are being questioned.

Let us now consider what we know about the other people who are, or may be, present in the interview room. (As already noted, in this study we are not concerned with interviews which involve the presence of an appropriate adult or interpreter, so their role will not be discussed.)

4.3.2.1   Interviewers

Interviews are conducted by either one or two interviewers. If two are present, one will generally take the 'lead' interviewing role, with the other observing, taking notes, and contributing only occasionally to the interview interaction. Interviewers are generally police officers, but some forces do employ civilians to 'process' detainees, including conducting interviews. This does not appear to be a widespread practice, although a small number of the interviews collected for this study do involve such civilians as interviewers.

Interviewing will be just one of many tasks performed by interviewers during their working week. Although some officers may conduct more interviews than others, none are dedicated solely to interviewing. They are normally subject to some form of appraisal of their general interviewing performance. As with so many aspects, the nature of this assessment varies from force to force. However, interviewers will be aware that tapes may be listened to by their colleagues and superiors not just in connection with the present investigation, but also in order to assess their professional ability.

The amount of information which an interviewer will have at the start of an interview can vary quite considerably. It will range from cases with a substantial volume of evidence from an ongoing investigation, to those where the interviewee has just been brought in and only minimal details are available to the interviewer. This will clearly be an important factor in determining how they wish to conduct the interview.

4.3.2.2 The Legal Representative

All detainees have the right to receive free and independent legal advice in private before being interviewed. Detainees can request a specific person or legal firm, or they may use the 'duty solicitor'. This function is performed on a rota basis by a number of local solicitors. If legal advice is requested, the interview will generally be delayed until it has been given (C 6.6). Detainees additionally have the right to have a legal representative present during the interview itself. However, most do not take advantage of this, meaning, perhaps surprisingly, that only a minority of interviews involve the presence of a legal adviser[10]. Thus the amount of legal advice which an interviewee receives varies considerably, with many (through their own choice) receiving none at all.

The discursive role of the legal adviser during an interview is closely prescribed. Their 'only role ... is to protect and advance the legal rights of their client. … The solicitor may intervene in order to seek clarification, challenge an improper question to their client or the manner in which it is put, advise their client not to reply to particular questions, or if they wish to give their client further legal advice' (C Note 6D). Their discursive role in the interview room is thus limited, and they are certainly not a primary participant. If this position is overstepped, they can be asked to leave (C 6.9) However, if an interviewee wishes to consult their legal adviser privately at any point during the interview, the interviewer is obliged to stop the interview and allow that consultation to take place.

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[10] Unfortunately no accurate statistics are available, and various research studies offer widely differing estimates – see Baldwin (1992): 27. However, all available estimates put the figure comfortably below 50%.

There is unfortunately insufficient space in the present study to make a full assessment of the impact on interviews of the presence of legal representatives. This would in itself make a fascinating and extremely useful research study. However, it is a factor which will be considered in the present study wherever relevant.

4.3.2.3 Practicalities

The interview will take place in a designated interview room in the police station. Most stations have several such rooms. They are normally relatively small and bare, with minimal furniture. There will be chairs and a table, upon which will be a tape recording device. This is a large, prominent machine which will be situated close to the participants. The interview will be recorded on two tapes simultaneously. One of these tapes will become the 'master copy', and the other will be used as a 'working copy'. PACE Code E advises that 'Tape recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview' (E 2.1). Thus all actions involving the tape recording process must be carried out in full view of the interviewee, beginning with the unwrapping of the audio tapes and their loading into the recorder (E 4.3). Interviewers must commence every interview by telling the interviewee that the interview is being recorded, and explaining what will happen to the interview tapes (E 4.4). There is thus a very heavy emphasis on ensuring that interviewees are conscious throughout the interview that the interaction is being recorded. This stands in stark contrast to most audio data analysed by researchers, who are generally at pains to avoid the 'observer's paradox' of influencing the interaction by the fact of recording it. As shall be seen, the tape recording process most certainly does influence this interaction, but in a way which is an absolutely integral part of police interview discourse.

As with the situation leading up to the interview, interviewees remain under considerable control and restriction during the interview process. Although, as noted above, interviewees have the right to say nothing when questioned, they do not have the right to refuse to participate in the interview process altogether. Even if an interviewee makes no response, interviewers will continue to put questions to them for as long as they deem necessary, as this lack of response can be used as evidence in itself (s.34 CJPOA). It is entirely up to the interviewer to determine when the interview is over. If the interviewee wishes to leave the room for a break, or to consult with their legal representative, they must ask the permission of the interviewer (although this will nearly always be given). A detainee may be interviewed a number of times, being kept in custody in between (up to the maximum period of detention, and subject to the approval of the custody officer).

In terms of the actual content of the interview, the opening and closing is prescribed by Code E. At the start of the interview, the interviewer must remind the interviewee that the interview is being recorded, give their name and rank, and ask all other parties to identify themselves. They must state the date, time and place of the interview, and tell the suspect that they will receive a notice about what will happen to the tapes (E 4.4). The interviewer must also caution the suspect (see section 4.2.2 above), and remind them of their entitlement to free legal advice (E 4.5). Thus every interview starts with the same pre-determined formula. It can be seen that much of this information is intended for the benefit of anyone subsequently listening to the tape, a feature which will be discussed in detail in this study.

At the conclusion of each interview, 'the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add' (E

4.17). The interviewer must finally record the time, before turning the tape recorder off. They must seal the master tape with a 'master tape label', which must be signed by those present (E 4.18). The Code instructs the interviewer to 'treat it as an exhibit' – once again, a clear nod to the treatment of interview data as evidence in any future court hearing.

4.3.2.4 Concluding the interview process

Paragraph 11.6 of Code C provides that interviewing 'must cease when:

(a) the officer in charge of the investigation is satisfied that all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect, this includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable, e.g. to clear up ambiguities or clarify what the suspect said;

(b) the officer in charge of the investigation has taken account of any other available evidence; and

(c) the officer in charge of the investigation, or in the case of a detained suspect, the custody officer, … reasonably believes there is sufficient evidence to provide a realistic prospect of conviction for that offence.'

At this point the case must be referred to the custody officer so that a decision can be made as to whether to charge the detainee (C16.1). Once a person has been charged with an offence, they can no longer be interviewed about it (except in very limited circumstances: C16.5). This is therefore a crucial consideration for an interviewer. They must use the interview to gain as much information as possible from the interviewee, but they must also bear in mind that as soon as a point is reached where there is

sufficient evidence to prosecute, the whole interview process must be stopped and there will be no further opportunity to talk to the interviewee.

Once the interview process is over, several options are open to the police. If the interviewee is charged, they may either be kept in custody, or released on bail. If they have admitted their involvement to a minor matter, and the police do not consider it worth pursuing further, the interviewee may receive a 'caution'. This is not to be confused with the 'caution' discussed above – this is a formal reprimand which is considerably less serious than a conviction, but will nonetheless be placed on a person's record. Of course, if there is insufficient evidence to charge or caution, the interviewee will be free to leave.

4.4 Interviews in the Judicial Process

A unique feature of police interview discourse is the process undergone by the data subsequent to their production. In some respects, the story only really begins once the interview itself is over. We will now examine this multi-purpose, trans-contextual aspect of police interview data by tracing the passage of an interview through the judicial system. It will become clear that the police interview is not just an information-gathering exercise, as may first appear. In fact it takes on an equally important role as a piece of evidence in itself.

The process begins with the two audio-tapes produced in the interview room. The master tape will be kept on the police file, and will remain sealed. The working copy will be used from this point onwards. The first action taken will be to have the tape transcribed, and a 'Record of Taped Interview' (ROTI) produced. This transcription process will be dealt with in detail in Chapter 5 and so will not be discussed any further

here. The police and the Crown Prosecution Service (CPS) now have both an audio and a written version of the interview at their disposal. A copy of the ROTI will be sent to the Defence – meaning the interviewee's legal representative if they have one, or the interviewee themselves if not. The Defence may also request a copy of the audio-tape.

The interview forms just one part of an ongoing investigation, and the police team assigned to the case will initially wish to use the interview data to determine their next investigative move. Witnesses and other suspects are likely also to be interviewed at the same time, and information passed on in any one of these interviews will be crucial in guiding the conduct of the others. They may find that this particular interviewee is no longer a suspect, but has pointed them towards another individual. The interviewee may have given them other leads to follow up, such as checking an alibi or searching a property. They may also have admitted their involvement. The suspect interview thus has a vital information-gathering function as part of the initial police investigation.

If the police consider that the interviewee should be charged, the matter will be passed to the CPS. The CPS is generally responsible for the final decision about whether or not a case will be proceeded with, taking into account factors such as the likelihood of conviction and whether it is in the public interest to prosecute ('Code for Crown Prosecutors' 2004). The interview forms part of the package of information on which they base such decisions. If they do decide to proceed against the interviewee, they must also decide what offences they are to be charged with. This is often a delicate decision: for example, the distinction between various levels of offence may depend solely on proving the intention of the perpetrator, but the consequences in terms of

sentence length if convicted can be enormous[11]. (It is also possible to charge a person with several alternative offences, thereby leaving the final decision on this to the jury/magistrates at the verdict stage.) They must ensure that they choose the offence which most closely reflects events so that justice is seen to be done, but which also represents the best chance of securing a conviction. One of the factors which will be considered in making that assessment is how the person charged will come across in the courtroom, and the best evidence the CPS has of that is their performance during interview. So it is not simply the content of the interview which matters at this stage, but also the interviewee's behaviour during the interaction.

If the CPS decides not to proceed, that will of course be the end of the matter. But if they do proceed with charges, the case will be prepared for court and our interviewee becomes a 'defendant'. At this stage, the case can proceed in two basic directions: a guilty plea, or a trial. If a guilty plea is entered, clearly the Prosecution have a much easier task on their hands. But the court will still need to determine the appropriate sentence, and the interview material will have a role in this. It may be used by either the Prosecution or the Defence in their submissions. For example, an early confession and full co-operation with the police at interview is something that a defence representative would certainly draw to the attention of a judge in favour of their client. Equally, an absence of such co-operation at interview, and a lack of indication of guilt until the last minute at court, might well be highlighted by the Prosecution. Sentencing guidelines allow for substantial reductions for an early guilty plea, so such submissions based on a defendant's conduct at interview can make a significant difference.

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[11] Obvious examples are the distinction between murder and manslaughter, and between possession of drugs and possession with intent to supply.

On the other hand, the defendant may plead 'not guilty' and the matter will proceed to trial. The interview tape and official police transcript will become part of the package of evidence to be presented at court. (The manner in which it is presented will be examined in Chapter 5). Significantly, they are included as part of the prosecution case. This is not entirely surprising: if the interview contained enough information to exonerate the interviewee, charges would not have been brought. But that is not to say that information contained in the interview cannot also be drawn upon by the Defence as evidence to support their version of events.

Thus lawyers for both sides will examine the interview material and use it in whatever way they can to support their case. One of the main ways in which both sides will seek to rely on it is as evidence of the defendant's consistency (defence), or lack of it (prosecution). Comparisons will commonly be made by the Prosecution between what a suspect says at trial and what they said (or at least are reported as saying) at interview. They will point to any differences as a sign of inconsistency, and therefore dishonesty, and potentially guilt. This is also the point at which the Prosecution can invite the court to draw negative inferences from any silences or omissions by the defendant at interview (s.34 CJPOA). If interview material does contain anything which damages the defence case, a key angle for the defence lawyer will be to investigate whether the interview can be excluded under s.76 or 78 of PACE, particularly due to the conduct of the interviewers.

This evidential function of interview data is a key aspect of this study, and is therefore worth observing in action. The following example is taken from the trial of Dr. Harold Shipman, during his cross-examination by Prosecution Counsel. Even edited this

amounts to a lengthy exchange, indicating the level of scrutiny to which interview data are put.

Example 4.1

PROSECUTOR: Now I am going to ask you please to look at what you told the police when they interviewed you in relation to Mrs. Mellor's medical history. Could you go please first of all to page 251. Page 251. Do you have it in front of you? We will just wait until everybody has it in front of them. Page 251, a third of the way down. [...] You are aware that this document is an agreed transcript taken from a tape-recorded interview which is admitted to be accurate?

SHIPMAN: It reflects what was said on the day, yes.

PROSECUTOR: Yes, and can be played if needs be. You don't dispute the content, that this accurately represents the interview do you?

SHIPMAN: No.

[Counsel reads long extracts from the interview]

PROSECUTOR: [...] you were telling the police that she, page 251, "She came back 10 days later to tell me about it again." That's what it says page 251, "She came back 10 days later to tell me about it again." That is completely at odds, isn't it, with the evidence you have given this morning?

SHIPMAN: No, I don't think it is.

PROSECUTOR: Will you explain why it is not at odds with it?

SHIPMAN: I don't have to explain.

PROSECUTOR: Well, you do because you have to answer my questions and I am asking you for an explanation?

SHIPMAN: Of what?

PROSECUTOR: Why you said to the police, "She came back 10 days later to tell me about it again?"

SHIPMAN: And I have already explained I was considerably distressed in the police station and although these may well be the words that were heard and said, it would not be the story or the history or whatever you want to call it I give today.

PROSECUTOR: Do you agree you gave one version to the police and a different one today?

SHIPMAN: I agree that the version that was taken down in the police station is different from the one I said today, yes.

PROSECUTOR: Well why did you give a different version to the police to the one that you are giving today?

SHIPMAN: Because today I am more sane.

PROSECUTOR: Today and in the days preceding today you have had time to concoct a false story, haven't you?

SHIPMAN: No.

PROSECUTOR: You had not thought about this line of defence, had you, when you saw the police?

SHIPMAN: I didn't realise I had to have a line of defence when I saw the police.

PROSECUTOR: You knew the police were accusing you of a very serious crime, didn't you?

SHIPMAN: I was aware of that.

PROSECUTOR: And you had simply not thought your defence sufficiently through, had you?

SHIPMAN: I will reiterate I didn't realise I needed a defence at that time.

(Shipman Trial Day 34)

Aside from the many other fascinating elements of this exchange which we will not concern ourselves with here, this extract demonstrates the importance of the interview as a piece of evidence in the criminal process. This is, in one sense, the ultimate purpose for interview interaction. It can also be seen that its appearance here in a courtroom as a physical exhibit ('page 251, a third of the way down'), is completely different functionally and contextually from the site of its original production. The relative awareness of, and orientation to, this unique feature of police interview discourse by interview participants will form a major part of this study.

Unfortunately it is not possible in this country to conduct any research on juries, as any inquiry into their deliberations would amount to 'contempt of court' (s.8 Contempt of Court Act 1981). It is therefore impossible to assess how juries use interview material in reaching their verdict. However, what we can say is that the interview is part of the package of evidence presented to the court and upon which the jury (or magistrates in the lower courts) must make their decision. Indeed, in addition to its use by courtroom lawyers, judges will often refer to passages from interviews in their summing up to the jury of the evidence. We can at least surmise that it has an influence on whether or not a defendant is found guilty, even if we cannot quantify that influence. And finally, as mentioned above, behaviour at interview can certainly have an effect on sentence length should the defendant be found guilty.

Overall, then, it can be seen that interview data have a vital function in the criminal justice process. They also have a rather unique dual purpose: on the one hand, they are a means of evidence-gathering, and on the other they form a piece of evidence in themselves. It can also be seen that interview data are put to a range of different uses by a variety of users. This is represented in Figure 4.1.

Figure 4.1: Audiences and purposes for interview data
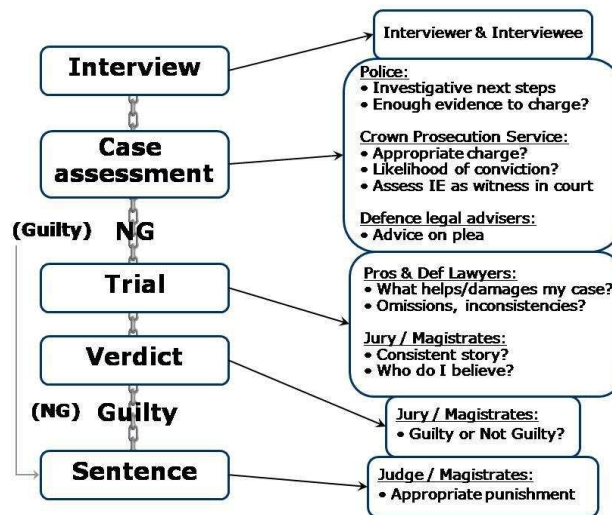
It is proposed that this range of different purposes and audiences has a hitherto unacknowledged influence on the discourse itself. One of the main purposes of this study is to identify that influence, and to consider the consequences both for the initial interaction and for its use as evidence.

In addition, another significant factor affecting the data is the various changes in format which they undergo en route from interview room to courtroom. For much of the process just outlined, reliance is placed solely on the police transcript and not on the audio tape. When considered in the light of the uses to which the data are put, this also has potentially serious consequences in terms of the integrity of the evidence. This will be examined further in Chapter 5.

4.5   The court context: some legal principles

This chapter has described the path taken by interview data from their initial production in the interview room to their presentation as evidence in the courtroom. We have already considered the legal framework which governs the interview context, but there are certain legal principles which apply at the court stage which, it is argued, also have

an influence on interview interaction. As just seen, interviews are not isolated, self-contained units but are merely one link in a chain of events which make up the criminal judicial process, and a major theme of this study is to examine the influences of the other links in that chain on the interview itself. Just as it is argued that the future audiences for interview discourse have an influence on the interaction, it is suggested that so too do certain legal principles which arise at later stages of the process.

The first principle is that of 'facts in issue'. In a criminal trial, the Prosecution need to prove certain elements which together amount to the commission of an offence. The Defence may in response raise new points such as a defence of duress or self-defence. These points together make up the 'facts in issue', which would normally have to be proved by the calling of evidence. However, it is open to either side to formally admit to any 'fact' which they agree on, thus avoiding the need for that point to be proved (Criminal Justice Act 1967, s.10). For example, in a case where a defence of provocation is raised to a murder charge, it may well be accepted by the Defence that the defendant killed the victim. The trial would then focus purely on the defendant's assertions of what caused them to commit that act, and the question of who committed the killing would only be a brief minor matter. In practice it is common for facts to be agreed between Prosecution and Defence in this way. It is thus an important part of the criminal justice process, of which the interview is of course part, to establish which facts are likely to be 'in issue' at court and which agreed. However, this involves a careful balance. On the one hand, it is important to narrow the focus of trials and hence avoid the waste of court time and taxpayer's money. But on the other, if the investigation is narrowed down too soon, potentially relevant avenues may go unexplored and vital information missed.

The other, more complex, principle is the burden of proof. The basic rule is that it is incumbent on the Prosecution to prove the guilt of the defendant, and hence to adduce evidence to prove each 'fact in issue' at trial. The Defence therefore generally does not have to prove anything – a defendant is innocent until proven guilty. There are certain exceptions to this. Firstly, there are certain specific points which have to be proved by the Defence (e.g. a defence of insanity), but this will always be to a lower standard of proof ('on the balance of probabilities' as opposed to 'beyond reasonable doubt'). Secondly, there are other points for which the Defence bears only an evidential burden as opposed to the persuasive (or 'legal') burden: in other words it is only necessary for the Defence to adduce some evidence which supports that point, at which the burden then switches back onto the Prosecution to disprove it. An example of this is self-defence. Overall, this means that the Defence does not have to produce a positive account of events, but merely has to cast doubt on the Prosecution's proposed version. This is reflected in the order of proceedings in court, whereby the Prosecution present their case in full first, and the Defence then respond to it.

Of course, the situation is – or should be – different at the interview stage. Although the interviewee will ultimately not be asked to positively prove anything, it is still very much in their interests to put forward a full version at this stage, especially given s.34 CJPOA. Yet it will be argued that interview participants – most usually the interviewer – often orient to this later court principle during the interview. The extent to which this is the case, and the potential consequences, will be examined in the data analysis.

It must be acknowledged that these are general principles of criminal law and hence are of course of relevance in the interview context. It is entirely right that police interviewers should have such principles in mind when conducting an interview in order

to ensure that it remains focused and relevant. Nevertheless, applying principles from the later trial stage at this earlier stage has the potential to limit and restrict the account elicited from the interviewee, which seems rather at odds with the investigative function of the interview. It does, however, tie in rather better with the interview's other function as evidence in itself, making this aspect yet another example of the tension created by these two competing roles.

To conclude, this chapter has situated the police interview in its place in the criminal justice system, and has elucidated some of the hidden factors which shape it, describing the legal principles and other more practical aspects which are likely to exert an influence on the interaction. The nature of that influence will form a large part of the data analysis.

5. Format of Interview Data[12]

5.1 Introduction

The previous chapter outlined the route taken by interview data through the criminal justice process. As mentioned, the data undergo major changes in format through that process, and those changes will be the subject of this chapter. This will show that, in stark contrast to the strict principles of preservation applied to physical evidence, interview data go through significant transformation between their creation in the interview room and their presentation in the courtroom. I will argue that, despite the safeguards provided by PACE, there is nonetheless a level of routine distortion and contamination unintentionally built in to the current system of presenting UK police interviews as evidence. As discussed previously, the data utilised in this chapter are taken from the case of Dr Harold Shipman.

To begin with, it is important to note how much emphasis is put on the exact words (apparently) used by an interviewee. The following is an example from the cross-examination of Shipman:

Example 5.1

> PROSECUTOR: Do you remember what you told the police about those blood samples?
>
> SHIPMAN: Which part please?
>
> PROSECUTOR: You told the police, didn't you, that you drove down to the surgery and delivered the blood samples and you then got on with the surgery?
>
> SHIPMAN: I am not sure of the word "deliver" but yes I did do that.
>
> PROSECUTOR: No?

---

[12] This chapter is based on Haworth (2008: forthcoming)

SHIPMAN: If you are happy to say that it is deliver then I will accept it.

PROSECUTOR: Let's just have a look. We can do it quite quickly and therefore accurately if we have it in front of us and you will not be in any way disadvantaged. Page 22 please?

SHIPMAN: Yes. Thank you.

PROSECUTOR: Bottom question, bottom answer rather, "Well, I drove down to surgery and delivered the blood samples and got on with the surgery." You see that?

SHIPMAN: Yes I do.

<div align="right">(Shipman Trial, Day 33)</div>

We will now consider whether this scrutiny of the data in such precision and detail at trial is in fact valid. The following diagram represents the changes in format which interview data undergo from interview room to courtroom.

Figure 5.1: Format changes of interview data
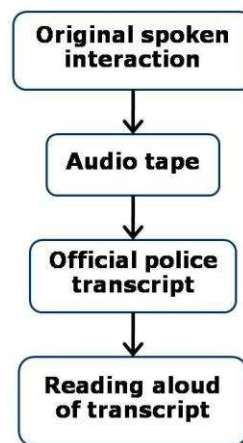
The original data are, of course, the words spoken in the interview room. They are preserved in audio format on tape. It is important to note that even at this preliminary stage, the data have already changed. Listening to a tape is never the same as being present at the time; all contextual information and cues are already lost. Further, the tape quality often leaves much to be desired.

The audio tape is then transcribed, in other words converted into a written document. This is perhaps the most significant change undergone by the data. Yet there is, as yet, no real recognition within the criminal justice system that this process causes the data to be transformed at all. Instead, the transcript is generally treated as a straightforward replacement for the audio tape from this point onwards. The data are then presented to the court as part of the prosecution evidence. Instead of playing the original tape, standard practice is for the written transcript to be read out loud in court by a police witness and the prosecutor.

One further stage to mention, although it will not be discussed here, is the production of the transcript of the court proceedings. This results in the version of the data which is read out in court being converted into yet another written version. The court reporter has to rely entirely on what they hear in the courtroom, and not on the written police transcript. So a further transformation takes place. (For more on the process of court transcription, see Walker 1990, and Tiersma 1999: 175-9.)

This whole process is problematic for a number of reasons. Firstly, there are difficulties relating to tape quality and accuracy; secondly there is the problem of how to portray spoken language in a written format; thirdly there is the question of editing, as very few tapes are ever transcribed in full; and finally there is the process of converting the data back into a (different) spoken form in the courtroom. Each of these areas will now be discussed in turn. An additional, related, problem is the amount of content and meaning which is lost due to the audio-only format, particularly through features such as deixis. This will be discussed in the analysis of interview data in later chapters.

An important factor to mention at the outset is the transcribers themselves. As with many other aspects, there is no standard national model and so each individual force has its own practice in this respect. Anecdotally it appears that transcription of interviews was previously often left to the interviewing officers themselves, which is something of a concern given the amount of influence over the data this entails (as we shall shortly see). It does now seem to be common practice to use civilian transcribers for this task. However, although many forces do provide training, this (in all the instances of which I am aware) does not cover any of the linguistic aspects to be discussed in this chapter.

5.2 Audibility

The fact that the recording of police interviews is overt (as opposed to covert surveillance tapes, for example) should mean that there are few difficulties in terms of recording quality. Interviews take place in a quiet, controlled environment, with the recording device prominently situated between participants, all of whom are made aware of the need to express themselves clearly and audibly 'for the tape'. However, unfortunately such difficulties do arise. Interview tapes are often inaudible in places, or at least unclear. I have even been handed one, still part of the police case file, which was entirely inaudible. Given the current state of digital audio technology, this is clearly unacceptable.

However, it is important to recognise that even with the best quality audio recording, it is still virtually impossible to create a 'perfect' transcription. Frazer (2003) sets out the aspects of human speech and speech perception which affect our ability to perform this task. She describes the inherent difficulty with transcription as follows:

'The reason for our normally effective perception is that in face-to-face communication we know how to judge the accuracy of our perception, how to question it if it is doubtful, and how to correct it if it is inaccurate.

These are exactly the steps that are necessary in creating accurate transcripts. The problem is that in transcribing from a recording we are not in an ordinary communicative situation, with a meaningful context, and the speaker present to correct any important errors. Rather we are abstracted from the real situation…' (2003: 216)

She cautions that even with a good-quality recording, '[e]ven the best …transcript, however, will only be sufficiently accurate, not a hundred per cent accurate' (217).

There are inevitably numerous points in any recording which will be open to doubt, yet only occasionally do you see an official police transcript with a section marked as 'inaudible' or 'unclear'. A transcriber faced with uncertainty will instead generally make an informed guess. The danger, as illustrated by Frazer (2003), is that often we do not realise that our perception is inaccurate, particularly if we are expecting to hear certain information – as might well be the case if we know that we are listening to a police interview with a suspect. Frazer refers to this as 'the unacknowledged role of the perceiver' (204), referring to 'the active role we play in constructing the messages we hear by combining the information in the speech signal with the knowledge in our heads' (206).

Indeed Coulthard and Johnson (2007) cite two striking examples of transcribers 'hearing what they expected rather than what was actually said' (144). In the first, 'an indistinct word, in a clandestine recording of a man later accused of manufacturing the designer drug Ecstasy, was mis-heard by a police transcriber as 'hallucinogenic' ...

whereas, what he actually said was 'German'' (144-5). In the other, 'a murder suspect, with a very strong West Indian accent, was transcribed as saying in a police interview that he 'got on a train' and then 'shot a man to kill'; in fact what he said was the completely innocuous and contextually much more plausible 'show[ed] a man ticket'' (145).

Thus the transcriber adds their own layer of interpretation to the original data, even with a relatively straightforward transcription of uncontentious audio material. And as the quality of the recording drops, the amount of 'interpretation' will increase. The problem is that this 'tampering with the evidence' is completely invisible to anyone who subsequently reads the transcript - unless, of course, they listen to the original audio file, but as already noted this rarely seems to happen once an official transcript has been produced. Contamination has already crept in.

5.3   Transcription: spoken – written

The conversion of spoken data into a written format is a highly problematic process, for reasons which extend well beyond the practical difficulties of audibility just discussed. As Gibbons observes, '[t]he fundamental problem is that speech and writing are different media, with different properties' (2003: 28). Walker, in her study based in part on her own experiences as a court reporter, notes that '[o]f all the features that distinguish writing from speech, the one which is potentially the most significant in transcription, is the inability of our writing conventions to express some of the para- and extralinguistic signals that speakers rely on to get their meaning across' (1990: 208). She gives examples of paralinguistic features such as 'intonation, breathiness, emphasis, high and low pitch, long, drawn out sounds'; and of extralinguistic features such as 'raised eyebrows, outflung arms, nods, sneers, and smiles', which 'can convey

meaning on their own or alter the significance of the words they accompany.' (ibid.)
She goes on to point out that, 'given that the printed medium is one-dimensional, none
of these meaning-bearing contextual components of speech can be represented by using
English orthography alone. … Without the freedom to go beyond orthography, a
sometimes-critical component of communication can fail to be passed along in written
form.' (ibid.)

In the police interview context the transcriber is, unlike the court reporter, not present at
the time of the production of the original data, so any meaning conveyed by
extralinguistic features is already lost before the transcription process even begins
(unless described verbally by someone present). With regard to paralinguistic features,
it is open to the transcriber to attempt to portray them in their transcript, but this is
rarely seen. As Gibbons notes, the visual representation of such features within a
written transcript tends to make the end result extremely difficult to read. He describes
this as 'a tension between two incompatible and competing criteria for transcription',
namely 'readability' and 'accuracy'; and acknowledges '[t]he impossibility of
simultaneously meeting these criteria in a single version' (2003: 30). He observes that:

> 'In reality most of the transcripts produced in courtroom and police contexts,
> although they purport to be 'verbatim', are heavily weighted towards
> readability. The process of transforming speech into a readable form can
> involve radical change.' (2003: 31)

A further problem, noted by both Gibbons and Walker, is a tendency to 'correct'
features of spoken language to a written style. Thus features such as false starts, repairs,
repetition, overlap and interruption, although common in spoken language, are routinely
omitted from written transcripts. Similarly, 'incomplete' sentence structures are often

'completed' by the transcriber. Although this makes for a more easily readable transcript, such features are in fact often highly significant indicators from a linguist's perspective, which can reveal a great deal of information about the speaker. Even from a lay perspective, they reveal facets of a speaker's character. We gain a completely different impression of a person who constantly interrupts or talks over others, compared with someone who speaks quietly and hesitantly. Our impressions may well be entirely wrong. That is any jury's prerogative. However, juries should at least be free to make their own assessments based on the actual behaviour of the interview participants, and not on a transcriber's interpretation of it. As Walker notes:

> 'A transcript on which a reporter has exercised this kind of editorial artistry – one in which grammar has also been corrected, false starts removed, and syntax rearranged – is undeniably more readable than its verbatim version. It is also a transcript in which reality has undeniably been transformed.' (1990: 232)

Of course it is easy to say that in the majority of cases, the kinds of changes described here are unlikely to have any great bearing on the outcome of a trial. But that simply does not seem to be an acceptable position to take in relation to material which is being used as evidence against a defendant in a court of law.

The following example from the Shipman trial illustrates both the problems just discussed – that is, the difficulty of maintaining accuracy, especially when transcribing material relating to unfamiliar subject matter; and the impinging of written language conventions on the spoken interview data. This extract is taken from the part of the trial where the interview was presented to the court as evidence, by being read aloud (more on which below).

Example 5.2

POLICE WITNESS (being interviewer): "But there's no mention in that entry which you claim to be for that date about taking a blood sample from her once again. I can see what you are pointing at. HP."

PROSECUTOR: Pause. I think the punctuation is a little adrift here, isn't it? "But there's no mention in that entry, which you claim to be for that date, about taking a blood sample, from her. Once again I can see what you are pointing at. HP, ESR. It doesn't actually say you have taken a blood sample from her."

Sorry, I am being told something.

JUDGE: I am not sure that the punctuation you have inserted is necessarily correct.

PROSECUTOR: No.

DEFENCE: I think there is also a typing error too, because--------

JUDGE: Is there? Yes.

PROSECUTOR: There is. It has got 'HP' and it ought to be 'HB'.

JUDGE: H…...

PROSECUTOR: B.

JUDGE: Yes.

PROSECUTOR (being Shipman): "It's not the custom of most general practitioners to write: 'I have taken a blood sample which would consist of this, this and this.' Most general practitioners just write down what the blood test is that they are doing."

(Shipman Trial, Day 23)

At the outset, it must be acknowledged that this extract comes from the official court transcript, which, as mentioned earlier, cloaks the data in an extra layer of interpretation of its own. The punctuation here is thus the court reporter's. But the basic point is still

clear. The police witness's attempt to follow the official transcript of interview goes astray, either through the punctuation inserted by the interview transcriber, or through his own choice of intonation in reading it aloud. The prosecutor recognises this and makes his own attempt at reading it out, but the judge interrupts, apparently because he has a different idea of how the data should be read. Note that the difficulty is, tellingly, referred to in terms of 'punctuation' – a purely written language feature – instead of being described as a question of intonation or emphasis. There is no reference at all to how the words in question should sound, illustrating that all concerned are treating the data purely as a written document. The oral format, that is the original interview itself, is apparently long forgotten.

In addition, we see the (understandable) confusion of 'HP' for 'HB'; a medical abbreviation used by Shipman in his patient notes. This in itself may well have been of little consequence. But it still necessitated a correction by the defence counsel, creating a further interruption. It is crucial not to lose sight of the fact that the point of this process is to present the interview to the court as evidence. Yet the actual exchange which took place in the interview room is completely overshadowed.

In fact, a potentially significant point does occur here, but is barely noticeable amid all the confusion: Shipman dodges the point being put to him. A common tactic used by Shipman in this interview is to appear co-operative but in fact to use a variety of avoidance tactics in response to the police questioning. (For a more detailed discussion, see Haworth 2006). Here he avoids addressing his own actions by referring instead to general medical practice. But, given the amount of interruption between the two turns from the original interview here, this subtle feature is all but lost, thanks to the difficulties created by the written transcript.

5.4   Editing: the Record of Taped Interview (ROTI)

Alongside the smaller-scale changes described above, most interviews are subject to a much more substantial editing process. An average interview record is in fact generally not much more than a summary, with only certain parts transcribed in full. A complete transcript of an entire interview is normally only prepared for the most serious cases. This is, of course, another extremely significant change to the original interview data, especially given the fact that it is this edited version which will be presented to the CPS and used in deciding whether or not the matter should proceed, and indeed is the version generally presented to the court. Yet this editing process is entrusted entirely to the transcriber, who must presumably use their own judgement to determine what counts as relevant or important enough to include. The fact that such a significant task is entrusted to an untrained lay police employee is of some concern.

5.5   Presentation to the court: written – spoken

We have now reached the stage of presenting the interview to the court as part of the prosecution case. Technically, the actual piece of evidence is the audio tape, not the transcript[13]. However, transcripts are admissible as 'copies' of the original evidence (s.133 & 134(1) Criminal Justice Act 2003). In fact in practice the audio tape is rarely played, with the transcript nearly always being relied upon instead as sole evidence of what took place in the interview room. This is problematic enough in itself, given the various factors just discussed. But, rather than simply handing the court a copy of the transcript, the rather bizarre custom is to present the transcript orally[14]. In other words, the transcript is read out loud in court by a police witness acting as the interviewer, and

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[13] R v Rampling [1987] Crim LR 823
[14] This most likely stems from the oral tradition of E&W criminal proceedings, whereby evidence is to be given to the court orally by witnesses in person as opposed to, for example, the continental system of giving evidence in predominantly written form. However, this is purely speculation.

– almost incredibly – the prosecutor generally takes the part of the defendant interviewee. In so doing, the participants are free to put whatever interpretative spin they wish on the material, for example adding emphasis, slowing pace, varying intonation, and so on. It goes without saying that this can result in a radical transformation of the original meaning and intention of the speakers. Paralinguistic and extralinguistic features, removed during the transcription phase, are now put back into the data – yet they are not those used by the original speakers, but those of the prosecutor and the police witness (who may or may not be the original interviewing officer). Even with the best intentions, and speaking as someone who has performed this task as a prosecutor, it is almost impossible to avoid manipulating the data for one's own agenda – which is the securing of a conviction.

Yet, in the eyes of the court, the same words are used and so the message, and the interpretation, presumably must be the same. The bench and the jury are normally provided with copies of the transcript to follow during this presentation, to which they can refer later on. This is perhaps viewed as some form of safeguard, in that they are free to see the 'actual words used' and form their own opinion as to the correct intonation and intended meaning. However, I would argue that any subsequent reading of the transcript is bound to be heavily influenced by the oral rendition they have just heard. (And in any case we have already seen that it is highly problematic to consider the official transcript as an accurate version of what was actually said.)

The process of converting the written data back into spoken form, then, involves just as much subjective interpretation, guesswork and plain inaccuracy as the reverse process discussed above. The following is an illustration of the process in action:

Example 5.3

> POLICE WITNESS (being interviewer): "We asked you earlier about the will and you say you have no knowledge of that. Correct?"
>
> PROSECUTOR (being Shipman): "That was correct."
>
> POLICE WITNESS (being interviewer): "But I think you said something else that wasn't, well, wasn't quite that answer, 'I've no knowledge of it,' so I'd like you to explain the 'but'..."
>
> PROSECUTOR: Now can we just try that again because the meaning of it may have been lost. The "I've no knowledge of it but..." is a quotation. So can you just read it again, please?
>
> POLICE WITNESS (being interviewer): "But I think you said something else that wasn't, well, wasn't quite that answer. You: 'I've no knowledge of it but...' I'd like you to explain the 'but'."
>
> PROSECUTOR: Please continue.
>
> (Shipman Trial, Day 23)

Once again we must note the caveat that this is the written version produced by the court reporter from the oral proceedings (although the bracketed indicators are my own addition to aid clarity), and of course this is entirely different to the experience of the jury in being present at the time. Nonetheless, the confusion and loss of meaning is clear to see.

The problem is twofold. Firstly, the prosecutor's interjection suggests that the police witness has failed to use the appropriate intonation to indicate that part of his utterance was a quotation. (He, of course, had to guess at the "correct" intonation by interpreting the punctuation added by the transcriber, which in turn was their interpretation of the

original speaker's intonation.) Secondly, the police witness has also omitted a vital word: 'but'. This word, as originally used by Shipman, is in fact the whole focus of the interviewer's turn. The combination of these reading errors results in the exchange making no sense, forcing the prosecutor to go back and seek corrections, thus interrupting the flow of the interview evidence (as also seen in Example 5.2). This leads to the absurd situation that in the middle of this exchange, we effectively have the prosecutor quoting the police witness quoting the police interviewer quoting Shipman. The jury could be forgiven for finding this whole exchange rather difficult to follow, even with a transcript in front of them. It is difficult to see how this can be described as an effective method of presenting the evidence.

5.6   From interview room to courtroom

Putting the various stages together, Figure 5.2 represents the formats in which the interview data are available at each stage of the criminal justice process. Solid lines represent the predominant format at each stage, with dotted lines representing secondary versions. It must be noted that the interview tape is also available in the courtroom, but, as noted above, it is extremely unusual for it to be utilised.

Figure 5.2: Interview format changes through the criminal justice process
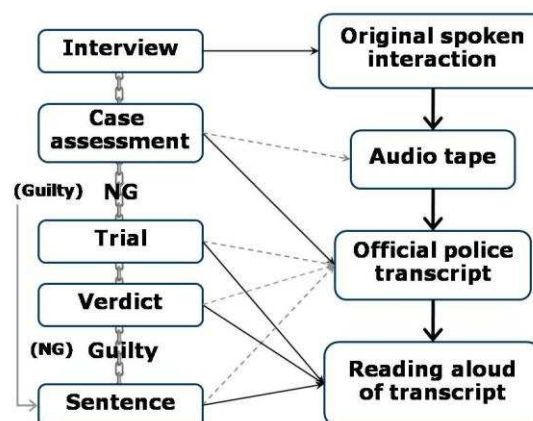
The following example demonstrates how interview data can be affected by this process, to the serious detriment of their quality as evidence. It relates to a crucial point in Shipman's trial which was based on his responses during interview. In response to a specific question Shipman denied that he kept any dangerous drugs, yet drugs were in fact found at his home during a search. The drug discovered by the police was diamorphine, which was the substance found in fatal levels in some of the victims. Not only did this give him the means to commit the murders, but crucially this denial at interview proved that he had lied to the police. This significantly undermined his honesty and integrity, an aspect which had been relied on heavily by the Defence, tapping into the image of trust and respectability typically accorded to family doctors. This undoubtedly deceitful response at interview was therefore hugely significant, as emphasised repeatedly by Prosecution counsel to the jury in both cross-examination and in their closing speech. However, it appears that crucial errors crept in. According to my own transcription from the audio recording, the relevant exchange is as follows:

Example 5.4a – my version

    IR: er re the drugs, (.) you don't keep drugs in er (.) your surgery, (.) is that correct

    IE: → I don't keep any drugs (.) if you're talking about <u>controlled </u>drugs

(Shipman IV1: 409-11)

It is worth noting, in considering the accuracy of this transcription, that this matches Shipman's response to the same question at a different point of the same interview (162-5). Yet the official police transcript apparently puts this differently[15]:

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[15] Unfortunately, access to the official police transcript could not be secured in time. However, the court record contains two different occasions when the interview transcript was directly quoted, which are mutually consistent (Day 23: introduction of interview as evidence, and Day 52: Judge's summing up). I would argue that this strongly suggests that those versions reflect the content of that transcript, but some doubt inevitably remains.

Example 5.4b – police transcript

        IE: → I've given you drugs. Are you talking about controlled drugs?

<div align="right">(quoted at Shipman Trial Days 23 and 52)</div>

There is a crucial difference in meaning here. This version contains a clear implication that Shipman has voluntarily handed over drugs to the police, when in fact he did exactly the opposite: he hid them and lied about it. The official police transcript, which is the version presented to the court as evidence, thus seriously undermines an important prosecution point. But that is not all. Not surprisingly, the Prosecution challenge Shipman about his apparent lie during cross-examination, and use exactly this part of the interview to do so. However, the version 'quoted' by Prosecution counsel is different again:

Example 5.4c – the Prosecution version

        IE: → I have given you <u>all</u> the drugs. Are you talking about controlled drugs?

<div align="right">(Shipman Trial Day 32)</div>

Compared to the police transcript, this contains the addition of 'all'. This version is much more helpful to the Prosecution than the transcript, in that this version would still amount to a lie: Shipman cannot have given the police all the drugs if more were then found at his house. I would certainly not wish to suggest that this was in any way deliberate on the part of the Prosecutor, but nevertheless the addition of this one word is certainly rather helpful to the agenda of the person quoting the 'evidence'.

Taken as a whole, then, this example demonstrates the transformations which interview data can undergo, stage by stage, from interview room to courtroom. It can be seen that by the time the process reached the crucial stage where the jury were actually

considering the interview as evidence in deciding on their verdict, the content had gone

a long way from what Shipman actually said in his interview.

5.7 Conclusion

To conclude, in this chapter we have observed the various transformations that

interview data undergo from the initial interview to their production as evidence in a

courtroom. It is easy to dismiss these changes as unlikely to cause any real interference

in the course of justice. I would not for a minute wish to suggest that Shipman's trial

was unfair, or that his verdict was in any way doubtful. However, when we are

discussing evidence, and factors which have the potential to influence the opinion of a

jury towards a defendant, I would argue that there is no room for complacency. There is

a generally accepted principle that all evidence should be preserved as intact as

possible. At the very least, it is time to acknowledge that this principle currently does

not extend to interview evidence.

6. Analytical Framework for the Case Studies

6.1 Introduction

This chapter will introduce the analytical approach to be taken to the case studies of the following two chapters. As previously discussed, a multi-method approach has been chosen, combining discourse analysis, CA, pragmatics and sociolinguistics, alongside a consideration of the relevant legal frameworks governing the interaction. Having thus started with a research question and a methodological position, a preliminary analysis of the corpus of data was conducted and significant linguistic features noted. Two analytical concepts were felt to fit well with the data observations, and these will be developed further here. The first, 'audience', will be discussed in some depth since this is possibly less familiar in its application at the discourse level. The second, 'narrative', needs much less introduction, but it is still useful to outline the aspects which will be applied here and the particular approach to be taken. The final section of this chapter will set out the four headings or themes under which the findings of the data analysis will be marshalled.

This chapter will draw on the wider corpus of data rather than simply from the interviews used in the case studies, in order to demonstrate the relevance and significance of the chosen features across the data as a whole.

6.2 Audience

So far, we have seen how interview data are transformed by the process of converting the original interaction into a format for presentation to future audiences. Now we will consider how those future audiences, and the purposes for which they use interview data, actually have an effect on that initial interaction as it takes place. Since the

question of audience orientation plays a key role as the basis for much of the data analysis, this will be discussed in some depth in this section. We will consider the identity and purposes of the various audiences for interview data, and the (discursive) relationship they have with interview participants. A preliminary analysis of the data set will then be conducted, in order to examine the influence of these audiences on interview interaction.

6.2.1   Theoretical background

The starting point for this discussion is very straightforward: who you are talking to affects what you say. Indeed Sacks, Schegloff and Jefferson (1974) describe 'recipient design' as 'perhaps the most general principle which particularizes conversational interactions' (727). It is a basic, intuitive part of the communicative act to adapt our discourse according to the person(s) with whom we are trying to communicate. We will also adapt the message according to the purpose held by both sender and receiver in communicating.

To give a simple illustration, a teenage girl will respond to the question: 'How was school today?' in an entirely different manner depending on whether asked by her father or her friend. Each has their own, completely different, reason for asking the question, so the girl will use her knowledge of the recipient, and their relationship, to frame her response accordingly. This is an entirely straightforward matter if she is speaking to them separately. If, however, both her father and her friend were present when the question was asked, her response is likely to be different again. She would need to adapt her response to meet the needs of both audiences, and the end result is likely to be something of a compromise, unlikely to fully satisfy either recipient. It is

worth remembering that the girl's actual experience of her day remains the same throughout.

The problem in the police interview context is that there are several different receivers of the discourse, and all with different purposes, from the initial investigating police officers, to the CPS, to the end users in the courtroom who must ultimately decide the interviewee's fate. This was represented in Figure 4.1. Further, most of these audiences are "hidden", in that they are not immediately present in the initial context. With regard to the different purposes, two points are immediately clear: firstly, they are rather more varied than is generally acknowledged; and secondly, these subsequent uses for interview data are of enormous importance.

In order to investigate how participants in police interviews negotiate these different audiences and purposes, the model of 'audience design' proposed by Bell (1984) will be applied to the police interview context. It will be seen that the interactive situation created by the configuration of audiences in this context in fact presents rather unique discursive difficulties for participants.

6.2.1.1 *'Audience design'*

Bell (1984) proposes that 'audience design' is the most significant factor in determining the speech style adopted by any speaker; 'that persons respond mainly to other persons, that speakers take most account of hearers in designing their talk' (1984: 159). He proposes four distinct audience roles, 'ordered according to whether or not they are addressed, ratified, and known' (ibid.):

'The main character in the audience is the second person, the addressee, who is known, ratified and addressed. There may also be others, third persons,

present but not directly addressed. Known and ratified interlocutors in the group, I term auditors. Third parties whom the speaker knows to be there, but who are not ratified participants, are overhearers. Other parties whose presence is unknown are eavesdroppers, whether intentionally or by chance.'

(1984: 159)

These are represented in the following Table:

'Table 3. Hierarchy of attributes and audi*ence roles'*

	Known	**Ratified**	**Addressed**
Addressee	+	+	+
Auditor	+	+	-
Overhearer	+	-	-
Eavesdropper	-	-	-

<div align="right">(Bell 1984: 160)</div>

Bell also proposes that we 'picture audience members as standing on concentric circles (Figure 5), each one more distant from the speaker' (1984: 159-60):

'Figure 5: Persons and roles in the speech situation

<div align="right">(Bell 1984:159)</div>

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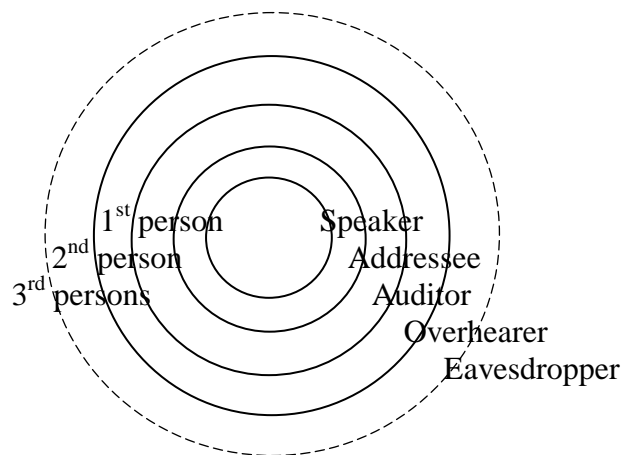
Applying this framework to the police interview context, there are (basically) two speakers, interviewer and interviewee, and a range of audience members to allocate: others initially present in the interview room (such as legal representatives[16]), fellow police officers, the CPS, prosecution and defence lawyers (conflated for simplicity at this stage), then at the court stage either the magistrates or the judge and jury.

According to Bell, 'audience roles are assigned by the speaker' (1984: 160). In the vast majority of speech situations, it would seem likely that speakers in the same situation with the same set of audience members will allocate the same roles to those audiences. But this is not necessarily the case. Although Bell does not directly address this point, his model certainly allows for the possibility that audience roles (and theoretically even the audiences) can be different for participants in the same interaction. We therefore need to consider the position of each speaker separately. Starting with the interviewee, it is proposed that Bell's Table would appear as follows:

Figure 6.1: *'Hierarchy of attributes and a*udience role*s' f*or interviewees

	Known	**Ratified**	**Addressed**
Addressee: Interviewer	+	+	+
Auditor: (legal rep.)	+	+	-
Overhearer: -	(+)	-	-
Eavesdropper: Police, CPS, lawyers, jury, judge, Mags.	-	-	-

The future audiences are allocated as 'eavesdroppers' rather than 'overhearers', as in order to be classed as an overhearer the speaker must be aware of their presence. It is

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[16] Since such additional audience members are present only in a minority of interviews, their position will not be considered here.

proposed that police interviewees are not truly aware of the future audiences for their talk. They are fully aware that they are being recorded and therefore 'overheard' (hence the allocation of a 'plus' in the 'known' column for overhearers), but this is not the same as knowing the identity of those who will listen to that recording (hence the brackets around the 'plus').

For interviewers, it is proposed that the table would appear as follows:

Figure 6.2: *'Hierarchy of attributes and a*udience roles*'* for interviewers

	Known	**Ratified**	**Addressed**
Addressee: interviewee	+	+	+
Auditor: (legal rep.)	+	+	(-)
Overhearer: police, CPS, lawyers, jury, judge, Mags.	+	-	+
Eavesdropper: -	-	-	-

In contrast to interviewees, for police interviewers the future audiences are allocated as 'overhearers'. They belong to the same institutional system, and it is part of the interviewer's professional role to be aware of their interest in, and subsequent use for, the police interview. Further, it is proposed that this institutional significance is enough to cause police interviewers to treat those audiences as actual 'addressees' of their talk. This is therefore an important distinction between the interviewer's and interviewee's position. It can be seen that marking 'overhearers' as 'addressed' causes the layout of the table to differ from Bell's 'standard' version. The additional '+' noticeably breaks the neat arrangement of the original model, providing a strong visual representation of the unusual configuration of audience roles for the police interviewer.

Turning to Bell's 'concentric circles' model, which represents audience roles according to their distance from the speaker, Bell observed when proposing this that '[o]ften in an interaction, the physical distance of audience members from the speaker coincides with their role distance, with addressee physically closest and eavesdropper farthest away.' (1984: 159-60). However, there is an additional factor in police interview discourse which is not accounted for in this model, namely time. Bell's framework assumes (not unreasonably) simultaneous presence at the speech event. But this is not the case for most of the audiences identified for police interviews. In order to account for this, a slightly more detailed version of the diagram is proposed, where within the categories of 'overhearer' and 'eavesdropper' each audience is further differentiated according to their temporal distance from the speech event. (Clearly this does not apply for 'addressees' and 'auditors' who cannot be temporally remote from the initial speech situation.) It will be noted that this still places the audience role as the primary factor, with temporal distance a subordinate category. In other words, a temporally remote overhearer is still more salient to the speaker than an eavesdropper present at the time of the initial speech event. For the police interviewee, then, the 'concentric rings' model appears as follows:

Figure 6.3: 'Persons and roles in the speech situation' for interviewees

Speaker: Interviewee
Addressee: Interviewer
[Auditor: legal rep.]

Eavesdroppers: Police, CPS
Pros & Def lawyers
Judge, jury, Mags.
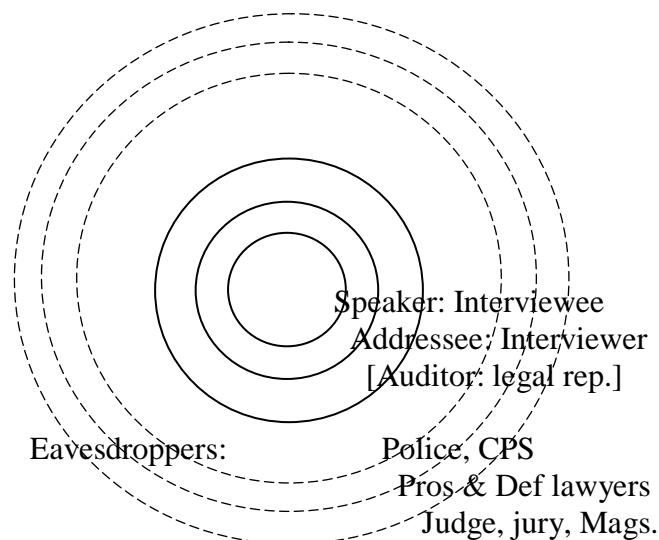
Bell's hypothesis is that as you move further out away from the centre, the influence of that audience on the speaker diminishes (1984: 160-1). This leads to a striking observation. The audiences appearing in the outer ring of the above diagram are from the courtroom context. We thus see that the audiences which are arguably the most significant for interviewees, in that they will ultimately decide their fate, are simultaneously the audiences which interviewees are least likely to take account of during the interview. The consequences of this mis-match could potentially be enormous.

When attempting to apply the 'concentric circles' model to the police interviewer, however, it immediately becomes apparent that this is not a straightforward matter. In the Table proposed above for the police interviewer, 'overhearers' are also addressed. But Bell's model does not allow for an audience to be simultaneously 'overhearer' (3rd person, outer ring) and 'addressee' (2nd person, inner ring). The neat correlation between distance (physical and temporal) from the speaker, and audience role, no longer holds. The model simply does not fit.

However, Bell identifies a communicative situation which is rather similar to ours in its problematic relation to his model, namely media communication. In fact broadcast media share many interesting parallels with police interview discourse, due to the presence of both a physically present audience and an external overhearing audience. They therefore make a useful point of comparison. Rather than undermining his theory, Bell sees such examples as the exceptions which prove his rule:

'The complex and often conflicting web of audience roles is nowhere more evident than in mass communication ... Mass communication inverts the

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normal hierarchy of audience roles (Figure 5) ... Rather than invalidating the addressee-auditor-overhearer hierarchy, however, it is precisely this reordering that is the site of mass communicators' difficulties in designing their utterances.' (1984: 177)

I would argue that the same applies to police interviews.

The next step is to consider how the (potentially problematic) influence of our 'overhearing' audiences is likely to be manifest in the data. Bell's primary focus is on 'style', and hence on quantitative sociolinguistic indicators. However, he acknowledges that '[a]s we move further out to the perimeter of the audience, the quantitative effects of interlocutors become slight or indistinguishable. But while style shift may no longer register, overhearer design can still be manifested in qualitative language choices such as politeness-marked pronoun selection, speech act design, and bilingual language switch' (1984: 176). He cites supporting evidence from several studies, concluding that '[o]verhearer design clearly influences a speaker's style, although it is evident at macrolevels of language rather than in the quantitative shift of microvariables' (177). In other words, if we are interested in evaluating the effect of the 'overhearing' audiences identified for police interviews, it is at the 'discourse' level that we are likely to find our evidence.

6.2.1.2   Broadcast interviews

In fact, several studies of broadcast interviews have examined the influence of their various audiences on the interaction, and specifically at the discourse level. Although these do not make use of Bell's concept of 'audience design', it is still instructive to consider their findings.

Firstly, it has been shown that in that context the overhearing audience is by far the most influential in discursive terms. Greatbatch (1988) notes that 'British news interview talk is designed to be hearable as being expressly produced for the consumption of a broadcast audience' (423). News interviewers thus use discursive strategies which position them not as the primary recipients of the interviewee's talk, but as 'conduits' to the overhearing audience who are the real intended target for the interviewee's talk. Heritage (1985) observes that, through these discursive strategies, 'questioners decline the role of report recipient while maintaining the role of report elicitor. This footing ... permits overhearers to view themselves as the primary, if unaddressed, recipients of the talk that emerges' (100). In particular, Heritage (1985) identifies the practice of 'formulating' interviewee's prior turns as a feature which is 'common in institutionalized, audience-directed interaction' (100), through which an interviewer 'maintain[s] the news audience – rather than the interviewer – as the primary recipients of the interviewee's story' (104).

Clayman and Heritage (2002), building on Heritage (1985), identify 'the production of talk that is targeted for an overhearing audience' as one of 'two major professional tasks of broadcast journalists' (119), the other being the maintenance of a neutral stance. They note that '[t]he audience is, however, only an indirect target of news interview talk. Both interviewer and interviewee address their remarks to one another ... And yet the participants do orient to the presence of the audience in more subtle ways which cast the audience as the intended target of the talk' (120).

However, the only feature of 'interviewer conduct' which they identify in the data to support this is that 'interviewers ... systematically avoid the kinds of vocal acknowledging actions (such as "mm hm", "uh huh", "yes", "oh", "really", and partial

repeats such as "did you") that are very common and densely present in ordinary conversation' (120). They claim that 'by withholding vocal acknowledgements, interviewers decline to act as the primary recipients of interviewee responses and thereby "deflect" them towards the news audience' (121-2). However, although the absence of acknowledgements is an important observation, it can (as they acknowledge: 124) equally, and perhaps more convincingly, be seen to be part of the interviewer's maintenance of a neutral stance towards the interviewee's utterances. With regard to 'interviewee conduct', they note that interviewees also withhold acknowledgement of 'statements describing background information that is known in common by interviewer and interviewee', thus 'contribut[ing] to the management of those statements as in reality targeted at the members of the news audience' (125).

However, although there is some similarity between broadcast and police interviews in terms of their audiences, there is a further level of complexity in the police interview context, and several key differences. Firstly, Heritage observes of the news interviewer that their 'task is to avoid adopting the position of the primary addressee of interviewee's reports' (1985: 115). But the police interviewer is an intended primary recipient: they are part of the team investigating the offence in question, and are (usually) in a position to make direct decisions about charging and detaining the interviewee immediately consequent to the interview (subject, of course, to the agreement of the custody officer). The interviewee thus has more than one 'primary' audience to maintain, and they are situated very differently in relation to the talk – physically, temporally, and in terms of their purpose. Meanwhile the interviewer has an extremely difficult position to maintain, as both 'conduit' and primary recipient of the interviewee's talk – stances which are effectively mutually exclusive.

The second key difference is that in the police interview context the interviewee is, as argued above, considerably less aware of the presence of the overhearing audiences than someone being interviewed in a media setting. Although in both situations the interviewee is aware that they are being recorded, the nature and purpose of those who will listen to that recording is, I suggest, by no means obvious to a police interviewee. Thus, although there are similarities between these discursive contexts in that both represent a site of difficulty in managing the needs of multiple audiences, there are additional factors in the police interview context which make it even more troublesome for participants.

Further, although the specific discursive features discussed in these studies are clearly of interest for the present study, when one considers the overwhelming influence of the intended audience identified at the stylistic level, and the fundamental importance of the overhearing audience in broadcast contexts, it could be expected that the influence of that audience would be manifest in significantly more discourse-level features than those identified. A key aim of the analysis here is therefore to identify further features of discursive 'audience design' in the police interview context.

6.2.2   Preliminary data analysis

In summary, applying Bell's model to the police interview context has identified:

1. significant conflicting demands on interviewers, potentially leading them into difficulties in designing their utterances for several different audiences at once;
2. serious problems for interviewees, who are likely:
   a. to orientate to a different audience model to their interviewer, and
   b. to overlook the most important audience for their talk; and

3. that this is most likely to be manifest in the data in 'macro', discourse-level features.

We shall now undertake a brief analysis of the wider corpus of police interview data to examine the 'audience orientation' of participants, and to establish the extent of the influence of the 'overhearing' (i.e. non-present) audiences on police interview interaction. This will allow preliminary assessment of the significance of this factor, before embarking on the much more detailed case studies. The discussion above pointed to significant differences between the discursive positions of police interviewer and interviewee in this respect. They shall therefore be considered separately, before going on to assess how this affects the interaction between them.

6.2.2.1 Interviewers

Awareness of, and orientation to, the 'external' audiences, is part of police interviewers' institutional function. Their professional experience and training make them fully aware of exactly who will subsequently listen to their talk, and their reasons for doing so. This section will demonstrate how this influences their discourse in the interview room. Turning to my corpus of interview data, analysis reveals a number of ways in which this influence is manifest. The most obvious examples can be categorised as instances of direct and indirect address of those audiences. It should be noted that at this stage all the future audiences will be included under one banner. This will subsequently be refined, but for now it is sufficient to treat them as one generic category.

The following is a typical example of direct address of the future audiences, supporting the proposition that these audiences are very much 'present' in interview discourse:

Example 6.1

SOL: can I just have a look at that {papers} {SOL: small cough} thank you

IR:→   for the benefit of the tape I've handed the exhibit to (.) Mr Shipman's

         legal representative

         (---) {papers}

→   Mr Shipman is now looking at the record himself.

         (---) {papers}

         thank you (.) I'll ask you again doctor (.) where's that information come

         from.

                                                        (Shipman IV2: 286-93)[17]

The police interviewer's two utterances marked here are clearly not addressed to

anyone present. Despite the fact that he is responding to a request from Shipman's legal

representative, and that he subsequently addresses Shipman directly, in these turns he

refers to both those people in the third person. His reference to 'the tape' makes it clear

that he is instead describing what is going on in the interview room for anyone listening

to the audio recording later on in the process.

The following example illustrates a similar phenomenon. Here we see that the

interviewer addresses the interviewee directly in terms of personal reference, but not in

terms of the semantic content of the utterance:

Example 6.2

IR: … the <scene of burglary> is erm, (.) a large (.) er basically children's

         play area, an inside play area. (.) that's near (.) er a garden centre. does

→   that ring any bells with you. (.) okay you're shaking your head.

---

[17] The transcriptions of the Shipman interviews used in this study are the author's own.

IE: (yeah)=

IR:→   =for a no. okay mate. …

<div align="right">(IV 2.26: 61-5)</div>

The interviewer is clearly not describing his actions for the interviewee's own benefit: he knows he is shaking his own head! Such examples are common in the data, often taking the form of requests for the interviewee to confirm information which is patently known to all present. They can be classed as a form of indirect address of the future audiences.

The future audiences thus have a discernible presence in interview room interaction, exerting a direct influence on the interviewers' discourse. The majority of examples in my data are of indirect, rather than direct, address of the future audiences by interviewers. Some of these, like the examples we have just seen, are fairly obvious and indeed innocuous. It seems obvious from our perspective that these are for the benefit of an absent audience, and it is easy to assume that interviewees are also fully aware of this. However, as we shall see, many examples of the influence of the future audiences are rather more subtle than these, and we shall also see that interviewees are apparently not always conscious of their presence as they speak.

There is one further point to note about these examples. These features could be regarded as showing the interviewer orientating to the taped/audio format – in other words, adapting simply to the fact that they are being recorded. But spoken data are recorded in all manner of different contexts, yet these features seem to be strongly associated only with the police interview context. I would argue that it is too simplistic to say merely that interviewers address such utterances to 'the tape'. It goes well

beyond that. It is not the fact that they are being recorded that matters, it is the fact that they will be listened to, and who by, and why. It is thus the audience, not the act of recording, which has an influence. This may seem to be the same basic point, but it involves a very important shift in emphasis. And it has very different consequences for the interaction – precisely because of the consequences of this interaction, namely its use as evidence.

This is particularly apparent in the context of the introduction of exhibits, as in the following example:

Example 6.3

IR: I'm now showing you I'll put it in the middle of the room 'cause your

        solicitor can examine it as well then, (-) it's the exhibit JFA42. (-) and it's

        an insertion. (.) behind (.) your computer there's a ghost image (.) …

(Shipman IV2: 274-6)

Once again we see the indirect address of the external audiences: 'I'm now showing you...'; 'I'll put it in the middle of the room...' – as opposed to e.g. 'here'. In addition we have the formal identification of the item being shown: 'it's the exhibit JFA42'. A description alone would be sufficient for an overhearer to understand the interaction at this point. But something more is required in this context: explicit, unambiguous identification is crucial to the evidential value of any information or response gleaned from the interviewee in connection with this document. The interviewer must ensure that no possible argument can be raised later by Defence counsel in court about exactly what is being discussed here.

The importance of this aspect of the discourse becomes clear when the interviewer gets it wrong. In the following example a suspect is being interviewed following a raid on

her flat, in which quantities of drugs and related items were seized. At this point in the interview, the suspect has admitted that some of the exhibits belong to her, but not others. The items have just been presented to the suspect in a number of different (and individually labelled) exhibit bags.

Example 6.4

IR: (?) cause it would look to me when I- a load of items [IE: mm] are all in
        the same spot, along with the knife of which you say that you used to
        pre- you know, to to to do the stuff,

IE: mmm

IR: (-) that some of it's yours and some isn't, if that's the case then I can
        I'm I'm happy with that fact.

IE: [mhm]

IR: [okay?] I'm trying to clarify that fact, because, (.) you're sometimes
        saying it is, maybe, probably, but there's not a great deal of

→   clar[ity. so let's let's be clear then.]

IE: →   [well that that tha] like that one's there, like I don't know where that
        comes from.

IR: →   but we're not talking [about that.]

IE: [yeah I know] you're not. but I'm just s- like some
        them could of like (.) well some of them must have been in [(?)]

IR: →   [fine,] that's
        in a different space. that's not an issue. but,

IE: →   so that that may that may be mine …

(IV 2.30: 135-52)

It is immediately apparent that the potential admission in the final line is meaningless to anyone who was not present in the interview room. The interviewer fails to appreciate this, and the evidential point is lost. It can be seen that this links back to the earlier discussion on format: vital content is "lost in translation" in the conversion of the data into an audio format. The problem here is that the deictic 'that', used repeatedly here, is meaningless once the link to its point of reference is broken. Although it is possible to deduce what was probably being referred to here, that is insufficient evidence to support a conviction, as any Defence counsel would have exploited in court.

The consequences at the trial stage are illustrated very clearly in the following example. This is taken from the Shipman trial, during the introduction of an interview as evidence. The police witness who is reading out the transcript was also the interviewing officer. They have reached a point in the interview where Shipman was asked about the seating arrangement when a document was signed by witnesses in his surgery.

Example 6.5

POLICE WITNESS (being interviewer): "OK. Where was Mrs. -- I know Mrs. Grundy was in the surgery, but she-----"

PROSECUTOR (being Shipman): "She was sat -- if you're the witnesses stood there, Mrs. Grundy would be sat here."

Now just pause. Can you just explain to us how he was describing the configuration, who was seated where, or can you not remember?

POLICE WITNESS: I seem to recall it was close proximity, but I can't recall the configuration.

PROSECUTOR: Continue, please.

(Shipman Trial, Day 23)

Once again, deixis ('there'; 'here') misfires due to the audio-only format. This was potentially very important as it relates to the forging of Mrs Grundy's will. This forged will made out Shipman to be the sole beneficiary, sparking the investigation which ultimately led to Shipman's conviction for her murder. Briefly, what is at issue here is a document which was passed between the people present in this room at the time being discussed. A great deal depends on who had to pass what to whom, as fingerprints were subsequently found on a document which may or may not have been this one. Another important aspect is who was able to see the contents of this document from where they were sitting, as this is also disputed. The seating arrangement is therefore significant. The interviewer should have been well aware of this – it is presumably the reason for asking the question – and so should have clarified this at the time. But he failed to do so, and as a result the evidential value of Shipman's response is lost.

The examples in this section have illustrated the difficulties facing interviewers who are expected to address their talk to both the initial audience in the interview room, and the external audiences, at the same time. Or, to couch it in different terminology, it demonstrates the difficulty of being both primary recipient and conduit to another audience simultaneously. They have also shown how serious the consequences can be if interviewers fall short of accomplishing this problematic communicative task. It seems that interviewers are occasionally caught between the competing demands of the interview as an evidence-gathering exercise, and the interview as evidence in itself. Although these should not be mutually exclusive, they do require a different focus. And, going back to Bell's model, it is far more 'natural' to focus on a temporally and physically closer audience (such as those physically present in the interview room, or fellow investigative officers to whom any missing information can easily be explained

in the discussions immediately after the interview), than it is to focus on the much more physically and temporally remote court audience. And it is extremely difficult to focus properly on both at once.

6.2.2.2   Interviewees

So far, we have seen that interviewers do adapt their discourse for the external audiences. However, this is still a difficult task for them to manage, leading to occasional oversights. But if this is difficult for interviewers, how do interviewees fare? Unlike interviewers, interviewees do not have professional experience and training to guide them through the police interview context. Instead they enter the process with only their general knowledge, and/or their own previous experience of the criminal justice system. Yet even the most 'experienced' criminal will only have spent a very limited amount of time in an interview room. Other than this scant prior knowledge, interviewees are reliant on the information given to them by the police (and their legal adviser if they have one) at the police station. We have already seen the form that this takes in Chapter 4: it consists of very limited information given by the custody officer, and in the wording of the caution. Theoretically, then, they have been made aware of the future audiences, and uses, for their interview discourse. But is this sufficient for them to moderate their discursive behaviour in the same manner we have observed for interviewers? Do interviewers assist them in any way with this task?

In fact, in striking contrast with interviewers' behaviour, I found no examples of direct or indirect address of external audiences by interviewees in my data. Instead, interviewees address their talk solely to the person in front of them, i.e. the interviewer.

This can be observed in Example 6.2 above. Here, the interviewee's response to the question takes the form of a visual shake of the head, followed by the verbal 'yeah'. His answer is clearly intended to mean 'no', but the part of his response which conveys this meaning is accessible only to those physically present. The interviewee is patently not paying attention to how this will sound later on to the external audiences, even when the interviewer seems so obviously to be addressing exactly that point by describing his actions.

The following is a further example of what can happen when an interviewee fails to take the future audiences and their purposes into consideration. Here, the consequences for the interviewee are rather more significant. This interview relates to a burglary. Those present in the interview room are looking at closed-circuit television footage of the scene, and still photographs taken from the footage. These show a man committing the offence, and the police interviewer is alleging that it is the interviewee.

Example 6.6

IR: can you (.) tell me whether or not you were involved in this offence,

IE: like I say I'm not saying anything at this time.

IR: right,

IE: →   if (.) it goes to court, or (.) whatever the lawyer sees fit, (.) by looking at

        the evidence that you've showed me, then (.) I will decide on what to do

        then. (.) in court.

IR: okay.

        …

IE: t- to be honest, (.) the photographs don't look that good. (.) er and, (???)

        show the lawyer them.

IR: right,

         …

IE: because to me, (.) all as that shows is, (.) someone who is an average

         build, (.) looks to me like between brown and black hair, face you

         cannae make out because it's blurred,

         [there's] (nae) eyes, (nae) nose, [(you can] see)

IR: →   [okay,]   [cause]   because what we're

         doing now is arguing whether or not (-) erm (.) whether or not you feel

         there's enough (.) evidence (.) to get you through a court. (.) but I'm

         asking you a simple question, (.) which is, have you committed this

         offence!

IE: →   well like I say, (.) I'm not saying anything at this time! I'll let the lawyer

         decide.

IR: right. okay…

<div align="right">(IV 2.26: 251-99, edited)</div>

This is a very interesting example. We know that this interviewee is a "regular", in that

he is just out of prison and is already known to the police. He shows knowledge of the

system and clear awareness of the future court context. But what he apparently fails to

take into account is that those present in that future context are also an audience for his

talk. He thus fails to tailor his discourse for that audience. It is the interviewee who

raises the subject of the evidence that will be presented in court. But he has completely

failed to take into account that this interview is itself evidence, too. His point here is

that the video evidence is not enough on its own to get a conviction. This may well have

been the case. Yet I would argue that for the audience listening in court and attempting

to reach a verdict, the video combined with these responses at interview are now almost certainly enough, regardless of the quality of the video. He has effectively incriminated himself. (It is worth noting that he had waived his right to legal representation.)

This example fits well with the 'audience design' arrangement for interviewees proposed above (Figure 6.3). It illustrates how interviewees orientate almost exclusively to the audience closest to them (i.e. the interviewer), and address their talk least to the most remote audience (i.e. the court). What is particularly striking about this example is that it shows an interviewee being explicitly aware of a remote future context and audience, while simultaneously failing to consider them as an addressee. This is even more striking given that here the interviewee also demonstrates his awareness that the court is ultimately the most important audience in the process of which this interview is part. It seems that even this is insufficient to override the interviewee's in-built 'audience design' model, whereby he sees the interviewer as the primary – perhaps only – recipient of his talk. As clearly shown in this example, for police interviewees this is a potentially dangerous oversight.

It is interesting to note that this closely resembles an example cited by Bell in support of his 'audience design' model, specifically as a case illustrating 'the difficulties of designing utterances for a mass audience' (Bell 1984: 177). Solomon (1978) analyses an interview with Jimmy Carter for Playboy magazine during the 1976 presidential campaign, at the end of which he made certain comments which became the subject of some controversy. The comments were made 'after the formal session ended as Carter was leaving the room' (Solomon 1978: 176), and were rather less guarded than the rest of the interview, concerning topics such as adultery and lust. Solomon shows that, in addition to the subject matter, this part of the interview is also stylistically very

different from Carter's previous impersonal, 'detached, deliberate tone' (177).

Attempting to account for this discursive change, Solomon concludes that Carter found

himself in 'a complex rhetorical situation marked by several conflicting elements'

(173). She notes that:

> '... Carter was talking with Scheer [the interviewer] on a one-to-one basis in
> his home in Plains, Georgia, although the ultimate audience was both more
> extensive and more distant. Carter had, in reality, two audiences – Scheer,
> whom he knew, and the general public, which was not physically present. The
> tone of the first segment of the interview suggested a keen awareness on
> Carter's part of the impact of his comments on the larger public... But the tone
> of the final section, although inappropriate for the broad readership, was
> perfectly acceptable in a personal exchange between two adult males. The
> problem ... of gearing remarks to both audiences was substantial.'

Going back to Example 6.6, the interviewee appears to have been caught in exactly the

same trap of addressing the needs of the immediately present audience and context,

while overlooking the wider context in which his talk will subsequently be received. At

this stage of an investigation, the Defence are perfectly entitled to challenge the strength

of the prosecution evidence. Any defence solicitor would be making exactly the same

points as the interviewee does here, probably to the same officer on the same day. But

although that is entirely appropriate in the immediate contemporaneous context of the

interview, that is at the pre-charge evidence-gathering stage of the judicial process, it

takes on a completely different light when re-contextualised as evidence in itself much

later in that same process. For that later audience and context, this 'legitimate

challenge' now sounds incredibly incriminating.

It is worth noting two further points here. The first is that in both these examples the interviewer gets exactly what they want, to the considerable detriment of the interviewee: the journalist gets his 'big scoop' with all the accompanying publicity and sales, and the police interviewer gains evidence to assist in the criminal investigation. In both these situations the needs of the external audiences are far more important professionally to the interviewer than those of their interviewee, and they ensure that those needs are met. Unfortunately for both interviewees, nobody is attending to their needs - including, apparently, themselves.

Nevertheless, it is equally clear in both examples that it is the interviewees' own actions that lead them into difficulty. They are both authors of their own misfortune, through a failure to consider all those who will ultimately receive their talk. Their words are entirely their own, and thus arguably reveal their 'true selves'. In the context of an investigation into a criminal offence, it may be argued that this is entirely legitimate, if one considers that a primary purpose of the interview is to establish the 'truth'. However, it effectively violates an important legal principle, namely the privilege against self-incrimination[18].

In summary, in line with the predicted model for police interviewee 'audience design' proposed above, interviewees have been shown to orientate almost exclusively to the physically present audience for their talk, namely the interviewer, and on the immediately contemporaneous context of the interview as part of the initial evidence-gathering stage of the judicial process. They almost entirely fail to consider the more

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[18] This rule means that a person cannot be compelled to give incriminating evidence against themselves. Thus a person can refuse to provide certain information or answer certain questions if this would in itself provide evidence which could lead to their conviction. Of course, people frequently waive this right without ever realising it existed.

remote but highly significant audiences for their talk later on in the process, potentially to their considerable detriment.

6.2.2.3 Interviewer-interviewee (mis)communication

So far we have examined the discursive behaviour of interviewer and interviewee independently, and observed key differences in their audience awareness and orientation. We shall now consider how this affects interaction between them.

We have seen that interviewers have a difficult professional task to manage, in that they are expected to address both their initial, physically present audience as well as attending to the wider institutional requirements of the external audiences. Examples 6.4 and 6.5 have shown that when an interviewer focuses on the interaction with the interviewee, the communicative link to the future audiences can be broken, and the evidential purpose frustrated. By the same token, if the interviewer focuses too heavily on directing his talk to the future audiences, communication in the actual interview room can become problematic. This can be seen in the following example.

Example 6.7

IR: from your records, (.) which you've had access to for some time now, (-)

        can you point out where the visits you made (.) to Mrs Mellor (-) are (.)

        indicated. (.) on them records.

IE: which visits are we talking about.

IR: well you said there was a visit in the morning, (.) [you then-]

IE: [nn no] I said that she

→   came to surgery. (.) it's here it's quite clear.

IR: →   can you just show me where that is.

IE: →   hhh I thought that was perfectly clear. the 11th of the 11th here.

IR: →   so that's on page nine, (--) and it's the second entry (.) 11/5/98, (.)

angina pectoris. (--)

In this example we see that the interviewee fails to understand the interviewer's apparent inability to see what he is referring to, namely the document in front of both of them. He has been asked to point out where his visits are indicated on this document, and (as far as he can see) he has done so: 'it's here it's quite clear'. But although this is a sufficient answer for the interviewer personally, it is not for the overhearing audience, and so the interviewer makes what appears to the interviewee to be an entirely superfluous further request: 'can you just show me where that is'. The audible sigh suggests exasperation on the part of the interviewee, yet the repetition of his response that the answer is 'clear', and the repeated deixis ('here'), show that he has still failed to understand the underlying point of this exchange – that he is being asked to address the future audiences, not the present one. In the end, having failed to elicit the answer he wanted from the interviewee, the interviewer himself makes identification explicit: 'so that's on page nine…'.

We thus see that in terms of ordinary communicative principles, the interviewer's turns here do not make sense to the interviewee, leading to a breakdown in understanding between the participants. The interviewer and interviewee are effectively addressing different audiences at the same time. The interviewee is talking directly to the interviewer, but the interviewer is mainly directing his talk to the external audience. It is therefore not surprising that this leads to miscommunication between them.

However, the situation is not entirely that simple. Straight after this exchange, the interviewee makes a very interesting reference to the tape:

Example 6.7 (cont'd)

IR: so that's on page nine, (--) and it's the second entry (.) 11/5/98, (.) angina pectoris. (--) I don't understand what these terms mean here. perhaps you could explain them for me. is this the right place I'm looking at

IE: yes that's the right place you're looking at, and I read that record out to

→   you on the previous tape. and if you wish I'll do it again.

(Shipman IV2: 123-7)

Note that he does not say 'I read that in the previous interview', as might be expected. So, paradoxically, he is clearly very aware of the fact that his words are being recorded, but is nonetheless apparently still only considering the interviewer as the audience for that recording – as indicated through his pronoun choice here. This is a neat illustration of the point made earlier, that awareness of being recorded is not the same thing as awareness of future audiences, and that addressing talk to 'the tape' is not the straightforward corollary of treating future audiences listening to that tape as addressees. It also once again shows that simply making interviewees aware of the existence of external audiences for their talk does not cause them to treat those audiences as addressees or to orientate their talk to their requirements. This is a vital communicative distinction.

6.2.2.4   Summary

In this section we have identified a complex configuration of audiences for police interview interaction. Using Bell's 'audience design' model, we have seen that this configuration differs in significant ways from more common interactive situations, presenting unusual challenges for participants. Further, the proposed configuration

suggested different audience orientation on the part of interviewer and interviewee, a hypothesis which is borne out through analysis of the data. It has been shown that interviewers do make attempts to address the future audiences during the interview, and moderate their discourse accordingly. Yet this is not an easy task to manage, and we have seen that they do occasionally slip up, seriously affecting the quality of the interview as evidence as a consequence. This is a result of their institutionally ambiguous role as both primary recipient of the interviewee's talk, and as elicitor of that talk for the future audiences. Meanwhile, we have seen that interviewees do not treat the future audiences as addressees of their talk, but instead focus purely on the immediately present audience and temporal context. This not only leads to miscommunication between participants, but can also be extremely detrimental for the interviewee's position in the wider context of the judicial process of which the interview is but one part.

Further, using our adapted version of Bell's 'concentric rings' model, we have identified the court context as the most distant from the speech event physically and temporally, pushing it to the 'outer rings' in terms of interviewees' orientation to it as an audience, but as simultaneously the most important audience in terms of the consequences of the interaction. It is, I would argue, this complete reversal of the ordinary communicative model that makes it so difficult for participants to adapt to the police interview audience configuration. Interviewers fare better due to their professional experience and training, while interviewees generally fail to account for this altogether.

6.2.3   Prosecution v Defence

Thus far it has been established that interviewers do address the future audiences and their purposes during interview interaction. I now wish to refine that further and suggest that they are not addressing all future audiences, but generally only the prosecution audiences (by which I mean their fellow investigating officers, the CPS, and the prosecution legal team at court). The interviewers' focus is, I would argue, on ensuring that there is enough evidence to support the interviewee's charge, prosecution, and conviction. The problem with such a focus is that by being directed (even subconsciously) towards producing one particular outcome, it is less open to other possibilities – such as the interviewee's innocence –and hence not fully 'investigative'.

Meanwhile, interviewees appear to orientate only to the interviewers as recipients of their talk. Combined with their discursive position as responder to the interviewers' questions, and the audience orientation of interviewers just proposed, interviewees' talk may thus end up being inadvertently oriented to addressing the needs of the prosecution audience while their own defence needs go unmet or even undermined. It is therefore proposed that the Defence are the neglected future audience for police interview discourse. (By this I mean the interviewee's defence legal team during case preparation and at court, and their own later position as a defendant in court). This fits with the findings of other research on the police interview context which has shown that the prosecution version of events is privileged over the suspect's story (e.g. Auburn et al. 1995, Heydon 2005, esp. 116ff.). What I will explore in the case studies is the theory that this is a consequence, at least in part, of the different audience orientation of participants.

6.3   Narrative

Another analytical framework which will be applied in the analysis is that of narrative. This needs considerably less explanation than 'audience', and will be dealt with much more briefly. This section will outline the aspects which have been selected as of particular interest here, and suggest how narrative models are likely to fit – or not – with the police interview context. As already discussed in the review of the relevant literature in this area, there is a link with the preceding discussion: stories are always told for an audience. An analysis of the types of narratives found in the police interview context is therefore likely to advance our consideration of the influence of audience on participants.

As previously noted, narrative is often invoked in studies of legal contexts, with the process classically portrayed as pitting one person's word against another's, of competing stories. Most of the narrative focus has, understandably, been at the trial stage. The courtroom is the ultimate arena where the opposing stories are recreated and set against each other, making narrative models particularly appropriate analytical tools in that context. Given that the police interview can also be said to involve two competing versions of the same event, it is likely that narrative will also be of useful application in this context. However, I would suggest that a slightly different approach is required.

If the criminal justice process is viewed as a whole, as is being advocated in this study, it can be seen that the interview and the trial occur at very different stages of that process. I would suggest that this entire process can also be viewed as a process of story construction, beginning with an initial event (the 'crime') which forms the basis of

subsequent tellings and re-constructions, and ending (often months later) with the ultimate performance of a final, polished version in the courtroom. From this perspective the courtroom version is no mere casual recounting of a tale, but more analogous to a formal theatrical performance. The interview, belonging to a much earlier phase of the same process, can thus be described as part of the formative, drafting stage of constructing the courtroom stories.

To link this to the legal framework, at the interview stage the 'facts in issue' for the case are still being negotiated. If details are agreed during the interview they will be considerably less important in the courtroom (and for the whole subsequent investigation), as they will not need to be subject to argument or extensive proof. By the same token, even seemingly minor details can become central and pivotal if they are not agreed. For example, in one of the cases to be studied the offence involved is rape. Since the suspect accepts during the course of the interview that sex took place, the actual sexual act will become (relatively) unimportant from then on, since both sides agree that it happened. This may well thus become almost incidental to the courtroom story, whose focus will now be elsewhere. However, if the suspect had not accepted this during interview, it could be expected that the majority of the Prosecution and Defence's presentations at trial would have been taken up with evidence about this one aspect.

Going back to the narrative analogy, it can be seen that by the courtroom stage the prosecution and defence stories are fully-formed and crafted. On the other hand, at the interview stage they are very much still taking shape. Key story elements such as the plot, the characters and their roles, and the aspects which are most relevant and worthy of inclusion, are all in the process of being established. Indeed this earlier part of the

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process directly shapes what will appear in the final, completed and polished courtroom versions.

Thus I am suggesting that the most appropriate way to consider the interview in narrative terms is as part of a process which is ultimately intended to produce the later courtroom narratives, rather than treating it as an isolated site of narrative production in and of itself. This hopefully represents a more fitting working hypothesis of what is likely to be observed in the interview data. Further, it fits well with the overall principle of this study of viewing the interview as just one part of a much wider process, and not as an end in itself.

Several specific aspects of narrative construction in the interview room will be considered here, based on the following observations. Firstly, leading on from the above discussion, it is clear that the version which emerges from the interviewee during the interview will have serious consequences for the future course of the case. This takes on even greater import due to s.34 CJPOA 1994, whereby (negative) inferences will be drawn in court if elements of the defence were not mentioned at this earlier stage. In narrative terms, in order to be able to produce a legally effective story in the courtroom, each element of that story must be covered during the interview in order that it will be available for the final finished version. Interviewers will be well aware of this, but interviewees probably less so. The analysis will address how this is managed by participants, especially given the interviewer's institutional role as elicitor of the interviewee's version of events.

This leads to another aspect, namely the extent of the interviewer's influence over the interviewee's account. The interview is commonly accepted within the legal world to be

the interviewee's opportunity to put forward 'their side of the story'; to give their own version of events in their own words. This study will examine the extent to which this is really the case. The discursive dynamic of an interview means that the participant pre-allocated the role of questioner will inevitably have a large degree of control over the structure and topics of the exchange (Greatbatch 1986). Yet the details of the story must come from the other participant, the responder. They are thus mutually dependent in creating the story. The idea of narrative co-construction therefore provides a useful analogy for examining the extent to which the interviewer influences and even co-authors the interviewee's account.

It will be recalled that other studies of police interview contexts, albeit ones in which the purpose was the production of a written interview report (Komter 2002, Rock 2001), have already shown the extent of the police interviewer's influence over accounts elicited from interviewees, and that it is the interviewer's interests which ultimately determine which aspects of the interviewee's version are included in the formal report. Yet in those cases the original interaction, and hence the process of co-construction, is not accessible to the judicial process. One of the purposes of introducing the recording of E&W suspect interviews was to ensure that such explicit editing and manipulation by interviewers would no longer take place. Yet although this makes it highly unlikely that those more blatant manipulations and omissions will be observed here, the questioner/responder roles are the same, as is the interviewer's overall agenda. The interviewer's potential discursive influence will therefore be just the same. What we will be looking for, then, are much more subtle processes of co-construction.

It must be emphasised that it is not being suggested that this influence is likely to be intentional on the part of interviewers, but that it is to some extent a natural consequence of the interviewer's institutional and discursive position, and of commonplace discursive phenomena. Yet the fact that an account heard directly from an interviewee's lips may nonetheless not be their free, unfettered version is not one that has been recognised by the legal system. This is precisely why close discursive analysis is desirable to uncover this aspect of interview interaction.

A further specific aspect which will be addressed here is the process of identity construction. Leading on from other studies of the discursive construction of identity discussed in Chapter 2.3.4, it is posited that identity is not a fixed, immutable characteristic of an individual but is something that is projected in different ways at different times according to the person being addressed and the purpose the speaker has at that particular time. It is, in other words, a discursive feature which is heavily dependent on the audience and the context, and is therefore of particular interest here. In the police interview context, the 'character' and role of the interviewee will be central to both the prosecution and defence versions of events currently being constructed, and hence the interviewee's identity is likely to be a key site of negotiation between interviewer and interviewee. Narrative will therefore again provide a useful approach in examining the discursive tactics employed by interviewees who are likely to want to project a certain self-image during a police interview – namely that of an innocent person – and those of the interviewers who are likely to attempt to construct a rather different identity for them. We will also consider the construction of other identities where relevant to the unfolding accounts. A further aspect to consider is the identity interviewers ascribe to themselves, especially in terms of their role in the wider

judicial process. Thus the question of identity can be seen to operate on two levels: one within the 'story-world' of the events being reconstructed, and another in the immediate social reality of the interview room itself (Gibbons' (2003) 'secondary' and 'primary' reality' respectively: 129ff.).

To summarise, this study will include a focus on the process of narrative construction in the police interview context, both in terms of the stories being developed and the identities being created within them. It will examine how this is achieved discursively and interactively, focusing not just on the interviewee but also on the interviewer's role, and particularly on the extent to which this can be described as a process of co-construction. Further, the emphasis will be not just on the stories being told, but on who they are being told for – in other words, the intended audience for the narratives which are being constructed.

6.4 Structure of the analysis

Leading on from the above discussions and combining the two main themes, the analysis will be structured under four analytical headings: audience orientation, offence construction, identity construction and story co-construction. The first heading, **'audience orientation'**, will apply the findings of section 6.2 in order to establish whether the discursive principles identified there are also at work in the interview being analysed. Particular attention will be paid to identifying differences in audience orientation and awareness between interviewer and interviewee. Audience orientation can in a sense be seen as an overarching factor for all the subsequent headings, which can to some extent be described as focusing on specific features of the interaction which are particularly influenced by the audience orientation of participants.

'Offence construction' refers to the way in which the interview is influenced by, and indeed structured around, the elements of the offence involved, resulting in offences effectively being 'constructed' discursively through the interview interaction (cf. Baldwin's 'construction of proof', 1993: 327). There is potentially a substantial difference in knowledge here between interviewer and interviewee. Interviewers are fully aware of the precise elements of the offence which need to be established, whereas interviewees are (generally) not. This means that interviewees are to some extent unaware of this fundamental framework for the interview. They are, however, acutely aware of the fact that they are being accused. Combining this with the different audience orientation of participants, it is proposed that interviewers orientate to this 'offence' framework by attempting to fit the matters described into the elements of the offence, in order to satisfy the requirements of the prosecution audiences who will subsequently use the interview as evidence. Given their discursively more powerful role as questioner, this means that this agenda will largely dictate the structure and topical sequence of the interview. Meanwhile interviewees will orientate merely to the fact that they are being accused by the interviewer, even if they do not know the precise nature of that accusation. A further consequence, given the interviewee's discursive role as responder to the interviewer, is that the interviewee will thus also only address the elements which make up the prosecution case. What is likely to be missing, then, is any orientation to the elements which may constitute a valid legal defence.

We will then move on to two elements of narrative construction, beginning with **'identity construction'**. Clearly the self-identity constructed by interviewees in terms of their role in the events in question will be of primary interest, but the discursive construction of the identity of others relevant to the story will also be significant,

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especially in terms of mutual definition and positioning. It is proposed that interviewers are likely to have a significant role in this process, albeit attempting to construct rather different identities than the interviewee. Further, given the proposed lack of awareness in interviewees of the most important audiences for their talk, it is suggested that interviewees are likely to misjudge the most appropriate and effective identity to project, with potentially serious consequences.

Finally, we shall examine the process of **'story co-construction'** through the interview. Again as discussed above in section 6.3, it is proposed that the interview represents a formative drafting stage of the process of constructing the ultimate prosecution and defence versions of events, with all aspects to some extent under negotiation. Since the interview is not an unaided monologue but a dialogic process, it will be argued that the account which emerges from the interviewee is effectively jointly produced by the interviewer. Further, the interviewer has the dominant discursive and institutional role, and, it is argued, a prosecution-focused agenda. This section will therefore focus on examining the likely (although perhaps unintentional) influence of the interviewer in constructing what is generally presented as being the interviewee's own version of events.

7. Case study 1: Assault and resisting arrest

7.1 Background to the interview

This interview relates to an incident which took place at the interviewee's mother's home on the previous day. The interviewee (IE) and his mother had had a falling out which had resulted in him being asked to leave the family home a week previously. They then had an argument on the phone the day before the interview, during which he (by his own account) threatened to smash her windows. Later that day he went round to the house, he claims to collect his belongings. His mother and her boyfriend were present, and possibly a number of other people. A police car went past, the mother flagged it down, and the situation became heated. Although the precise details cannot be known, it can be stated with some certainty that the officer attempted to arrest the IE, the IE tried to get away (from the officer or from the situation as a whole), and then there was a struggle of some sort between the IE and the officer which resulted in both men falling through a fence. During this melee, the mother picked up the officer's truncheon and hit her son over the head with it, causing him to lose consciousness. The IE also alleges that her boyfriend punched him shortly before this, but this is not corroborated. The IE was taken to hospital for treatment, and subsequently arrested. It is alleged that the IE struggled violently to resist arrest, causing injury to the officer, and that the other people present were simply assisting the officer to restrain the IE, whom they considered to be assaulting the officer. The IE, on the other hand, claims that he had done nothing wrong, had no intention of causing any harm to his mother or her house, that he did not realise that he was being arrested but simply wanted to get away from the situation. From his point of view he was being assaulted by a number of people and therefore attempted to get away from them. The interview took place in July

2000, is conducted by one male interviewer, and is 22 minutes in duration. A full

transcript can be found in Appendix A.

A factor worth noting with regard to this particular interview is that it is part of the data

provided via a force solicitor, implying that some aspect of this case resulted in a

complaint or internal investigation. It is not possible to know what this related to, or

what the outcome was. It is tempting to speculate, especially since in my analysis I raise

questions about potential defences available to the IE connected to the injuries he

himself sustained during his arrest, but this is a dangerous path to tread. I raise it here

for the sake of completeness, but also explicitly to discount it as a factor influencing my

analysis.

7.2   Legal framework[19]

An immediately noticeable feature in this interview is that it is not entirely clear exactly

what potential offences the IE is being interviewed about. At the start of the interview,

the interviewer (IR) states that '...just before we came hin- in here, (.) I arrested you, (.)

in relation to the assault on the police officer from the incident yesterday, (.) and in

relation to a resisting arrest' (52-55). This is not very specific however, and could

indicate a number of different offences, namely:

- s.89(2) Police Act 1996 – resisting or wilfully obstructing constable;

- s.89(1) Police Act 1996 – assault on constable in execution of duty;

- s.38 Offences Against the Person Act (OAPA) 1861 – assault with intent to resist
  arrest;

- s.47 OAPA 1861 – assault occasioning actual bodily harm (ABH).

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[19] The legal position set out here is that which stood at the time of the interview, not at time of writing, although there are not known to be any differences. It is sourced from the 2000 edition of *Blackstone's* Criminal Practice.

The exact offences would, of course, have been spelled out to the IE at the point of his arrest (although whether the IE would have appreciated the subtle legal differences between these offences is another matter.) We shall consider the basic principles and differences between these offences shortly.

What is interesting is that the IE has (apparently) not been arrested for any offences regarding his conduct towards his mother. Yet on several occasions the IR does seem to be investigating potential offences relating to alleged threats made to her. This is, of course, what led to police involvement at the scene in the first place. Indeed, the IR reads extracts from the arresting officer's statement in which he states that he initially 'received a complaint that you have made threats to commit damage. (.) o- (.) or- t- to kill the occupant' (378-9); and that the officer then attempted to arrest him with the words 'I am arresting you on spus- on suspicion, (.) of making threats to commit, (.) criminal damage, (.) and to prevent a breach of the peace.' (399-401). Given the IE's subsequent unconsciousness it seems that this arrest was never actually effected.

The IE is thus effectively being interviewed about a number of potential offences, all at the same time, but he has only been arrested and cautioned in respect of some and not others. This, I would argue, makes it difficult for the IE to comprehend exactly what he is being accused of in this interview, what aspects of the event are most relevant and which he should be orienting towards, and what he needs to be raising in his defence. It is of course the case that the final charging decision will only be made after the interview stage (as discussed in Chapter 4), and hence that all aspects of events should be explored here. But it is equally true that the IE should know exactly what offences he is being interviewed about in order that he can make an adequate response.

The main legal framework for this interview, then, relating to the alleged assault on the police officer, is that of 'offences against the person'. This is a wide category of offences, largely stemming from the Offences Against the Person Act 1861, but in this case supplemented by specific offences from the Police Act 1989 relating to police officers acting in the course of their duties. All the offences listed above are potentially available on the facts, and so the IE could end up being charged with any of them depending on what comes out of the police investigation. A key part of this, of course, will be this interview with the suspect. Therefore a key goal for the IR here is to establish which (if any) of these offences is the most appropriate to charge the IE with. The main factors in this decision are that (1) some of these offences are, legally speaking, harder to prove than others (see more below), and (2) some carry much harsher sentences on conviction. These factors will need to be weighed against each other in order to establish which charge stands the best chance of resulting in a conviction leading to a sentence appropriate to the circumstances. It is therefore imperative from a prosecution perspective that all relevant information, including that which might lead to a potential defence for a particular charge, is elicited during this interview.

We shall now consider the elements that the Prosecution would need to establish for each of these offences (slightly simplified to exclude parts irrelevant to this case), in ascending order of seriousness. It should be noted that criminal offences are generally divided into two key elements, the actus reus and the mens rea. As a rough generalisation, the former refers to physical deeds, the latter to the accompanying state of mind of the person carrying them out.

s. 89(2) Police Act 1989 – Resisting or wilfully obstructing constable (maximum 1 month):

- 'A defendant obstructs a police constable if he makes it more difficult for him to carry out his duty[20]. While 'resisting' implies some physical action, no physical act is necessary to constitute obstruction.' (Blackstone's 2000: B2.28)

- 'A constable is not acting in the course of his duty, and a person cannot therefore be liable for obstructing him in the course of such action, if what he is doing is carrying out an arrest which is in fact unlawful[21].' (ibid.)

- Note that 'obstruction' must be proved to be 'wilful'.

The more serious available offences all involve having to prove that an 'assault' took place, which has the same definition in each case:

Assault:

- actus reus: Victim (V) must apprehend the imminent application of unlawful force upon him[22]. nb.:

  - The force does not need to be actually applied;

  - The force must be unlawful – it may be lawful on the basis of e.g. self-defence, consent, crime prevention, etc.

- mens rea: it must be committed intentionally or recklessly. The test for recklessness is subjective[23], which means it depends on the defendant's own personal understanding of the situation, not what a 'reasonable man' would have understood or thought in the same circumstances.

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[20] Hinchcliffe v Sheldon [1955] 1 WLR 1207, obiter
[21] Edwards v DPP (1993) 97 Cr App R 301
[22] R v Ireland [1998] AC 147, per Lord Steyn at p.161
[23] 'Cunningham recklessness': R v Cunningham [1957] 2 QB 396

s.89(1) Police Act 1989 – Assault on constable in execution of duty (maximum 6 months):

- In addition to a basic assault, it must be proved that V is:

  (a) a police officer (OR a person assisting them); and

  (b) acting in the execution of their duty.

- This covers any duties, not just effecting an arrest.

- Assault or unlawful arrest would '[take] the officer outside the course of his duty[24]' (Blackstone's 2000: B2.23) – in which case the defendant (D) could not be guilty of this offence.

- 'The defendant need not know, or even have reason to suspect, that his victim is a police officer or that the officer is acting in the execution of his duty'[25] (ibid.: B2.24).

- However, 'if D honestly believes that he is being attacked ..., and uses force to resist them, he will not be guilty of a s.89 offence ... D's honest belief in his need to act in self-defence would negative any mens rea for assault[26]' (ibid.).

s.38 OAPA 1861 – Assault with intent to resist arrest (maximum 2 years):

- For this more serious offence, the Prosecution must prove (in addition to an assault) an 'intent to resist or prevent the lawful apprehension or detainer of himself or of any other person' (s.38).

- They must also prove that the arrest was lawful; and that D subjectively realised that the arrest was lawful (Blackstone's 2000: B2.14).

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[24] Davis v Lisle [1936] 2 KB 434
[25] Blackburn v Bowering [1994] 1 WLR 1324]
[26] Kenlin v Gardiner [1967] 2 QB 510; Blackburn v Bowering [1994] 1 WLR 1324

s.47 OAPA 1861 – Assault occasioning Actual Bodily Harm (ABH) (maximum 5 years):

- It must be proved that the assault caused V actual bodily harm.

- ''Actual bodily harm' has been defined as any injury which is 'calculated to interfere with the health or comfort of the [victim]'[27]. Minor cuts and bruises may satisfy this test, although the Charging Standards agreed between the police and the CPS do not endorse the bringing of s.47 charges in the absence of more serious injuries, such as broken teeth, extensive bruising or cuts etc., which require medical treatment.' (Blackstone's 2000: B2.19)

- The mens rea is the same as for a basic assault – there need be no additional state of mind regarding the causing of actual harm.

- The status of V as a police officer is irrelevant to whether or not this offence has been made out (although it will result in a harsher sentence if convicted).

Putting all these together, the 'prosecution checklist' for these offences, and hence the list of points which need to be addressed during the interview, is as follows:

1) Did the IE either:

    (a) physically resist the officer, or

    (b) intentionally make it more difficult for him to carry out his duty?

2) Did the IE 'assault' the officer?

3) Was the IE personally aware that that he risked causing injury to the officer?

4) Was the force used by the IE against the officer potentially lawful due to self-defence?

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[27] Miller [1954] 2 QB 282, per Lynskey J at p.292

5)   Was the officer acting in the course of his duties / was the arrest lawful?

6)   Did the IE himself realise the arrest was lawful?

7)   Did the IE act with the intention of resisting/preventing his arrest?

8)   (if assault element established) Did IE's assault result in actual bodily harm to the officer?

It can be seen that a significant number of these involve the IE's intentions and subjective awareness. In other words they involve the IE's internal thought processes as opposed to externally observable actions. (This is of course true for the mens rea element of any offence.) Such aspects are often extremely difficult for the Prosecution to prove, unless the IE makes specific comments or admissions regarding his state of mind and understanding of the situation at the time. Since the interview process is the only stage at which the police are able to talk directly to their suspect, it presents them with their prime opportunity to achieve this. It is therefore a key part of the IR's task to elicit such information from the IE during the interview. Further, given the evidential status of interview data, any information thus elicited actually amounts to evidence on that point. Thus an IE's linguistic choices at interview can inadvertently provide, indeed create, evidence which will support their own conviction.

Two further legal points merit further explication here – lawful arrest and self-defence.

7.2.1.1 Lawful arrest

In order for an arrest to be lawful, the arresting officer must make it clear to the person that they have been arrested, and why (PACE 1984, s.28). 'If sufficiently clear words are not used, ... the person concerned will not be regarded as arrested[28]' (Blackstone's

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[28] Alderson v Booth [1969] 2 QB 216

2000: D1.4). 'Such force as is reasonable in the circumstances' may be used (Criminal Law Act 1967, s.3). 'The use of excessive force will not, however, render the arrest unlawful[29]' (Blackstone's 2000: D1.7).

7.2.1.2   Self-defence

The law on self-defence is not entirely straightforward, and arises from the common law as opposed to statute (in other words, its definition emerges from judge-made case law and is therefore subject to constant refinement and reinterpretation). For these purposes, and at the relevant time, it can best be stated as: 'a person may use such force as is reasonable in the circumstances as he honestly believes them to be in the defence of himself or another[30]' (Blackstone's 2000: A3.30). It can be seen that this involves an element of the subjective view of the defendant.

Another aspect of self-defence which comes into play here is the question of its legal status as a 'defence'. There is some theoretical debate as to whether it is, strictly speaking, a defence or a matter of justification. The difference is between:

(a) something which negates a necessary element of an offence, and

(b) a situation where all necessary elements of an offence are made out, but a separate factor is present which amounts to justification for it.

This becomes relevant for our analysis since in order to establish whether extra circumstances exist which may amount to justification, the IR would need to investigate aspects which go beyond the elements of the offence which the Prosecution must establish. If (as I will argue) the investigation tends to focus solely on making out the prosecution case, this would probably uncover points related to (a), but could well fail to pick up on information relevant to (b). It should be borne in mind that this principle

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[29] Simpson v Chief Constable of South Yorkshire Police (1991) The Times, 7 March 1991
[30] Beckford v The Queen [1988] AC 130, per Lord Griffiths at p.145

applies not just to self-defence but to a number of other 'general defences' such as duress, mistake, and insanity.

As mentioned above, there are a number of other potential offences available in this situation. For example: assault occasioning GBH/ABH on the IE by his mother, her boyfriend, and/or the police officer; criminal damage to the fence; threats to kill; threats to destroy or damage property; breach of the peace; and others. However, the decision has been taken (at this stage) not to charge the IE with other offences, nor to charge anyone else with an offence. This does not make them irrelevant, however, as other charges can still follow. The IR's decisions about which potential offences to pursue and investigate during this interview, and which to ignore, are therefore highly significant in terms of shaping what happens next in terms of processing the event into the judicial process.

In summary, then, there are a wide range of criminal offence frameworks which are applicable on the facts of this situation. The charging decisions taken before this interview took place have brought some to the foreground and minimised the relevance of others, although all remain relevant to some degree. This section has outlined the evidential points which need to be established for the most important of these offences. This has highlighted that a substantial part of these offences depends on being able to prove the internal state of mind of the IE, something which can most convincingly be demonstrated through the IE's own words.

A particularly interesting feature is that the IE could himself potentially be classed as a victim as well as, or indeed instead of, a perpetrator of criminal offences. But the official availability of this role to the IE depends entirely on the decisions of others,

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namely the CPS. And the CPS will be heavily guided in making those decisions by the evidence which emerges from this interview. And the evidence which is allowed to emerge in the interview depends heavily on the IR, as we shall see.

7.3   Analysis

7.3.1   Audience orientation

To begin, then, I wish to demonstrate that the audience orientation of participants proposed in the previous chapter holds true for this interview – i.e. that the IR orientates his talk to the future audiences and purposes for the interview, whereas the IE does not. We shall first consider the IR.

Example 7.1

IR:→	James. I have to inform you that this interview is being tape recorded. all	1
	right mate?=	2
IE:	=yep	3
IR:→	now I called you James, e- do you p- are you happy being called James or	4
	do you (-)	5
IE:	any. i[t-] it don't really matter.=	6
IR:	[no] =yeah okay so (.) you're happy with	7
→	[James] not Tommo	8
IE:	[yeah] yep.	9
IR:	okay mate. {clears throat} right. (-) let me introduce myself, my name's	10
	John David Green, Detective Constable 123. and I'm stationed at {small	11
	police station in suburb of mid-size city} in the CID department. can you	12
→	give me your name,=	13
IE:	=it's James Steven Thompson.	14

Here the IR repeatedly addresses the IE by name, displaying knowledge of both his first and surnames (the surname by implication from the abbreviated form used in line 8). Indeed the IE's name is the topic of discussion for several turns (4-9). Yet after this, the IR asks the IE to give him his name (13). It is clear that the IR does not need this information himself, and hence that it is being elicited for the purposes of other audiences for this talk. It is interesting to note that the IE does not question this, but gives his name in full. This is possibly an indication of the IE's own awareness of the institutional requirements of the context (cf. Clayman & Heritage 2002: 125 on news interviewees), but equally it could be a response to the very formal and full terms in which the IE introduces himself (10-13, especially 11). The taking, and indeed supplying, of such cues to the desired response of the IE is a feature that will be observed repeatedly in this interview.

It can also be seen that the IR specifically asks the IE to 'give me your name' (13). This explicitly encourages the IE to orientate to the IR alone as his audience, when precisely the point of the question is to elicit information for a different audience. I do not wish to suggest that this is in any way deliberately misleading, but it nonetheless shows that the IR does not assist the IE to address the future audiences even when he is doing so himself.

Example 7.2

IR:	[...] can you give me your name,=	13
IE:	=it's James Steven Thompson.	14
IR:	and date of birth,	15
IE:→	XX of the XXth ninet[een-(??)]	16
IR:→	[and where] do you live.	17

IE:	er {gives address}.	18
IR:→	right sorry give us your date of birth again,	19
IE:	XX of the XXth nineteen eighty	20
IR:	right. (.) James. can I just ask you, y- you're putting your hand	21
	[over your mouth] and it muffles it up.	22
IE:	[oh sorry. heh! {laughs}]	23
IR:→	and [people have got to listen to this (after)].	24
IE:	[er, (.) nineteen] eighty.	25
IR:	right.	26

This example contains explicit reference by the IR to the future overhearing audiences (24), although it is interesting to note his use of the vague generic noun 'people' as opposed to giving any explanation of their identity or purpose. It is also a good example of the tensions in the IR's task of fulfilling the needs of both himself as initial present audience, and the different requirements of the other audiences. As requested, the IE gives his date of birth (16), but the IR begins his next question before he has completed his answer (17). As with the IE's name, the IR will already know this date as it will be written down in front of him, and hence he does not appear to actually listen to the response, displaying the fact that this information is irrelevant to him personally. But his interruption of the response has thwarted his real purpose in asking the question, namely to elicit this information audibly for the future audiences and for its evidential value. He therefore goes back and repairs this (19). It is interesting that the IR, possibly trying to gloss over his mistake, pins the blame for this lack of clarity on the IE (21-2), when in fact the IE's utterances are perfectly audible on the tape – it is only the IR's interruption which makes it unclear.

Example 7.3

IR: =okay. (.) would {clears throat} so (.) the next question is would you   42

        agree that apart from meself and (.) y- yers- <u>your</u>self, (.) there is no-one   43

        else (.) present in this [room.]   44

IE: [mm.] yep.   45

Once again the IR's question here is entirely redundant for the purposes of himself and

the IE, but is intended to provide information purely for those who are not present. All

these examples demonstrate the IR's clear awareness of the future overhearing

audiences and their evidential requirements. On the other hand, the following examples

demonstrate that the IE has no such awareness.

Example 7.4

IR: the officer's received injuries that amount to, (.) what <u>we</u> call ABH and   343

        that's bruising, (.) which we accept could have happened during the   344

        struggle, (.) but they still happened during the struggle with your<u>self</u>, (.)   345

        and, okay! (.) the injuries w- you might not regard as serious, (.) in terms 346

        of (.) the fact (.) that it's gonnu (.) put him in extreme pain. (.) but they 347

        still amount, (.) to an ABH and I'll tell you what they are, (.) graze to the 348

        left right elbow, (.) graze to the lar- left right knees, (.) graze to the left 349

        right rear shoulder, (.) soreness, (.) at bruising below right breast and to 350

        (.) the nip of his er nobe on his- node on his er (.) on his chest. (-) okay? 351

IE:→   (there) look there <u>I</u>'ve got some   352

IR: yeah, [(? what you) s-]   353

IE: [from falling on] the floor [(?)]   354

IR: [(I) hear] what you're saying, (.) but the 355

officer's saying, (.) that those (-) those (-) number of bruisings occurred,   356

(.) whilst he was effectively arresting you. (-) and during the struggle that   357

ensu[ed.]   358

There is a striking contrast between the amount of detail provided about the officer's

injuries and those of the IE, who merely invites the IR to 'look there' (352). This

displays his complete lack of recognition of the interview's subsequent audio-only

format, and the consequent need to describe what he is referring to. It also demonstrates

his focus on the IR as sole audience for his talk: 'look' can have only one intended

recipient here. It is not even clear what he means by 'some' – the IR's previous turn

could provide 'graz[es]', 'bruising' or even the general 'injuries' as the intended

referent. There is thus no evidential value whatsoever to the IE's response here. (The

IR's role in this exchange will be considered in detail below.)

Example 7.5

IR: {clears throat} okay, (-) he also, (.) goes on to say, (-) that err, (.) he   369

actually, (.) grabbed hold of your hand, (--) e- sorry (your)- grabbed hold   370

of your arm, (.) and told you, (.) that you were under arrest.   371

IE: they didn't at all.   372

IR: and at that- and [at that you started to struggle.]   373

IE:→   [no I'll right I'll stand up] in court against him on that   374

one cos he's proper ly- I <u>hate</u> that! (-) all officers lie to get out of it. (.)   375

and no-one even takes a word [of what (?? said?)]   376

The IE's reference to the court suggests that he is not taking into account the fact that

his words here in the interview room will also be presented in court. To the IE that is a

distinct and separate context, far removed from the 'here and now' of the interview

interaction. As also seen in the previous chapter (Example 6.6), this shows awareness of the existence of the future court context, but the absence of an awareness of the direct link to it created by the trans-contextual nature of talk in the interview room.

These examples are sufficient to illustrate the different audience orientation of IR and IE in this interview. These examples show occasions where this orientation is more or less explicit, and focus on small-scale, individual turn exchanges. However, the intended audience for talk, and the purposes held by those audiences, will have a significant influence on all aspects of the discourse. In the following sections I will consider some of the ways in which this influence is manifest in wider themes on a larger discourse scale throughout the interview, and the serious consequences which result.

7.3.2   Offence construction

This section will analyse several aspects of this interview which can be labelled collectively as 'offence construction'. Firstly we will examine the way in which the elements of the relevant offences identified in section 7.2 above direct and shape the IR's discursive strategies during the interview. Secondly we will consider how the elements which are most salient for the Defence are routinely overlooked or minimised by the IR. Finally we will see how the IE orients to the 'offence framework' being imposed on the interaction. To begin with, it can be seen that the IR expressly labels the events being discussed in terms of 'offences':

Example 7.6

IR:	[...] I also have to point out for the purposes of the tape that just	52
→	before we came <u>hin</u>- in here, (.) I arrested you, (.) in relation to the assault	53
	on the police officer from the incident yesterday, (.) and in relation to a	54

→ resisting arrest. okay?	55
IE: yep.	56

Here the legal frames of 'assault' and 'resisting arrest' are formally invoked[31]: this is what the IE has been arrested for, and hence what he is being interviewed about. This therefore sets the framework, and the (IR's) agenda, for the whole interview.

It can be seen that the IR reifies the offences through the use of articles: 'the assault' and 'a resisting arrest'. The use of the definite article here is interesting. 'The assault' carries the distinct implication that its existence is a given; a foregone conclusion. But it is ultimately only an assault in the legal sense if a court decides it is. This interview is supposed to be part of a long process leading up to that being determined. Its purpose is supposed to be to investigate whether or not there may have been an assault, whereas this implies that the IR has already decided that there was – in other words that he has already made an assumption of guilt. We will see how this is borne out through the rest of the interview.

Example 7.7

IE: [when he dragged] me out of the gate, (.) yeah I knew I [was] gonna	145
[IR: yeah]	146
get arrest[ed] but I was trying to get away. (.) not- I didn't hit him	147
[IR: yeah]	148
whatsoever.	149
IR:→ that's resis[ting]	150

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[31] As already discussed above, these labels are too vague to be matched to specific offences, but these will have been spelled out to the IE at the point of arrest. They will also be accessible to the future audiences via the case file of which this interview will become part. The lack of specificity here is ultimately only a problem for the researcher.

| IE: | [I had d-] yeah but I [had d-] | 151 |
| IR:→ | [to me] that's a resisting arrest.= | 152 |

Here the IR takes the IE's description of his actions and formally labels them as an offence: 'that's a resisting arrest' (152). This identification of events as amounting to a concrete, legally determinable item is again compounded by the use of an article (as opposed to the equally valid assertion 'that's resisting arrest', which is in fact how the IR first formulates it (150)). This example indicates that part of the IR's approach is to take the IE's description of events and attempt to fit it into the offence frameworks he is seeking to apply. Thus the relevant offence frameworks can be seen to directly dictate the IR's agenda. Building on this, the following examples all show how elements of the 'prosecution checklist' are directly incorporated into the IR's discourse.

Example 7.8

IR:	{clears throat}(.) now (-) first thing I need to (.) get out of you, (-) or (.)	113
	ask yer,	114
IE:	yeah	115
IR:→	is (.) do you accept (.) that you assaulted (.) the police officer.	116
	(.)	117
IE:	no, (.) cos I didn't assault him (er) I <u>pushed</u> him at the end of the day and	118
	I know thats <u>counts</u> as an assault but I didn't hit him.	119
	(.)	120
IR:→	do you accept that th- the officer, (-) was arresting you (.) at the time.	121
IE:	I didn't <u>know</u> he was arresting me at the time.	122

The IR's questions here go straight to the two key aspects which need to be established for the Prosecution – did an 'assault' take place, and did this incident occur in

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connection with a lawful arrest? If the IR can elicit admissions to both of these elements, then most of the requisite items on the checklist will be covered, and it will then simply be a case of investigating the finer details in order to establish which of the range of available offences is the closest fit to the facts. This would be a very convenient short-cut, but the IE's responses show that he does not accept these basic elements of the prosecution case. The IR will thus have to do additional work if he is to establish that these essential elements were present.

It can be seen that the IR's turns here contain embedded assumptions about the presence of these elements. The question frame 'do you accept that...' implies that whatever follows did happen (compared with asking e.g. 'did you...'). The question is thus not whether or not these things happened, but whether or not the IE accepts the situation as it was – or at least as the IR sees it. This tends to support the assertion that the IR is approaching the interview with a pre-determined view of what happened, based on the assumption that criminal offences took place. This is not, however, a controversial statement when it is considered that the police must have reasonable grounds to suspect that the IE is guilty in order to be interviewing him in the first place.

Example 7.9

IR:	right when he grabbed hold of yer,	224
IE:	yep	225
IR:→	why- w- what did <u>you</u> believe he was doing when he grabbed hold of yer.	226

As previously identified, several key elements of the prosecution case depend on the rather difficult task of providing evidence of a suspect's knowledge and intentions. In particular, the more serious offence of s.38 OAPA 1861 requires the additional element of 'intention to resist arrest'. The IR's question here can be seen to be directed at this

specific offence element, and is designed to elicit – indeed to create – precisely such evidence in the form of the IE's response.

Example 7.10

IR:	{clears throat} okay, (-) he also, (.) goes on to say, (-) that err, (.) he	369
→	actually, (.) grabbed hold of your hand, (--) e- sorry (your)- grabbed hold	370
→	of your arm, (.) and told you, (.) that you were under arrest.	371
IE:	they didn't at all.	372
IR:→	and at that- and [at that you started to struggle.]	373

Lines 370-1 are a clear orientation to the requirements of the s.89 Police Act 1989 offences, and s.38 OAPA 1861. These require the officer to have made it expressly clear to the IE that he was being arrested in order for the arrest to have been lawful, and hence for these offences to be available. The follow-up point in line 373 builds on this assertion, despite the IE's denial, by explicitly linking the arrest to the IE's struggling. This directly maps onto the s.38 OAPA 1861 offence of assault with intent to resist arrest, which requires this causal link between the assault and the arrest.

The following examples demonstrate how the IR's application of these 'offence frameworks', and his focus on fitting events into the 'prosecution checklist', have the potential to limit the information – and hence evidence – he elicits in response.

Example 7.11

IR:	[what] I'm asking you James, (.) is to keep it straight.	250
IE:→	yeah I did resist arrest [cos] I didn't (.) [want] to get arrest[ed.]	251
IR:→	[right] [(at th-)] [so,] (.) what	252
	action did you take, at the moment that the police officer grabbed	253

	[hold of]	254
IE:	[just to] get away that was it.	255
IR:→	what did you <u>do</u>. t- t- to s- to resist arrest.	256
IE:	I tried to- like he had hold of me arm, (.) I [tr]ied to get away, ...	257
	[IR: (?)]	258

After an exhortation from the IR to 'keep it straight', the IE utters a significant admission: 'yeah I did resist arrest' (251). (We shall return to the elicitation of this 'confession' in Example 7.43.) Immediately the IR interrupts: 'right' (252)[32], but the IE had not finished his intended turn. The IE attempts to continue with an explanation for his actions: 'cos...' (251), but the IR repeatedly interrupts (252) and then continues with his next question entirely disregarding the IE's attempted continuation. In fact the IE's explanation here does not take matters much further, but that is beside the point. The IR got the admission he was seeking and then actively discouraged the addition of further information to contextualise that admission and provide an explanation for the IE's actions. This could have been vital, in that it could have meant that the 'confession' was not actually what it seemed, or, more importantly, the additional information could have amounted to a valid defence. Instead, the IR's discursive behaviour here shuts down the possibility of such information emerging.

Rather than allowing information which might undermine the admission to emerge, the IR instead seeks to build on it by pursuing details of the IE's actions. It is interesting to note the IR's rephrasing of same question into 'offence' terms here. He initially asks: 'what action did you take, at the moment that the police officer grabbed [hold of]' (252-

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[32] It is clear from the intonation on the audio recording that this is not a discourse marker or back-channel, but is an attempt to commence a new turn and take the floor at this point. This interpretation is further supported by his continuation of interruptive talk until the IE does relinquish the floor.

4). Yet even though he receives an answer to this (255), his next turn has virtually the same semantic content yet rephrased into 'offence' terminology: 'what did you do ... to resist arrest' (256). This illustrates how the IR's 'offence construction' is a type of orientation to the later audiences and their purposes. This is not about making something clearer for the current participants – arguably the IR's first version here is more accessible to the IE than the second – but instead it is directed towards the future evidential function of the interview. It packages up the interview into readily identifiable pieces of evidence.

A similar phenomenon can be observed in Example 7.4. Once again this shows the IR's categorisation of events in offence terminology, including the explicit re-labelling of bruising as 'what we call ABH' (343-4). This also displays the fact that in this context the power to perform this labelling belongs exclusively to the IR and is entirely inaccessible to the IE. In the IR's view, even if the IE (subjectively) 'might not regard [the officer's injuries] as serious' (346), they (objectively) 'still amount, (.) to an ABH' (348) (reified with an indefinite article once again) – and it is the IR's view which counts here. Further, the IR's turn in lines 356-8 can be seen to address the link which must be established between the IE's actions and the arrest, in order to activate the additional offences of s.38 OAPA 1861 and s.89(1) Police Act 1989.

However, a noticeable feature here is the IR's lack of follow-up to the IE's response in line 352. As already observed, the IE's response of 'look there I've got some' is entirely inadequate evidentially. Yet the IR fails to pursue the missing information for his future audiences, or provide a verbal description 'for the tape', leaving a significant difference between the evidence available of the officer's injuries and those of the IE. The IR's focus here is purely on the alleged assault on the officer, and his lack of pursuit of this

line of enquiry indicates that he does not consider it relevant at this point. Yet this is not the case. It would be entirely relevant – in terms of potential defences – to assess whether or not the arresting officer was using reasonable force, in order to establish whether or not the IE could legitimately claim to have been acting in self-defence as a consequence. (Remember that the question of whether or not the officer used excessive force is irrelevant to whether or not the arrest was lawful, and so does not have a direct bearing on establishing the prosecution case.) By not allowing evidence of injuries to the IE to be brought in here, the IR potentially leaves the Defence disadvantaged if they seek to rely on this in support of a claim of self-defence at a later stage, in that it could be argued that this was not raised by the IE 'on being questioned' (s.34 CJPOA 1994). However, it should be noted that this also leaves a potential gap in the evidence available for future prosecution audiences, too, particularly in relation to the making of a charging decision.

We shall now consider the IR's treatment of elements which may be relevant for a successful defence at other points in this interview.

Example 7.12

IR:	right when he grabbed hold of yer,	224
IE:	yep	225
IR:	why- w- what did <u>you</u> believe he was doing when he grabbed hold of yer.	226
	(.)	227
IE:→	what, when he was- I thought he was (.) trying to hurt me at the end of the	228
→	day- I was just (.) <u>angry</u>, I didn't know what was going off [(or)]	229
IR:→	[no.] when the	230
	officer, (.) grabbed hold of yer,	231

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IE:	yeah	232
IR:	cos earlier on (.) you actually said at the beginning, (.) that when the	233
→	off[icer (.) grabbed hold of yer] (.) you thought that he was going to arrest	234
	[IE: I thought he was just getting me out of the garden.]	235
→	[yer. (.) and you didn't want to] be arrest[ed.]	236

As seen above (Example 7.9), the IR's question in line 226 directly addresses an important element of these offences. The IE's response raises two significant points for the Defence. Firstly, he states he thought the officer was 'trying to hurt me' (228), which supports a potential claim of self-defence. Secondly, he says that he 'didn't know what was going off' (229), which indicates that he didn't know that he was being arrested, which again would provide a defence to certain offences (although not all). Yet the IR does not pick up on either of these aspects, instead interrupting with 'no' (230) and repeating his question, this time actually providing his preferred answer – which instead fits a finding of guilt (233-6). This effectively dismisses these potential defence points without properly exploring them.

Example 7.13

IE:	and I got <u>hit</u>, (.) and I got whacked over the head	453
	with a truncheon and I got hit under me arm.	454
IR:→	when you got hit and whacked o- w- when you got hit, (.) who hit yer.	455
IE:	my mum!	456
	(-)	457
IR:	yeah (--) so how many- how many times were you <u>hit</u>.	458
IE:	I don't know I- I know I got hit (.) and I got hit there and then I was	459
	knocked out! wan I!	460

	(.)	461
IR:→	right. so you weren't- (.) but y- (.) you weren't aware of anyone <u>else</u>	462
	hitting yer?	463
IE:	no I seen my mum grab the truncheon out of me hand.	464

Here the IE once again asserts that he was himself assaulted, but does not directly state by whom. However, the use of a 'truncheon' as the weapon would, in the absence of any other information, lead to an assumption that the assailant was a police officer. It can be seen that the IR's priority appears to be to attempt to redress this in his subsequent turns. Firstly he seeks clarification of who hit the IE (455). Then, in a turn which seems designed to summarise the previous exchange (especially due to the opening 'so' which so often occurs at the start of IR formulations), the IR chooses to focus not on who did hit the IE, but who *didn't* (462-3). This indicates that the IR's orientation is not to the fact that the IE was assaulted, but instead to establishing that something did not happen – namely that the IE was not assaulted by the officer. This suggests that the IR is not attempting to gain a full picture of the incident from the IE's perspective – surely for the IE what matters is the person who did hit him, not the people who didn't. Instead his priority appears to be to rule out potential weaknesses in the prosecution case, or to eliminate possible lines of defence.

Having considered the way in which the IR shapes the interview discourse to 'construct' criminal offences, we shall now turn to the discursive behaviour of the IE.

Example 7.14

| IR: | [you expl]ain in your own words what happened yesterday. | 66 |
| IE: | er first of all I rang my mum up and I had a argument with her on the | 67 |

	phone, (.) and er (.) sommink stupid like I'll smash yer windows or	68
→	sommink like that. (.) er not (intentioning) (.) just like I didn't mean it (at	69
	all), (.) I went round there (-) the police car went past (.) she flagged them	70
→	down tried to get me arrested. (.) for threatening behaviour, (-) the copper	71
	was gonna have a word with me, (.) and then I thought he was gonna	72
	arrest me and I tried to run off and he grabbed me.	73

Here the IE starts off using what sounds like offence terminology – 'intentioning' (69) – but which is incorrect. He immediately clarifies his intended meaning by rephrasing this in 'lay' terms: 'just like I didn't mean it (at all)' (69-70). This suggests a desire to 'speak the language' of the police context, but also demonstrates his lack of fluency and ease with it. Nonetheless, his (unprompted) use of the phrase 'threatening behaviour' here indicates a certain level of familiarity with the criminal justice system.

Example 7.15

IR:	who are they.	293
IE:→	Andrew Pearson's my co-D for another offence yeah,	294
	(-)	295
IR:	right,	296
	(.)	297
IE:	an he was a witness, (.) an you're gonna bel[ieve that?]	298
IR:	[no. I haven't] said- I haven't	299
	told you who the witnesses <u>are</u>. (.) I'm asking you who the person is	300
	you've just mentioned.	301
IE:→	he's my co-offendant.	302

This again shows the IE's familiarity with the criminal justice system, but again he gets the terminology wrong. He uses the slang term ' co-D' (for co-defendant), but when the IR asks for clarification of this person's identity the IE attempts to give the full, correct term but produces another incorrect lexical item – 'co-offendant' (302). In both these examples the IE is apparently attempting to moderate his preferred mode of discourse in order to conform to what he thinks is appropriate in this context, but instead the end result is lack of clarity and potential communicative error.

Example 7.16

IR:→	yeah. [what did] you <u>then</u> do with the truncheon.	521
IE:	[(as I)] I didn't do nowt! (.) my	522
	mum <u>grabbed</u> it out of my hand then and whacked me on the head! (-)	523
→	like I'd <u>hit</u> an officer with a truncheon. now think about that. I'd be going	524
	down for years woun'I. (.) [I'm] not <u>that</u> thick.	525
IR:→	[w-] you picked the truncheon	526
	up, (.) with the intention of doing what!	527
	(.)	528
IE:	just keeping my mum's boyfriend back. cos he was gonna hit me again.	529
→	(-) not- not the officer, (.) at all.	530

The IR's questions here (521, 526-7) are clearly directed to offence elements once again, particularly with regard to the question of intent. It can be seen that in response the IE places strong emphasis on denying hitting the officer (524, 530), despite the fact that the IR makes no direct mention of this. This indicates that the IE has picked up on the underlying implication and accusation in the IR's questions; in other words that he recognises the 'offence construction' in the IR's turns, and so moves to counter it.

Such denial of unvoiced accusation is a common way in which IEs respond to the 'offence construction' agenda of IRs in my data. Here this can be observed in the way in which the IE chooses to include details of what didn't happen in addition to what did. Further, there are any number of things he didn't do with the truncheon, but he selects what he considers to be the most relevant one to deny. And that relevance stems from the underlying purpose of the entire interview: to establish whether or not the IE assaulted the officer while being arrested. This is the overarching frame of the whole interview interaction, oriented to by both participants at all times, sometimes explicitly but also less directly, as in this example.

However, unfortunately for the IE he once again appears to have got it wrong. The accusation which he selects to address here is that he hit the officer. But, as mentioned earlier, the action of 'hitting' is not actually necessary for an assault. So, although the IE is correctly orienting to an unvoiced accusation, he selects the wrong one. (At no point in this interview is the IE ever accused of actually hitting the officer; it forms no part of the prosecution case.) So although it may be true to say that both IR and IE are orienting to the relevant offence frameworks, those frameworks do not appear to match. This will be developed further in the following section.

7.3.3 Identity construction

The next discursive feature to be analysed in this interview is the identity construction of the two participants. Leading on from the previous section, we shall begin by considering how the IE portrays his role in the events under consideration.

The first point to note is that this IE denies these offences. The identity he seeks to construct, therefore, can be assumed to be that of an innocent man. In Example 7.16 we

observed his emphasis on establishing that he did not hit the officer, but also that this does not in fact assist him legally. We also noted the mismatch between the actual legal offence framework and what the IE appears to understand it to be. In this section I will show how this apparent misunderstanding appears to lead the IE to construct a very consistent and detailed identity for himself and his actions, but unfortunately for him it is one that not only does not fit a 'Not Guilty' identity, but in fact fits rather well with a 'Guilty' one. We will see that the IE chooses, without prompting, to repeat over and over again elements which support the Prosecution's case, all the while protesting that he has done nothing wrong. The IE's belief in his own innocence is apparent from the following examples:

Example 7.17

IE:	[I come out of my- (wait a minute) I was walking out I was walking	131
	out of my gar]den, (.) and he goes you're coming down the station. (.) I	132
→	says I'm not cos I haven't <u>done</u> owt. (.) he goes you're coming down the	133
→	station. (.) and I goes I'm <u>not</u>, (.) cos I haven't done nowt wrong. (.)	134
	because all I'm doing was coming round to get my stuff, (.) cos that's all I	135
	went round for, to get my clothes, (-) and he grabbed me and then we fell	136
	back through a fence, [...]	137

Example 7.18

IE:	[yeah but] I (feel) I'm gonna get stitched up	591
	[by the] lot of them [aren't I].	592
IR:	[what] [I will] do,	593
	(.)	594
IE:→	know what I mean [I didn't even <u>risk</u> t-] <u>risk</u>- I coulda- I coulda tried to	595
	[IR: is I am going to]	596

→	leg it out of the hospital if I knew I was guilty, (.) w- <u>plenty</u> of chances
	there was a <u>door</u> behind me.

597

598

We will now consider two aspects repeatedly stressed by the IE, namely his assertion that he did not hit the officer, and the constant claim that he was trying to get away. The above assertions of innocence indicate that the IE does not see these claims as inconsistent with a 'Not Guilty' persona. The identity which the IE is seeking to construct through these details is thus not one of a person who behaved in a criminally culpable manner which these details are intended to mitigate, but one who is not actually guilty of anything at all. However, given that the officer was attempting to arrest the IE at the time, any action to 'get away' would of course amount to 'resisting arrest'. And any physical contact with the officer, or indeed anything which would cause the officer to apprehend that such contact might take place, is enough to make the IE guilty of 'assault'. The fact that he did not hit the officer is thus largely irrelevant – the IE has chosen the wrong 'offence element' to deny. The identity which the IE creates through the following examples is thus one of a person who is in fact guilty of a number of serious offences.

Example 7.19

IE:	(-) the copper	71
→	was gonna have a word with me, (.) and then I thought he was gonna	72
→	arrest me and I tried to run off and he grabbed me. (.) we scuffled, (.) fell	73
	through a fence, (-) and then (.) we were scuffling on the floor me and the	74
→	police officer, (.) it wan't I wan't punching him or oot like that I was just	75
→	like you know like push[ing] an that, trying to get away he was holding	76
	[IR: mm]	77

→   on to my legs that's all I wanted to do run away (-)   78

In this one short example we see that the IE effectively admits all the necessary

elements to make himself guilty as charged. Lines 72-3 contain an admission that he

thought he was being arrested and so tried to run off, and in line 76 he admits pushing

the officer. Yet this is not as a result of any prompting or robust questioning by the IR,

but in response to a very open invitation to 'explain in your own words what happened

yesterday' (66). But a closer analysis shows that once again the IE is emphasising what

didn't happen, and is orienting to unvoiced (and therefore assumed) accusations. He

thus attempts positive self-portrayal by stressing that he wasn't being aggressive

towards the officer or attacking him ('I wan't punching him or oot like that', 75), but

that on the contrary he was trying to get away from him and so was pushing him away

(76). In many potentially violent or aggressive situations this might well have been the

'right' thing to do, but not here.

The same assertions are repeated by the IE a striking number of times in this interview.

It is also significant that they tend to arise generally not in response to any specific

questioning but are offered as additional supporting information by the IE. This

indicates that they are an important and deliberate part of the version of events he

wishes to portray. For example:

Example 7.20

IR: right. (.) so witnesses that we have at the scene, (.) have basically (-) said   314

        that they formed the opinion (.) that you were going to hurt the police   315

        officer.=   316

IE:→   =if was gonna hurt the officer, (.) I had (.) so many oppor[tunities]   317

IR: [all I'm saying]   318

     is (.) why would they say that.   319

IE: I don't know do I! cos it- they've seen (?) struggling together (.) and fell   320

     through a fence right, (.) I could a- (.) the officer was on the floor! (.)   321

→   right, (.) I could ave hit him so many times but I didn't. (.) I tried to get   322

→   away. (.) I didn't even touch the officer.   323

Example 7.21

IE: [this-]   [no]   this was while I   506

     was <u>away</u> from the officer. (-) the officer was on the floor, yeah? (.) I   507

→   (roll-) I'd got a- I'd got up, (.) and I was just about to get away. (.) I ain't   508

→   hit the officer or nowt like that, he had hold of my legs. (.) and as he had   509

     hold of m-me legs all the officer said was em (.) will you try and help me   510

     restrain him. (.) you get him down.   [right?]   511

Example 7.22

IR: he said the situation was such that he was asking people that were   417

     standing by, (.) to assist him.   418

     (-)   419

IE:→ I was only- aaahhr! (fucking!?) [I was] trying to get away!   420

Example 7.23

IE: [I'm s- no, not] <u>saying</u> that!   448

     (.) but <u>part</u> of it's wrong!   449

IR: well which part's wrong.   450

IE: the one where he says oh, I'm arresting yer at the gate. (.) he didn't even   451

→	say that (.) at <u>all</u>! (--) and I didn't even it im! I just fell through the fence	452
	that's w- (.) that was it. and I got <u>hit</u>, (.) and I got whacked over the head	453
	with a truncheon and I got hit under me arm.	454

(See also lines 125, 257, 259, 264-5, 483, 493, and Example 7.16 above.)

It is tempting to assume that the IE simply does not know what amounts to an 'assault' in legal terms. But the following example suggests otherwise.

Example 7.24

IR:	{clears throat}(.) now (-) first thing I need to (.) get out of you, (-) or (.)	113
	ask yer,	114
IE:	yeah	115
IR:	is (.) do you accept (.) that you assaulted (.) the police officer.	116
	(.)	117
IE:→	no, (.) cos I didn't assault him (er) I <u>pushed</u> him at the end of the day and	118
→	I know thats <u>counts</u> as an assault but I didn't hit him.	119

Rather bizarrely, the IE's denial of the direct accusation of assault – 'no ... I didn't assault him' (118) – is immediately followed by an admission that he did act in a way that he knows does 'count' as assault. This seems to suggest that to the IE there are two separate definitions in operation here, one being the technical legal definition, and the other being based on the IE's own notion of what is right or wrong. And it appears that, at this stage at least, it is more important to the IE to portray himself as someone who did not do what he considers to be 'wrong' than it is to consider the legal consequences of his words. This can also be observed in the following example.

Example 7.25

IR:	[but you said ear-] y- you said earlier on, (.) and I	140
	quote, (.) you said at the very beginning, (.) that you thought that the	141
	officer was gonna arrest yer and that's when you st[arted to struggle]	142
	[IE: well yeah when e-]	143
→	to [try and get (away.)]	144
IE:	[when he dragged] me out of the gate, (.) yeah I knew I [was] gonna	145
	[IR: yeah]	146
→	get arrest[ed] but I was trying to get away. (.) not- I didn't hit him	147
	[IR: yeah]	148
→	whatsoever.	149
IR:	that's resis[ting]	150
IE:	[I had d-] yeah but I [had d-]	151
IR:	[to me] that's a resisting arrest.=	152
IE:→	=yeah it is resisting but (.) at the end of the day (.) I had (.) so many	153
→	opportunities to [(hit the officer)] I _didn't_.	154
	[IR:{clears throat}]	155
IR:	right.	156
IE:→	and I _wouldn't_.	157

Yet again the IE directly admits to criminal liability ('yeah it is resisting', 153) while

denying other, less legally significant aspects of his behaviour. What appears to be

more important to him, even if it amounts to admitting guilt, is creating the image of

himself as someone who didn't, indeed *wouldn't* (157), hit an officer (cf. Edwards

2006), and whose only motivation was to get away from the situation, presumably as

opposed to wanting to stay or to escalate it. What is surprising is that this positive

identity construction appears to take priority over portraying himself as innocent of criminal charges. This seems to indicate a surprising disregard for the consequences of this interview in terms of its future role in the judicial process.

As a final point, however, let us return to the following extract from Example 7.16:

IE: like I'd <u>hit</u> an officer with a truncheon. now think about that. I'd be going   524

         down for years woun'I. (.) [I'm] not <u>that</u> thick.   525

Thus far we have seen that the IE attempts to portray himself as not the sort of person who would hit a police officer, even if he effectively admits guilt in the process. This may have lent the IE's identity a certain ethical weight, something which could potentially have gone in his favour at sentencing. But his words in lines 524-5 suggest that this is less on moral grounds, but instead because he is aware that such an action would be viewed especially dimly by the legal system and would result in a long custodial sentence. As observed elsewhere, this indicates a rather unexpected mix of awareness of some aspects of the criminal justice system, while simultaneously displaying a complete lack of awareness of others. The key aspect which the IE has overlooked here is the future use of the interview as evidence. Despite the IE's assertion here that he is 'not that thick', he is likely to feel rather foolish when his words here are relayed to the court which will ultimately be judging him. It seems rather unlikely that he would have uttered such a statement while standing in the courtroom responsible for sentencing him. Yet that is effectively what he has done, due to the trans-contextual nature of interview discourse.

We shall now turn to the construction of the IR's identity. Firstly, we shall examine how the IR chooses to portray himself as a disinterested recipient of the IE's talk, akin

to the neutral stance of the news interviewer discussed in Chapter 6.2. We shall then consider how well this matches with his actual discursive behaviour in this interview.

Example 7.26

IR:	right. (.) if we start then from the beginning,	62
IE:	yep.	63
IR:→	I'm just gonna sit back and listen to yer,	64
IE:	yep [that's fine]	65
IR:	[you expl]ain in your own words what happened yesterday.	66

At the start of the questioning phase of the interview, we see that the IR describes his role to the IE as someone who will be a passive recipient of his version of events, his lack of direct involvement emphasised with 'just gonna sit back' (64). It should be noted that immediately following this exchange, the IE does give a fairly long, uninterrupted narrative description of the events of the previous day (67-86). However, the interview clearly does not continue in this fashion – the IR is very much an active participant.

Example 7.27

IR:	okay! (-) mm. (--) {papers} James.	532
IE:	yep.	533
IR:→	I've heard what you said, (-) I'm not- (.) I'm not going to, (-) say one way	534
→	or the other, (.) whether- (.) I <u>believe</u> it or not, (.) because that's not <u>down</u>	535
→	to me.	536
IE:	mm.	537

Example 7.28

| IE: | you know my my mum's witness[es,] | 584 |

IR:	[go on]	585
IE:	they're as bad (.) as anybody else, (.) who I know gets in trouble. the	586
	whole lot of them. (.) ahhhrr fu-	587
IR:→	James! (.) I picked this file up, (.) and I'm reading through it. (.) I'm	588
→	making no value judgement, (.) on anybody. (.) and that includes you. (.)	589
	[okay?]	590

Both these examples contain claims by the IR that his own subjective opinions play no part here, including the apparent assertion that even his own beliefs are not 'down to' him (535-6) in this institutional capacity. Yet this strong, repeatedly asserted claim of neutrality is not entirely borne out by his actions during this interview. In the following example, taken from very early on the interview, the IE has just described being hit on the back of the head with a truncheon by his mother, which resulted in him being knocked out and taken away in an ambulance.

Example 7.29

IR:	mm. (.) now y- you mentioned early on that (.) you don't want to (.) t-	103
	and this was before we came [in (when you were at the counter)]	104
IE:	[yep. I don't want to press] charges on my	105
	mum.	106
IR:→	right. (-) not (.) that (.) I've read the circumstan[ces,] (.) not that I believe	107
	[IE: mm]	108
→	that there was (.) any reason for you (.) to be press[ing] charges to be	109
	[IE: mm]	110
→	honest yourself but, (.) that would be for a court to decide.	111
IE:	yep	112

187

Here we see the IR explicitly stating his personal beliefs ('I believe', 107), which are based on having 'read the circumstances' before the interview began (107). The documentation available for him to read at that stage would, of course, not contain anything from the IE's perspective. This is a direct acknowledgement that he had come to a view about certain aspects of this case before hearing the IE's version of events in the interview. Based on this information, the IR has decided that there is no reason for the IE to press charges against his mother. Yet his injuries very clearly amount to a serious assault (in fact to GBH), and there is no dispute that his mother intentionally caused those injuries. The basic elements of a successful prosecution case are therefore made out. What the IR is saying, therefore, is that he has decided that there is a valid defence available to the mother. This may well turn out to be the case. However, to have come to this decision before speaking to the victim indicates that the IR most certainly has made a 'value judgement' about what happened in terms of what would amount to reasonable force and self-defence, and about who was an aggressor and who a victim. This rather calls into question his claims of impartiality towards the IE's account. This topic recurs at the end of the interview:

Example 7.30

IR:	right. (.) let me (.) put this to you here and now. (-) y- in terms of what	554
	you've said about pressing charges, (.) at the moment a- at this moment in	555
→	time, (.) if there's any stage in the (.) future that you want to (.) put	556
→	forward mitigating circumstances, (.) what you've already said to me, (.)	557
	in relation to the situation with your mother, (.) you can do that. (.) I am	558
	not in a position where I feel, (.) that I am going to arrest your mother, (.)	559
→	in relation to (.) what you re[gard as]	560
IE:	[she (s??t)] a truncheon over my head (then	561

	[????)]	562
IR:→	[what you regard as] assault on you. (.) okay? (.) that's what I'm saying,	563
	(.) if at er (.) if at any stage I am told differently, (.) then I will review that	564
→	situation. (.) but what I <u>am</u> saying to you is, (.) if you w- intend to use that	565
→	as mitigating circumstances, (.) if the need arises, (.) then you can put that	566
	forward. (.) all right? (--) right. i- (.) I'm gonna bring this interview to a	567
	close now mate,	568
IE:	yep.	569
IR:	is there anything else that you want to say before I do that.	570
IE:→	no.	571

Here the IR describes the mother's actions as 'what you regard as assault' (560, 563), a description which makes a pointed contrast with his earlier description of the officers' much less serious injuries as 'what <u>we</u> call ABH' (343, Example 7.4). Both the IE and the officer have received injuries at the hands of others, but the IR labels them in such a way as to ensure that one gets institutionally recognised and acted upon, while the other does not. The use of personal pronouns, especially the juxtaposition of 'I' and 'you' in lines 558-563, also belies the IR's claims of neutrality. It is also noticeable that here he opts to use the personal 'I' rather than invoking his institutional identity with 'we', as seen in the earlier example.

A further point to note here is the mention of 'mitigating circumstances' (557, 566). This is a legal term which relates to information put forward by the Defence in court at the sentencing stage. It can therefore only arise after a finding of guilt (or a guilty plea). Although the IR hedges this with 'if the need arises' (566), this nonetheless indicates

once again that the IR has already pre-judged the outcome. He appears to be conducting this interview on the assumption that the IE is guilty and will be convicted.

The mention of 'stage[s] in the future' (556) and of legal principles applicable only in the courtroom indicate the IR's orientation to the later court context during this much earlier stage of the judicial process. And once again we see his orientation predominantly to the Prosecution agenda in his focus on (a) what might reduce a sentence (after a successful prosecution); and (b) whether or not other charges should be brought against someone else. However, by focusing only on whether his mother's actions amount to an offence, this overlooks the possibility that they may also amount to a defence for the IE. (The fact that the IE was hit over the back of the head does at least allow the possibility that he was legitimately trying to leave the scene to avoid serious injury, hence providing justification for evading arrest.) But having decided that the mother's actions do not amount to an offence the IR deems them no longer relevant, and hence does not explore them or allow the IE to elaborate.

In fact, he explicitly closes this down as a topic here. By telling the IE that he will be able to give this information at a later stage, he thereby strongly implies that it is not appropriate for the IE to do so at this stage: '*if there's any stag*e in the (.) future that you want to (.) put forward mitigating circumstances, (.) what you've already said to me, (.) in relation to the situation with your mother, (.) you can do that' (556-7); 'if the need arises, (.) then you can put that forward' (566-7). In addition, by referring to 'what you've already said' (557) he further implies that nothing more should be said about it here. The IR's use of the permissive 'can' in both instances also makes it clear that it is up to him to determine what the IE can and cannot talk about, and that it is he alone who determines what is relevant in this context.

Given these strong indications by the IR, the exchange in lines 570-1 is perhaps not surprising. The IR makes what might appear to be a very open invitation to the IE to add any information he wishes to the interview (as required by PACE Code C 4.17). However, viewed in the immediate discursive context of the directly preceding turns, where the IR has made it clear that he does not consider information about the assault on the IE relevant, it is hardly surprising that the IE simply replies with 'no'. The significance of this for the application of s.34 CJPOA (whereby defendants will be prejudiced if they do not mention when questioned something which they later wish to rely on) is obvious.

A final point to note on this subject is an interesting slip-up made by the IR when administering the caution at the start of this interview.

Example 7.31

IR:	(.) okay. (.) have to remind as well of the caution, and that is that you do	46
	not have to <u>say</u> anything but it may harm your defence if you <u>fail</u> to	47
	mention <u>when</u> questioned something which you later rely on in court. (.)	48
→	anything you <u>do</u> say may be used in evidence against you. do you fully	49
	understand [what that] means.	50

The IR strays from the given wording by adding two highly significant words: '...may be used in evidence against you' (49). This can be seen to match the IR's apparent focus on the interview as an opportunity to collate evidence for the Prosecution only. This overlooks the fact that it is equally important to cover information that may be relevant to a defence, not only so that the IE is given a proper opportunity to mention all points which he may later wish to rely on, but also so that the police and CPS obtain all information relevant to their investigation and to the charging decision.

Thus far we have seen that the IR appears to be focusing only on the needs of the future prosecution audiences, and not those of the defence. Given the control that an IR has over the interaction in their institutional role as questioner, any agenda held by the person in that role is likely to influence the version which is allowed to emerge from the IE during the interview process. In the next section we will consider how the IE's narrative is indeed shaped and directed by the IR's agenda, despite apparently being the IE's own version in his own words.

7.3.4   Story co-construction

In previous discussion (Chapter 6.3) it was established that the police interview represents a formative, drafting stage of story construction. At this point in the judicial process, each side's narrative of events is in the process of being created and assembled. Part of the function of the pre-trial investigative stage is to establish the 'facts in issue' (as discussed in Chapter 4.5); in other words to determine which elements are agreed by both sides and where the areas of dispute lie, and hence what the trial needs to be about (or indeed if there need be a trial at all). So an important part of the interview process is to decide which elements will end up in the final 'stories', which can be edited out, which are minor details and which major themes.

Thus at the interview stage the IE's version of events is still under construction, with topic and relevance being keys areas under negotiation. We know that the person in the role of questioner has considerable discursive control over precisely these areas (Greatbatch 1986). We have seen that the IR orientates strongly to the prosecution framework and tends not to address defence aspects. We have seen that the IE is considerably less aware of the applicable 'offence frameworks', and hence of what needs to be incorporated into his account. Further, we have observed the IE taking cues

from the IR as to the preferred content of his utterances. Putting all these factors together, there is a strong likelihood that the account elicited from the IE during this interview will be heavily influenced by the IR's prosecution-focused priorities rather than his own defence needs.

We have also seen that the IR appears to have approached this interview with a pre-conceived version of events in mind, or a 'Guilty scenario' (cf. Auburn et al.'s (1995) 'preferred version': 357), based by his own admission on the information he has read beforehand (Example 7.29). We shall therefore begin by examining how that information, in the form of the prior statements of other witnesses, influences the interaction and the story which is constructed through this interview. Firstly, we will see how the IR uses these statements as the basis of his questioning.

Example 7.32

IR:	and the other point that I want to e- to put to you is <u>this</u>. {clears throat}(-)	283
→	during (-) the course of the struggle, (-) I'm reading from the (.) officer's	284
→	statements and other witness statements, (-) {clears throat} (.) it's quite	285
	clear that these people (.) formed the opinion (.) that you were- you were	286
	attacking (.) the police [officer.]	287
IE:	[I don't think] who's the witnesses.	288
IR:	I can't tell you their [names.]	289

Example 7.33

IR:→	right. (.) so witnesses that we have at the scene, (.) have basically (-) said	314
	that they formed the opinion (.) that you were going to hurt the police	315
	officer.=	316
IE:	=if was gonna hurt the officer, (.) I had (.) so many oppor[tunities]	317

IR:→		[all I'm saying]	318
→	is (.) why would they say that.		319
IE:	I don't know do I! cos it- they've seen (?) struggling together (.) and fell		320
	through a fence right, (.) I could a- (.) the officer was on the floor! (.)		321
	right, (.) I could ave hit him so many times but I didn't. (.) I tried to get		322
	away. (.) I didn't even touch the officer.		323
IR:→	as I understand it, (-) you say you've tried- you could have hit him so		324
	many [times]		325
IE:	[yeah but] I didn't=		326
IR:→	=as I understand it, (.) you were trying to hit him (.) on a number of		327
	occasions and you were stopped (.) by witnesses that were present.		328
IE:	I don't think-		329
	(.)		330
IR:	on at least two occasions.		331
IE:	no! (.) I didn't [(hit either)]		332
IR:	[which re]sulted in, (-) your mother actually finally hitting		333
	you over the head.		334

These examples show that the IR appears to treat the information contained in these witness statements as established fact, as 'evidence', and not merely as subjective opinion. Although the IR qualifies the status of his assertions with 'as I understand it' (324, 327) it is noticeable that this contains the personal pronoun, transporting the content from the witnesses' perspective to the IR's own view. The assertions made in the witness statements already appear to have been incorporated as fixed, non-negotiable features in the IR's version of the story. This matches the tendency in our

society to accord the written text a higher, more authoritative status than its spoken

counterpart (Biber 1988: 6-7), as also observed in the privileging of the written

transcript over the spoken version of the interview discussed in Chapter 5. This

apparently elevated status of prior written statements can also be observed in the

following example.

Example 7.34

IR:→	[I'll read exactly what]'s said, (.) "I said (.)	377
	I have received a complaint that you have made threats to commit	378
	damage. (.) o- (.) or- t- to kill the occupant (.) and I am going to have to	379
	talk with you about this. (.) He replied, (.) "I'm going nowhere with you,	380
	(.) your (.) you're doing nothing." (-) the officer said to you "calm down.	381
	(.) I just need to speak with you. (.) about what (.) has (.) happened."	382
	(.)	383
IE:	I said yeah, (.) I walked out of the gate, (.) he [grabbed] me,	384
IR:	[so-] so would you agree	385
	(.) that what the officer has just said to that point [is] correct.	386
IE:	[yeah] but until we got to	387
	[the gate]	388
IR:	[hang on!]	389
IE:	aaarrrr! y- you're [changing it all the time!]	390
IR:→	[no no, (.) I'm] reading to you what it says. do you	391
→	want to hear what it says or don't yer.	392
	(.)	393
IE:	[yeh a-]	394
IR:→	[so you] can make a response to it.	395

IE: aar {grunt/agreement token?}   396

         (--)   397

The reference to 'exactly what's said' (377) contains an implication of precision and accuracy, and of authority. The inference invoked here is that since the IR's words are an 'exact' rendition of the statement, the contents of the statement are equally accurate and truthful. The use of the passive 'what's said' is also interesting: the deletion of the officer as agent minimises the subjective nature of this version as the account of a named individual. This also occurs in lines 391 and 392. Instead of describing the account as what the officer says, the IR refers to 'what it says'. This attributes agency to the written statement itself, again removing the officer's subjective agency in creating that version, but instead attributing it to an inanimate object – hence quite literally 'objective'. Another related feature here is the assumption that the witness's statement contains a completely accurate, word-for-word reconstruction of what was said at the scene. Linguistically this is highly unlikely, bordering on impossible (Coulthard 1996, Solan & Tiersma 2005: 98ff.). Yet the presence of these words as direct quoted speech (rather than reported speech) in both the officer's statement and in the IR's repetition of them, presents this as unproblematic fact.

This example also contains an explicit statement that the IR's role here is to respond (395). This responsive discursive role is frequently allocated to IEs in my data, especially with regard to prior written witness statements. This theoretically allows IEs the opportunity to respond to every allegation being made against them, which is a key institutional task for the interview. However, it also means that the IE's version can only emerge as secondary; as a reaction to the already fixed 'Guilty scenario' which has

emerged from the witness statements already written down, and hence formalised. It is thus derivative, its structure and content dictated by the prior source, rather than emerging with its own narrative identity as it might if it were a 'first telling'. Further, it can been seen that as soon as the IE tries to put forward his own details or version of events here (384, 387, 390) the IR interrupts him and prevents him from continuing (385; 389; 391-2), thereby actually preventing the IE from producing his own narrative version in response to the officer's statement.

This responsive role is also invoked in the following example, taken from the end of this interview where the IR is explaining what will happen in a subsequent interview.

Example 7.35

IR:→	I will be putting to you, (-) what (.) the evidence is. (-) or what people	600
→	have said. (-) and you will then have <u>your</u> (.) chance to reply to that. (-) a	601
	decision will <u>then</u> be made at the end of the day looking at what <u>you've</u>	602
	said, (.) and what (-) [(???)]	603
IE:	[well yeah there's about seven witnesses,] they're all	604
	gonna've fucking got together last night aren't they.	605

Once again we have explicit acknowledgement that the IE's account will be a second version, based on and around the pre-existing witness statements (601). This also contains an acknowledgement that a direct comparison will be made between the witnesses' accounts and the account elicited from the IE during the interview process, and that crucial decisions will flow from this (602-3). This highlights how essential it is for the IE that he is enabled to put forward his own account at this stage.

It is also significant to note the IR's description of other people's statements as 'evidence', which he instantly corrects (600-1), once again indicating the status he accords them. Alongside the labelling of the IE's version as something to be put forward as 'mitigating circumstances' (Example 7.30), it can be seen that the IR, at this early stage, is already ascribing their words a particular role in the later process. This is further support for my assertion that IRs orientate strongly to the evidential value of people's utterances at this stage, especially the IE's during the interview itself, and are hence orienting to the future audiences and contexts for these data. The key additional point here is the observation that the prior stages of the judicial process, in the form of the taking of witness statements, also influence interview interaction. This further reinforces my overall argument of the necessity of treating the police interview as an integral link in a chain of events, heavily shaped by other events along that chain, as opposed to viewing it as an independent, free-standing discursive event. This is equally true for interviewees and others directly involved in this process as it is for the researcher.

We can observe another aspect of this link between the various stages of the judicial process in the following example, in fact an extract from Example 7.33, which also links back to our previous discussion of 'offence construction'.

Example 7.36

IR:	right. (.) so witnesses that we have at the scene, (.) have basically (-) said	314
	that they formed the opinion (.) that you were going to hurt the police	315
	officer.=	316

It can be seen that this addresses the basic element of an 'assault', namely whether the victim would have 'apprehend[ed] the imminent application of unlawful force upon

him'[33] . Without access to the witness statements, let alone the actual statement-taking process, it is perhaps dangerous to speculate about how this information came to be in multiple witness statements. However it can be acknowledged that it is rather unusual for more than one witness to have specifically, and independently, decided to comment on what they thought another person intended at a given moment. The fact that this happens to correlate with an important offence element does tend to support the theory that this information was elicited due to specific prompting by whoever took the statements (cf. Rock 2001). This is not to suggest that there is anything wrong with so doing – it is an entirely legitimate part of the investigator's task to attempt to establish whether these elements are present – but the point to note here is how that earlier prompting is 'recycled' and reproduced in this interview (Aronsson 1991), and hence becomes part of the account elicited from the IE at this later stage. And further, it shows that the tendency to concentrate on prosecution points, and to overlook potential defence points, appears also to happen at other stages in the process. It thus has already had an influence on the evidence gathered even before the interview stage. By the time the completed bundle of evidence is passed to the CPS for the charging decision, such elements will have gained significant prominence through such repetition, to the point where they potentially take on far greater weight than might otherwise have been the case. And, by the same token, potential defence points will have become minimal.

We will now turn to other ways in which the IR influences the version which is elicited from the IE during this interview. Firstly we will consider the IR's treatment of the IE's own prior (verbal) statements in the interview, before looking at other ways in which the IR 'co-constructs' the IE's account.

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[33] see footnote 22

Example 7.37

IR:→   [but you said ear-] y- you said earlier on, (.) and I   140

→   quote, (.) you said at the very beginning, (.) that you thought that the   141

         officer was gonna arrest yer and that's when you st[arted to struggle]   142

                                          [IE: well yeah when e-]   143

         to [try and get (away.)]   144

It can be seen that the IR attempts to treat the IE's prior verbal utterance in the same

way as a written statement, from which he can 'quote' (141). 'Quotation' implies that

the IR has an accurate source to which he can refer, which is of course not the case. He

may have made his own written notes while simultaneously conducting the interview,

but (as with the transcription issues discussed in Chapter 5) this will at best be an

approximation. Indeed, this is (my own interpretation of) what the IE actually said:

IE: [...] and then I thought he was gonna   72

         arrest me and I tried to run off and he grabbed me. (.) we scuffled, [...]   73

Although the IR's version is similar to the IE's words, it is certainly not an accurate

'quote'. In fact it alters the IE's words subtly but significantly, re-casting the scene

described in a different light (cf. Heydon 2005: 138). Firstly, the IE's 'scuffle' (73) has

in the IR's version become 'struggle' (142), an action which is much closer to the

offence element of resisting and/or obstructing the officer. In addition, 'scuffling'

implies mutual give and take, whereas 'struggle' suggests action by one person against

another. It is also significant that in the IE's version he is first grabbed by the officer,

whereas in the IR's version the officer takes no active role. Further, 'run off' (73) has

become 'get away' (144), which contains an implied indirect object: the IE must have

been trying to get away from something. The implication, supplied by the preceding part of the IR's turn, is that he was trying to get away from the arrest – which is of course an offence. It is worth noting that the IE only says that he thought he was going to be arrested (72-3), in other words he is saying that the officer had not actually tried to effect the arrest at the point where he grabbed the IE. This is potentially a very important point, but it is not investigated by the IR here.

Example 7.38

IR:→	right. (.) okay. (-) [now] you said that you made threats,	158
	[IE: n-]	159
IE:	yeah	160
	(.)	161
IR:	w- (.) what were the threats you made, [and] who did you make em to.	162
	[IE: a-]	163
IE:	as I says [(?)]	164
IR:	[and] why!	165

Once again the IR's formulation in line 158 packages up the IE's prior words into an 'offence framework': 'you said that you made threats'. But the IE did not use this phrase. This is (my interpretation of) the source of this formulation:

IE:	er first of all I rang my mum up and I had a argument with her on the	67
	phone, (.) and er (.) sommink stupid like I'll smash yer windows or	68
	sommink like that. (.) er not (intentioning) (.) just like I didn't mean it (at	69
	all),	70

Again it can be observed that 'argument' (IE, 67) implies two-way interaction, whereas 'threats' (IR, 158 & 162) are decidedly one-way. Yet the IE simply agrees with the IR here, effectively admitting to a further criminal offence in passing. We have already noted that he has (apparently) not been charged in relation to this, but this is still very much a possibility. Several factors can be observed in relation to the IE's agreement here. Firstly, the IR introduces the 'fact' that the IE has made threats not as a new element, or as an accusation to which the IE is invited to respond, but as a pre-established, non-contentious 'given'. It is introduced as an introductory preamble to a question, subordinate to the consequent main 'point'. The extra level of embedding created by the indirect quotation also buries the 'making threats' element deeper into this already subordinate part of the IR's turn. Its importance is thus underplayed, as is the opportunity for the IE to dispute this: if it is not the point of the question, and is (to the IE's mind) not too far away from what he said, it may not seem worth him disrupting the IR's turn at this preliminary stage to correct it. Secondly, the IR claims to be merely quoting what the IE himself has already said. This is slightly more difficult for the IE to dispute as compared with an assertion made by the IR on his own behalf, as he risks appearing inconsistent or as if he is arguing with his own point.

Having observed how the IR shapes and recasts the IE's own prior words during the interview, we shall now see how he also shapes other aspects of the IE's narrative of events, beginning with the continuation of the example we have just discussed.

Example 7.39

IR:	right. (.) okay. (-) [now] you said that you made threats,	158
	[IE: n-]	159
IE:	yeah	160

	(.)	161
IR:→	w- (.) what were the threats you made, [and] who did you make em to.	162
	[IE: a-]	163
IE:	as I says [(?)]	164
IR:	[and] why!	165
	(.)	166
IE:	what it was yesterday, (.) I went to see my stepbrother at my mum's	167
	workplace yeah, (.) they work at separate ends of the factory (-) (when) I	168
	was talking to him she come in she goes I wanna word wi yer outside.	169
	(--){sniff (IE?); papers} and she was going on and that and saying that	170
	you can come back home if you want. I says look! (.) at the end of the day	171
	I'm never (.) ever coming back home. (.) I goes for what you've done to	172
	me, (-) I'm not coming back. (-) and then I rang her up and I says look (.)	173
	can I come and get some clothes, and then she tried saying that (.) she's	174
	not having me back when I've finished (.) the relationship between the	175
	whole of the family yesterday.	176
	(-)	177
IR:	mhm, (-){sound of writing?} [go (on) I'm listening,]	178
IE:	[and er] anyway I just said to her look. (.)	179
	y- you're evil. (.) I says for what you've done to me and I (goes) I'll	180
	smash yer windows. (.) and then I went to the house, and she goes "well	181
	smash my windows then" I goes "do you really think I'd actually smash	182
	yer windows?" (-) I goes I (woun't at all). (.) and then she flagged down	183
	the policeman an (-) .hh hh[h]	184
IR:→	[right] (-) did you (.) at any time threaten to	185

	burn the house down.	186
IE:	no. (.) threatened to smash the winders I <u>never</u> threatened to burn the	187
	house down	188
	(--)	189

An important first point to note is that the IR does allow the IE to produce a fairly long, unguided account here. Indeed when the IE pauses (177), the IR encourages him to continue (178). However, closer analysis shows that this is perhaps not as encouraging as it first appears. Although the IE introduces a number of topics here, such as his visit to his mother's workplace, the IR does not pick up on any of these but instead simply goes back to his original question about the type of threats made (185, linking back to his question in 162). It can be observed that the details included by the IE, such as background details of the family relationships, are indeed not strictly relevant to the 'offence framework', but they are clearly highly relevant to the IE in terms of his explanation for the events in question. They also provide rich contextual information to situate the bare words of the threats which are the subject of the IR's question. By not pursuing such aspects or allowing the IE to elaborate, the IR once again minimises information significant to the IE in favour of aspects which are relevant to his own agenda. This is, to some extent, entirely valid, as the IR has a duty to keep the interview on track and to focus on investigating the matter in hand. But by closing down aspects which the IE considers relevant, the IR risks distorting the version which emerges and failing to elicit information which may turn out to have an important bearing on the case. It also once again demonstrates the power the IR has over the IE's own version.

It can be seen that the IE's response does actually include an answer to the IR's original question about the threats made (179-81), but the IR's subsequent turn indicates that this perhaps does not quite match the version he wants or expects. His preconceived version, based on the prior written statements of other witnesses, apparently contains a threat to burn the house down (185-6). When the IE's version fails to match this, the IR pursues this apparently missing element rather than any of the elements which actually do feature in the IE's account. Thus the IR is able to go back and 'edit' the IE's version in order to match it more closely with his own. Such editing can act to re-focus the IE's account, to highlight some parts and minimise others, or even to add details which were not present. The IR's question here adds the striking image of a house being burned down, which plays no part whatsoever in the IE's account. Yet even if it is wholly denied, this image has now entered the story (and potentially the minds of the jury/magistrates). (It is worth bearing in mind that this suggestion almost certainly derives from the statement of another witness, which the IR then 'recycles' into this interview.)

An interesting feature of this aspect of the discourse is that such exchanges are not typified by a stereotypical adversarial accusation-denial interview style, but rather by the opposite. The general tendency observed in my data in terms of account construction is collaboration, not confrontation. This collaborative discursive tendency can be observed in the following two examples.

Example 7.40

IE:	[I says] look at the end of the day we're over now I don't wanna see you	206
	anymore.	207
	(-)	208

IR:→	yeah, (.) go on!	209
	(-)	210
IE:	and that's about it really (.) and then that's where it started.	211
	(-)	212
IR:→	right. (-) and the police officer arrived,	213
	(.)	214
IE:→	he arrived, we were all right at first.	215
	(.)	216
IR:	yeah,	217
IE:	and then my mum started mouthing (.) mou[th]ing an (.) her boyfriend	218
	[IR: e-]	219
	started mouthing and the officer told my mum to get in the house, (.) and	220
	stay in the house, (-) and she didn't of course, (-) all I can remember is	221
	the officer keepin hold o me, (.) and me and im falling back through a	222
	fence.	223

Here the IR takes up the role of supportive listener, with back-channelling (209, 217) and direct encouragement ('go on!': 209). It can be seen that in response the IE treats the IR as an active collaborator, adopting and incorporating the IR's words as contributions to his own ongoing narrative (213-5). The IR's turn in 213 can also be seen to be a clear prompt to the direction in which he wishes the IE's account to continue, which the IE then takes. This example is harmless enough, but it illustrates the way in which the IE is influenced by the IR's turns, leading to the creation of a version of events which may come entirely out of the IE's mouth, but which is

nonetheless jointly produced. This tendency for the IE to treat the IR as a collaborator can also be seen in the following example.

Example 7.41

IE:	[cos a-] what it was th- th- the	467
	officer dropped it, (.) and my mum's boyfriend went to hit me, and he	468
	already hit me before.	469
IR:	right,	470
IE:	so I picked it up off the floor,	471
	(.)	472
IR:	right [so going back]	473
IE:	[and I t-] I told him, (.) to stay away from me,	474
IR:→	right, (.) stop!	475
IE:→	stop! (.) leave me alone,	476
IR:→	no. I s- I'm saying stop! (.) right? (.) go back to the point where you said	477
	y- (.) yerrr (.) yer mum's boyfriend had hit you before. (.) when did that	478
	happen.	479

Once again the IE is apparently treating the IR as a collaborative co-constructor of his narrative. Yet this is not the IR's role, as made clear by his correction in line 477. Yet it is the IR's own discursive behaviour, albeit unwittingly, which leads the IE into this potential trap. It should be made explicitly clear that it is an entirely desirable tactic for police IRs to encourage IEs to produce a free, unfettered account in their own words, and hence supportive back-channelling and other forms of encouragement are certainly not to be discouraged. (See e.g. Haworth (2006) for a good example of the considerable benefit of allowing an interviewee room to talk.) However, the important caveat I wish to raise here is the observation that IRs' prompts and encouragement have the potential

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to influence and alter an IE's account in ways which are not immediately noticeable and hence may be overlooked as a factor. There is a real danger that since, as we have observed, the pre-conceived 'Guilty scenario' shapes the IR agenda, which in turn shapes the way in which the IE constructs his account, this could well directly cause the interview to produce the 'evidence' sought. Yet given this causal link back to the investigative process in the creation of that evidence, it may be considerably less reliable than it first appears. If this discursive influence continues unchecked and unobserved, the investigative team may be left with 'evidence' which they have unwittingly contaminated and hence devalued, while missing those potentially vital nuggets of more reliable evidence which they fail to look for and hence do not uncover.

The dangers of (unintentionally) prompting the IE's responses in an IR-preferred direction are illustrated by the following example.

Example 7.42

IR:	[(I) hear] what you're saying, (.) but the	355
	officer's saying, (.) that those (-) those (-) number of bruisings occurred,	356
→	(.) whilst he was effectively arresting you. (-) and during the struggle that	357
	ensu[ed.]	358
IE:	[{loud sniff}]	359
	(-)	360
IR:	yeah?	361
IE:	what.	362
IR:→	who- w- would you agree that- that he's more than likely right, that those	363
→	injuries occ[urred during- during his struggling with you.]	364
IE:→	[what, when we (were struggling), yeah proba]bly, [cos] we	365

both fell through the fence.   367

There is a subtle but vital change between the two versions given here by the IR. He initially reports the version given by the officer at the scene (355-358), which includes the assertion that the injuries were caused 'whilst he was effectively arresting you' (357). He then seeks the agreement of the IE to this assertion (361). On failing to receive this, he explicitly asks for agreement with the officer's statement, using a question type which is strongly conducive to agreement (Harris 1984): 'would you agree that- that he's more than likely right, that...' (363). But he continues with what is presented as a repetition of the earlier version, but which omits any mention of 'arrest' (363-4). This is a crucial element, but it is glossed over here in a doubly embedded clause. The IE does then express agreement (365), although qualified ('probably'). This could well have been taken as agreement to the entirety of the officer's assertion, which is of course what the IR wants. But the immediately following turns indicate that this was not the case:

(.)   368

IR: {clears throat} okay, (-) he also, (.) goes on to say, (-) that err, (.) he   369

          actually, (.) grabbed hold of your hand, (--) e- sorry (your)- grabbed hold   370

          of your arm, (.) and told you, (.) that you were under arrest.   371

IE:→   they didn't at all.   372

IR: and at that- and [at that you started to struggle.]   373

IE:→   [no I'll right I'll stand up] in court against him on that   374

→   one cos he's proper ly- I <u>hate</u> that! (-) all officers lie to get out of it. (.)   375

and no-one even takes a word [of what (?? said?)]   376

The IE clearly strongly disputes the fact that he was being arrested, yet the construction

of the dialogue in 355-367 could in fact have been interpreted as the opposite. The IR's

discursive behaviour apparently led the IE to agree with something which he in fact

didn't accept, and which, equally dangerously, led the IR to assume he had established

a crucial offence element which was in fact likely to be hotly disputed in the future by

the Defence. In terms of case preparation and efficiency, this would hardly have been

helpful to either side.

We shall conclude this section with a more extended example of how the IR's

discursive tactics can strongly influence the construction of the IE's own account.

Example 7.43

IR:	right when he grabbed hold of yer,	224
IE:	yep	225
IR:	why- w- what did <u>you</u> believe he was doing when he grabbed hold of yer.	226
	(.)	227
IE:	what, when he was- I thought he was (.) trying to hurt me at the end of the	228
	day- I was just (.) <u>angry</u>, I didn't know what was going off [(or)]	229
IR:	[no.] when the	230
	officer, (.) grabbed hold of yer,	231
IE:	yeah	232
IR:	cos earlier on (.) you actually said at the beginning, (.) that when the	233
	off[icer (.) grabbed hold of yer] (.) you thought that he was going to arrest	234
	[IE: I thought he was just getting me out of the garden.]	235

	[yer. (.) and you didn't want to] be arrest[ed.]	236
IE:	[yeah at first yeah.] [I didn't] <u>wanna</u>.	237
	(.)	238
IR:	[(?)]	239
IE:	[cos] I hadn't done owt wrong at the end of the [day.]	240
IR:	[so] (.) am I right making	241
	the <u>assumption</u> then, that at the point that he grabbed hold of yer, (.) you	242
	thought you were g- being arrested.=	243
IE:	=yeah.	244
	(.)	245
IR:	and you didn't want to be ar[rested so-]	246
IE:	[I'm not gonna lie] yeah.	247
IR:	right. (.) okay th-	248
IE:	I did [r-]	249
IR:	[what] I'm asking you James, (.) is to keep it straight.	250
IE:	yeah I did resist arrest [cos] I didn't (.) [want] to get arrest[ed.]	251

This sequence begins with the IR asking the IE what he believed was going on at the point that the officer grabbed him. As we have seen, this is an extremely important point in terms of establishing various elements of the available offences, and in terms of creating evidence of the IE's state of mind, subjective knowledge and intentions. The IE's initial response is to say 'I thought he was (.) trying to hurt me', and 'I didn't know what was going off'. These statements support two strong potential lines of defence, namely that IE was acting in legitimate self-defence because he thought he was being

attacked, and that he did not realise that he was being arrested (which relate to points 4, 6 and 7 on the offence checklist in section 7.2 above).

However, the IR interrupts IE's turn with 'no' (230), strongly indicating that this is not the response he wanted. This is further indicated by the fact that the IR continues by starting to repeat his prior turn – 'when the officer, (.) grabbed hold of yer,' (230-1), rather than moving on to a new point. The IR then, rather than ask the question again, actually suggests the answer (233-236). It is significant that he does so by claiming to quote the words of the IE: 'you actually said at the beginning,' (233). But the IE interrupts and gives his own account of what he was thinking: 'I thought he was just getting me out of the garden' (235), which makes no mention at all of the crucial 'arrest' element. The IR makes no acknowledgement of this utterance, indeed he simply continues his turn talking over IE's (234), and asserting his preferred version that 'you thought that he was going to arrest [yer. (.) and you didn't want to] be arrest[ed.]' (234-236). The IE does then agree with this proposition (237), actually echoing the IR's words ('you didn't want to'; 'I didn't wanna', 236 and 237), although this does rather contradict his immediately prior utterance in line 235, and his original response to the question in lines 228-9. Having received this preferable response, the IR moves to a formulation – 'so...' – which contains none of the elements of the IE's own unprompted utterances, but explicitly spells out the legally significant elements once again (241-246). Once again, the IE agrees with this (247).

This sequence is then rounded off by an extremely interesting exchange in lines 250-1. The IR asks the IE to 'keep it straight'. In response, the IE himself provides a form of summary of this entire sequence but including only those points repeatedly stressed by the IR, and none of those which he raised independently (and using offence

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terminology: 'resist arrest', 251). In the space of these 27 lines, then, the IE's version has effectively had all points potentially helpful to the Defence edited out, and has been reconstructed in exactly the terms most helpful to the Prosecution agenda. The perhaps surprising element here is that this is achieved by a process of apparent co-construction between both IR and IE.

7.4 Discussion

In this case study, we have examined four separate aspects of the discourse which are nonetheless intrinsically linked. The section on 'audience orientation' demonstrated that the IR is orienting to the later audiences and contexts; the section on 'offence construction' showed that he does not do so equally but in fact predominantly addresses the needs of the Prosecution. The section on 'identity construction' showed, among other points, that the IE is not orienting to the future audiences, and especially not to the evidential status of the interview. Finally, the section on 'story (co-)construction' demonstrated that the IR's prosecution-focused agenda gets to dominate and shape the account which emerges from the IE during the interview, despite the fact that on a surface level it appears to be the IE's own account in his own words. The end result is that (a) key defence points potentially get omitted, to the disadvantage of the IE due to s.34 CJPOA; (b) the CPS does not necessarily receive a full, balanced picture of events on which to base the charging decision; and (c) the picture which does emerge is distorted by the misguided efforts of both IR and IE, making it less reliable evidence of what really happened, which is after all the ultimate purpose.

8. Case Study 2: Rape

8.1 Background to the interview

In this case, a man is being interviewed on suspicion of rape. The complainant (C) is a friend of his who had been staying at his flat on and off on a temporary basis. They both agree that they had spent the previous evening together, and that sex took place in the IE's bed. They both also agree that there was some form of falling out which culminated in C leaving the flat. C claims that this was because the sex took place against her will. The IE maintains that the sex was consensual, but that afterwards they had a row about something else, which led to C becoming upset and leaving. Both had been drinking. The IE and C met on a course for people with mental illness, C having been diagnosed with paranoid schizophrenia, the IE suffering from depression. The IE is also (or used to be) a psychiatric nurse. Present at this interview are two interviewers, IR1 being male and conducting virtually all of the questioning, and IR2 being female. IR2 plays only a small role in the interview interaction, asking a short series of questions right at the end of the interview. There is also a female duty solicitor present, who plays no role at all for the main body of the interview. Her only contribution comes right at the end when she asks for a brief consultation with the IE, which leads to the IE making one reiteration of a point, after which the interview is concluded. This interview took place in January 2005, and is 29 minutes in duration. A full transcript can be found in Appendix A.

8.2 Legal Framework

The legal definition of rape applicable at the time of this interview is contained in the Sexual Offences Act (SOA) 2003, the relevant parts of which are as follows:

'1 Rape

(1) A person (A) commits an offence if—

    (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with

        his penis,

    (b) B does not consent to the penetration, and

    (c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the

    circumstances, including any steps A has taken to ascertain whether B consents.

74 "Consent"

For the purposes of this Part, a person consents if he agrees by choice, and has the

freedom and capacity to make that choice.'

This statutory definition came into force on 1st May 2004[34], and made some important

changes to the previous position, such as widening the acts which count as 'rape',

making the category of victims non-gender specific, and altering the definition of

consent. It is not pertinent to discuss these changes in any detail here (see Temkin &

Ashworth 2004 for a full discussion), but it is worth noting that a concept such as

'rape', which may seem to have a standard, 'common sense' definition, can in fact

legally alter overnight. It also now differs between England and Scotland, which has its

own legislation covering this type of offence. This illustrates the difference between a

lay understanding of such concepts and the legal position: it is unlikely that the moral,

'common sense' view of what 'consent' means differs overnight or as you cross a

border, but the legal definition does. Thus, as we saw in the previous case study, it is

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[34] Sexual Offences Act 2003 (Commencement) Order 2004 (SI 2004/874), art. 2

possible that there will be a difference here between the lay understanding of the rights and wrongs of the situation, and the legal framework which determines guilt or innocence. In addition, research has identified the existence of 'rape myths' which pervade both lay and institutional attitudes to rape, and especially to rape victims, and such 'myths' are also likely to cloud the picture further for both IR and IE. Despite the apparently clear-cut nature of the charge here, then, there is in fact nothing 'obvious' or universal about being guilty of an offence such as this.

The facts of this particular case throw up a particularly thorny legal issue, namely the question of consent and voluntary intoxication. This hinges on the interpretation of 'capacity' to consent (s.74 SOA 2003), as well as whether a defendant's belief in the complainant's consent was reasonable given the circumstances (s.1(1)(c) and (2)). In extreme cases section 75(2)(d) might be invoked, which contains a rebuttable presumption that a person was not consenting if they were unconscious at the relevant time. A useful summary of the application of section 74 SOA 2003 to such circumstances is as follows[35]:

'If, through drink (or for any other reason) the complainant has temporarily lost her capacity to choose whether to have intercourse on the relevant occasion, she is not consenting, and subject to questions about the defendant's state of mind, if intercourse takes place, this would be rape. However, where the complainant has voluntarily consumed even substantial quantities of alcohol, but nevertheless remains capable of choosing whether or not to have intercourse, and in drink agrees to do so, this would not

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[35] It will be observed that this judgement post-dates this interview, but it appears that the point had not been addressed in, or affected by, any other case law in the meantime: 'We are not aware of any reported decisions which deal with this aspect of the new legislation' (30 per Sir Igor Judge P). It can thus be taken as an accurate summary of the legal position at the time of this interview.

be rape. We should perhaps underline that, as a matter of practical reality, capacity to consent may evaporate well before a complainant becomes unconscious. Whether this is so or not, however, is fact specific, or more accurately, depends of the actual state of mind of the individuals involved on the particular occasion.'

R v Bree, [2007] EWCA Crim 256, 34 per Sir Igor Judge P

The level of C's drink and drug intake is therefore directly relevant to the determination of guilt or innocence. If she is drunk but lucid, this will assist a defendant's position because she will be deemed more likely to have been able to consent, and, indeed, more likely to have actually given consent (see e.g. R v Bree 40). However, if she is too drunk, she will be deemed less likely to have been capable of meaningful consent, leaving the defendant potentially in some difficulty. This is therefore something of a legal minefield for defendants.

Further, it can be seen in the above statement of the legal position that there is an important element of mens rea involved: alongside the mental capacity of the complainant, guilt or innocence also depends of 'the defendant's state of mind'. (It must be noted that this does not mean that a defendant can use his own intoxication as any form of defence.) As with the previous case study, this means that a successful conviction requires the Prosecution to establish what was going on in the defendant's mind at the relevant time, and so the same observations apply regarding the importance of providing, indeed creating, such evidence through the interview process.

In summary, the following is a list of the elements which need to be established for a successful conviction for rape in the circumstances of this interview. The Prosecution needs to prove the following:

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1. The defendant (D) intentionally penetrated the vagina of the complainant (C) with his penis;

2. C did not consent to this, or lacked the capacity to give consent due to intoxication;

3. D could not have reasonably believed that C was consenting, given all the circumstances.

Given that in this case there is no dispute that sex took place but it is maintained that C consented, the Defence needs to address the following[36] (assuming that actual evidence of C's consent is highly unlikely to exist):

1. C was not so intoxicated that she couldn't give her consent;

2. D's belief that C consented was reasonable in the circumstances;

3. Any steps that D took to ascertain whether C was consenting (n.b. although this is not essential, the lack of such steps would count heavily against a defendant given the wording of s.1(2) SOA 2003).

8.3 Analysis

The overall structure of this interview is as follows. The IE is asked to give his version of events, then IR1 runs through the Complainant's version using her witness statement, after which further questioning takes place before the interview is concluded. An extremely interesting feature of this interview is that my analysis reveals a distinct change towards the end of the interview in the discursive behaviour and attitude of the main IR (IR1). For the majority of this interview we see the same prosecution-driven approach observed in the previous study. However, there is then a discernible shift away from the 'Guilty scenario' and towards a more defence-oriented agenda. In order

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[36] The Defence does not have to formally prove any of these points, for the reasons discussed previously relating to legal and evidential burdens of proof (Chapter 4.5). Nevertheless, in order to mount a successful challenge to the prosecution case, these are the points which would need to be raised.

to demonstrate this shift in the discursive behaviour of participants and, especially, to analyse the consequences for the interaction in terms of the information elicited, the analysis of this interview is arranged slightly differently to the previous chapter.

We shall commence with a consideration of audience orientation and offence construction as before. We will then examine the construction of identity and story up to the 'shift'. We will conclude by examining the position after the shift, combining these elements rather than discussing them under separate headings. This is in part due to the fact that there is considerable overlap here between the concepts of 'character' and 'story', due to the nature of the allegation and especially the line of defence. The versions of events being put forward by accused and accuser are very similar in terms of concrete facts: they agree on all major details of what happened; the only difference is as to whether or not the Complainant consented to it or if it happened against her will. The essence of the case is thus who should be believed. It therefore becomes as much a question of who is the more reliable, trustworthy narrator as it is about the stories they are telling.

8.3.1 Audience orientation

We shall commence once again with a brief consideration of the audience orientation of the participants.

Example 8.1

IR1:→		[okay] (.) so, (.) you're saying on to this morning	101
→	what happened this morning. (.) we're talking about (.) Saturday the Xth		102
	of January. what's happened.		103

Here IR1 initially refers to the relevant time as 'this morning' (101,102), which is a perfectly adequate term of reference for the purposes of all present in the temporal frame of the interview. But the deictic 'this' only works within that frame. The additional temporal locator 'Saturday ...' (102-3) becomes necessary if, and only if, IR1 is addressing someone outside that frame. This demonstrates that IR1 is addressing his talk not only to those present in the interview room, but also to the future audiences and the future evidential value of this interview.

Example 8.2

| IR1: → | [okay] | just describe yourself for me. what sort of build are you | 253 |
| | | and size. | 254 |

Here, the IR himself clearly does not need a verbal description of a person sat right in front of him. Once again, this information is only necessary for recipients who are not present at the interview. However, just as observed in the previous case (Example 7.1), the IR encourages the IE to orientate to him alone as recipient by specifically asking the IE to provide this information for 'me'.

Example 8.3

IR1:	[whereabouts was she touching you (in the pub).]	702
IE:	(-) just- it was just gentle stuff (tactile) you know arms, or whatever, but	703
	it's kind of (-) it's not like kind of like, (.) down, (-) sort of, (-) you	704
→	know (.) down there or whatever, [(but it's ?)]	705
IR1: →	[just for the] benefit of the tape you're	706
→	indicating to your (.) genital re[gion is that (right ?)]	707
IE: →	[yeah yeah (??) there yeah.] (.)	708

This example shows a feature common in my data, namely misfiring deixis. The IE uses gesture and the deictic 'there' to indicate part of his body (705), apparently failing to take into account the needs of any non-present audience (as also seen in Example 7.4). IR1 is, however, alert to those needs and so provides the missing verbal description (706-7). But instead of repairing his utterance and adapting his response for that audience, the IE simply repeats the faulty referent 'there' (708), indicating that he is still only orienting to the IR(s) as audience for his talk. In fact, although IR1's turn is clearly directed at the future audiences, it does little to assist the IE to do the same. He states that his clarification is for 'the benefit of the tape', which is a rather oblique way of drawing attention to those who will actually listen to the tape. (In addition, 'the tape' to which he draws attention is physically present in the current temporal frame, further disguising the temporal and physical distance of the other audiences.) And he continues to refer to the IE in the second person ('you're': 706; 'your': 707), marking him as the direct recipient of his turn, despite the fact that the target for his words is clearly the future audiences and not the IE.

These few examples are sufficient to demonstrate that this interview contains the fundamental differences in audience orientation between IR and IE which we have observed elsewhere.

8.3.2   Offence construction

The most immediately noticeable linguistic manifestation of 'offence construction' in this interview is in the use of 'policespeak' (Fox 1993) by both IRs and IE. This not only establishes the 'crime genre' for the interaction, but directly contributes to transforming the events being described into parts of an 'offence'. In other words,

lexical choice is instrumental here in recasting a sexual act as a rape – which of course

works on the fundamental assumption that what took place was indeed a criminal act.

Example 8.4:

IR1:	how much had you had to drink, (.) including yesterday evening up until	212
→	this morning- how much had you had to drink before this incident took	213
	place.	214
	(-)	215
IE:	before? (.) or [erm-]	216
IR1:	[u- up un-] up until. what had you had to drink. tell me in	217
	total what you had to drink.	218
IE:→	er before the incident took p- (.) errr fff (.) errm (-) between us we got	219
	two bottles of wine...	220

In this example, the sexual act is officially labelled by IR1 as an 'incident' (213), a term

with distinctly negative, 'offence' overtones. The IE's home is similarly re-labelled:

Example 8.5:

IR1:	okay. (-) she then said that you became aggressive, (-) started moaning	351
→	about a christmas present, (.) and then left the premis[es. is <u>that</u> right?]	352

Details of the sexual activity are throughout described using very formal terminology,

as in the following example:

Example 8.6:

IR1:	okay. (-) she then said that you got on top of her, (.) and placed your erect	460
→	penis inside her vagina. (.) and you said to her that you were gonna do it	461
	at least four or five times. [is that right]	462
IE:	[no,] no I didn't do it four or five- this is	463

→	embarrassing sorry! (.) erm, (.) no. (.) I put my penis in <u>after</u> the oral sex,	464
	like I said, and we al- we spent a <u>long</u> time (.) having oral sex, (.) and she	465
→	was moving her body around, her- her vagina in my my face, there was	466
	<u>no</u> indication that she (.) to me didn't want to have that,=	467
IR1:	=yeah=	468
IE:→	and then I inserted my penis	469

This may relate simply to the fact that they are having to discuss extremely intimate matters in the kind of detail which would be considered taboo in almost any other social setting, particularly with a stranger. But it is worth noting that, as well as being medical anatomical labels, 'penis' and 'vagina' are also the terms used in the statutory definition of rape. The following example shows an even more explicit orientation to the 'offence' by IR1:

Example 8.7:

IR1:→	okay. [she] then said that (.) after being pushed away from committing or	446
	[IE: (mhm)]	447
→	tryna (.) [carry] out the oral sex on her that you moved your hips up to her	448
	[IE: mhm,]	449
→	face, (.) [and] asked for her to com- (.) to err, to commit oral sex on you.	450
	[IE: mhm,]	451
IE:	(g- ?-) no, no, no I did not.	452

The choice of verbs here is undoubtedly legal rather than technical or medical, and makes a rather bizarre mismatch with the verbal object. Consensual sexual activity is not something which is 'committed'; but criminal offences are. The choice of verb here thus has the effect of re-casting whatever follows as somehow belonging to the category

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of objects with which that verb is most commonly used – i.e. here it subtly portrays oral sex (an activity which the IE has accepted took place) as a crime.

What is striking in these examples, and throughout the interview, is that the IE adopts the same terminology as the IR – see for example his echo of the description of events as an 'incident' above (Example 8.4: 219). Similar examples were also observed in the previous case study (Examples 7.14 and 7.15). I would argue that this is an example of accommodation (Giles & Powesland 1975); of a speaker tailoring their discourse for a particular audience and context. But the only audience on which the IE is focusing is the IR, hence adopting the language which actually assists IR's agenda. Unfortunately for the IE, instead of creating an image of consensual sexual activity, which is what he is actually trying to describe (and is so essential to his defence), his accommodation to the IR actively contributes to the construction of events as a criminal offence.

A further way in which an offence is 'constructed' in this interaction is through the IR's orientation to the necessary offence elements, as also observed in the previous study. Throughout the interview, the IRs' questions are directed at establishing the points listed above as necessary for building the prosecution case. Or, to put it another way, they are directed at meeting the evidential needs of the future prosecution audiences. The first point that needs to be established, then, is that a sexual act took place between the IE and C:

Example 8.8:

IE:	<u>I</u> would sleep (.) a- erm on the sofa, (.) but sometimes I slept in the bed	90
	<u>with</u> her, (.) but (.) sex hasn't taken place, (.) or I've slept on the sofa	91
	with her and we just chatted all night (.) and [(nothing)]	92

IR1:→	[okay] so you've never ever had	93
	sex with her at all.	94
	(-)	95
IE:	errrm (-) up until last night, (.) er or this morning, (.) <u>no</u>.	96
IR1:	right. up until this morning.	97

The following example addresses the same point:

Example 8.9

IR1:	and that she could see your erect penis, (.) through, (.) the boxer shorts.	414
IE:	I don't very often get an erect penis actually but erm, (.) for reasons	415
	{mumbling},	416
IR1:	yeah,=	417
IE:	=but I didn't <u>have</u> an erect penis [(???)]	418
IR1:	[okay]	419
IE:	mhm,	420
IR1:→	tis obviously a question that I need to clarify, are you saying that you're	421
	incapable of having intercourse or not.	422
IE:	erm to a point a- to a level I can have intercourse, I (??) had	423
	(morbidoplexy) when I was a kid which means that I- er basically I had	424
	an undescended testicle.	425

Here, the IE has raised the possibility that he might have a physical reason why he is not capable of sexual intercourse, which would completely negate an essential element of the offence. This, in isolation, would amount to a very strong defence, until it is recalled that the IE has already admitted that they did have sex. Yet IR1 still deems it necessary to ask this specific question, the answer to which is beyond doubt even on the

IE's own account. This shows the fundamental importance for the IR to close down that (im)possible defence explicitly and on record, in order to negate that threat to the essential elements of the prosecution case. (The rather superfluous nature of the question, paired with its institutional necessity, is reflected in the IR's self-justificatory preamble: 'tis obviously a question that I need to clarify': 421).

At another point the IE gives an extended description of the evening's events (104-58, discussed later), which includes a wide variety of topics including a trip to the pub and the co-op, details of the sexual activity which the IE says took place (including kissing and verbal exchanges), and the presence of C's Jack Russell dog. This whole description is then distilled into the following formulation by IR1:

Example 8.10

IR1:	okay. (.) so y- you maintain then, (.) at the moment that, (.) you've (.) had	163
	sexual intercourse with Caroline,	164
IE:	yeah	165
IR1:	<u>with</u> consent,	166
IE:	<u>with</u> consent, (.) I didn't ejaculate but that [does]n't matter [(does it)]	167
IR1:	[no.] [doesn't	168
	matter no.] and she's (.) fully (.) agreed to that has she.	169
IE:	she fully agreed to it yeah I mean there's p- if she'd been screaming	170
	shouting there's people above me or people below me.	171
IR1:	(okay.)	172

The 'okay...so' marks what follows as a summary of the IE's account, yet the IR omits the vast majority of the information just relayed to him by the IE, instead only including the parts which match elements of the offence. Indeed IR1 checks each element on the

'prosecution checklist' separately, first establishing whether he accepts that sex took place (163-5; item 1 on the list), then moving on to the question of consent (166; item 2).

It can be seen that the IE defers to IR1's control over his own account here. He does repeat a detail which he had included in his account and which IR1 has not included in his formulation, namely the fact that he did not ejaculate (156; 167). But he instantly qualifies this and apparently defers to the IR's right to determine the relevance of his own utterances with 'but that doesn't matter (does it)' (167). The clear implication is that such a detail, which is perfectly relevant to a detailed description of a sexual encounter, doesn't matter specifically to the question of whether or not the sex amounted to an offence. This is to some extent an orientation by the IE to the 'offence' framework, but note that he displays his lack of knowledge of that framework by actually asking IR1 for confirmation. Thus both participants here acknowledge that relevance in this interview relates purely to the offence elements, and that IRs have the sole right (and knowledge) to determine that. The extent to which this is ingrained in the whole exchange can be seen in the way that IR1 actually starts saying 'no' before the IE even asks if it matters (168) – the IE's addition of a detail followed by 'but' seems to be enough for IR to understand that the IE is inviting him to monitor the relevance of that detail. This implies that this is an underlying mechanism of the whole exchange, with the further troubling implication that for much of the time the IE may be self-monitoring, and not mentioning details because he has already decided that they are not relevant.

Having observed how the IR constructs the prosecution case in this interview, we shall now consider the defence perspective. As with the previous study, it can be seen that

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defence elements are not pursued or are considerably less developed than their

prosecution counterparts. To begin with, the following extract contains the only

explanation of the offence offered to the IE:

Example 8.11

IR1:	ahhhm (-) d'you know why you were arrested this morning.	31
IE:	rape apparently. [(er?)]	32
IR1:	[okay.] (.) what do you understand by the word rape.	33
	(.)	34
IE:	erm it is, (.) er- it- it's (-) having sex (.) with someone against their	35
	<u>wish</u>es [basically]	36
IR1:	[okay that's] that's- that's a (.) good enough generalis[ation] [IE:	37
	mmm] as t- as to what we're talking about at the moment, (-)	38

Given the range of legal elements involved in the offence of rape, as detailed in section

8.2 above, this is clearly inadequate in assisting the IE to understand exactly what needs

to be established, or indeed disputed, during this interview. It must be acknowledged

that this IE has a solicitor present during the interview, and has presumably had the

opportunity to consult her before the interview commenced. But the IR's question

specifically seeks to establish the extent of the IE's knowledge, and his answer reveals

the lack of it. The fact that the IR does not seek to redress this lack of knowledge may

suggest deference to the solicitor's role – it is after all not the job of the IR to give the

IE legal advice. But it also illustrates that the IR's position is considerably closer to the

Prosecution than the Defence, and is certainly not a neutral, 'assisting' role.

The IE's response shows an understanding of one basic element of the offence which he

needs to address, namely the question of consent ('it's (-) having sex (.) with someone

against their wishes basically': 35-6). It can be seen that, sure enough, this is the one

element upon which he places constant emphasis throughout the interview:

Example 8.12

'we kissed, (.) it was consensual kissing,' (121)

Example 8.13

IR1:	okay (.) she then said that you, (.) pulled her pants down, (.)	383
IE:	m[hm],	384
IR1:	[and] placed your fingers inside her vagina. (.) is <u>that</u> right.	385
	(.)	386
IE:→	err, (.) with her con<u>sent</u>	387

Consent is of course a vital part of the offence, especially on the facts of this case, and

so he is right to treat this as significant. His difficulty is that he has been left to second-

guess the exact elements of the offence, what 'consent' really means in this context, and

thus what else he needs to say in his defence. The way in which he chooses to portray

the situation, including his portrayal of both himself and the complainant, reveals the

assumptions he appears to be making about what being guilty of rape entails.

Unfortunately for him, most of those assumptions are wrong.

One assumption he appears to make is that lack of consent would involve violence on

his part and physical, vocal resistance on her part. This has already been seen in

Example 8.10 above (170-1). It is also apparent in several other places in the interview,

for example:

Example 8.14

IE:	and erm (-) then, (??) we were	135
→	kissing, (.) it was, (.) like I <u>say</u> it was completely con<u>sen</u>sual! there was	136

→	no <u>effort</u> to push me away or whatever, she didn't say (.) no, stop or	137
	whatever,	138
IR1:	mhm	139
	(-)	140
IE:	and (.) her little Jack <u>Russ</u>ell was by her side, (.) (cos he'd) been kind of	141
	>you know seeing as it's a Jack Russell it doesn't ever (.) go far,< (.) (and	142
→	if) I'd been any way kind of aggressive towards her or whatever th- that	143
	Jack Russell would have gone absolutely <u>crazy</u>!	144

Example 8.15

IR1:	okay, (.) what's the nature of your disability please John if you don't	204
	mind me asking.	205
IE:	ermm (.) a bone disease. (.) er (.) my left hip's been replaced three times,	206
→	I've had surgery on my lower leg it's very weak, so <u>I</u> can't go around	207
→	shoving myself on to (people for god's sake)	208

There is no room here to discuss the rather dubious assumption that lack of consent

should take the form of screaming, shouting and physical resistance (see instead Ehrlich

2001: 62-93); we shall limit ourselves here to the observation that it is legally

irrelevant. Of course the fact that the IE misjudges the relevance of violence to the

commission of this offence does not do him any harm: his emphasis on the non-violent

nature of what happened still contributes to some extent to his overall defence, even if it

does not amount to a defence in itself. But unfortunately he misjudges other factors

which are in fact extremely important: firstly, the significance of her drinking on her

ability to give meaningful consent; and secondly whether his belief in her consent was

reasonable given his medical knowledge combined with his awareness of her drug-taking. These factors will be discussed in the following sections.

As with the previous study, for the majority of this interview there is a noticeable absence of attempts by the IRs to address the specific points required from a defence perspective. Despite the numerous occasions on which the IE refers to the fact that C was consenting, the IRs ask no follow-up question aimed at establishing exactly why the IE believed that that was the case, or at ascertaining what steps he may have taken to ensure that she did consent (SOA 2003, s.1(2)). However, as already mentioned this interview is striking for the apparent volte-face of IR1 during its course, and for the distinct shift in his questioning after that change. One of the ways in which this shift is apparent is in the appearance of questions which are specifically helpful to the Defence, addressing those points which are so noticeably absent in the interview up to that point. We shall return to this in the discussion of that shift in a later section.

8.3.3   Identity construction

We shall now move on to a consideration of the identity construction of the 'characters' involved in this incident. As previously discussed, a narrator always has a choice as to the portrayal of a particular character, and will emphasise those aspects most pertinent to their story while minimising or omitting those which are not relevant, or which do not support the version of events they wish to relate to their audience. The identities which the IE chooses to construct for both the complainant and himself here are therefore likely to be less a complete image of their fully rounded 'selves', but more a strong indication of what the IE thinks will best suit the needs of his audience and best forward his own purpose in this context. It is also reasonable to assume that his purpose here is to portray himself as innocent of the charges against him. What we will see,

however, is that his choice of character portrayal instead potentially works heavily against him. He chooses to portray C as drunk and unstable, and himself as passive and (later) professional. These are all problematic for his defence. If C is too drunk or mentally impaired she could legally be deemed to have been incapable of consent (s.74 SOA 2003). His professional medical knowledge means that he personally should have been more aware of this risk, thus making him more likely to fail the subjective test laid down in the Act regarding whether or not his belief that she was consenting was reasonable (s.1(c) and s.2 SOA 2003). Further, the Act also contains a strong exhortation (if short of imposing an actual duty) to take positive action to 'ascertain whether [C] consents' (s.74 SOA 2003). Passivity and lack of action is therefore also undesirable on his part. Thus every element this IE chooses to emphasise actually works against him.

Although the main focus of this section is on the IE's construction of character, the IRs' contributions will also be discussed where pertinent. The IRs' contributions to, and influence on, the construction of character will be developed further in the following section.

8.3.3.1 Construction of the Com*plainant's identity*

We shall start by seeing how C is introduced in the interview first by IR1, and then the IE.

Example 8.16

IR1:→	=allegation was made by a- a lady called Caroliiiinnne Smith	40
	this morning. (.) can you tell us how you know Caroline	41
	at all.	42

IR1 introduces C at the start of this interview as 'a lady' (40). In response to this question, the IE offers the following information about C by way of introduction:

Example 8.17

IE:	Caroline, (.) I first met about a year ago, we both go (.) tooo (.) (college	43
	at) (there's that what-) well we both <u>went</u> to (college), (.) at erm, (-) the	44
	college of further education. (.) >they had a course there for people with	45
→	mental illness.< (.) <u>I</u> have mental illness, (.) I have depression, (.) and	46
→	Caroline had paranoid schizophrenia. [it's] diagnosed.	47
IR1:	[mm]	48
	(.)	49
IR1:	yep!	50
IE:	yeah.	51

It can be seen that the IE is given room to say more here: IR1 uses back-channelling (48) and leaves a pause after the completion of the IE's turn (49) before offering the floor further to the IE (50), rather than taking a turn himself. Yet the sum total of the information the IE chooses to offer here is the information about mental illness. It is noticeable that this is not strictly relevant to the question, but is additional information adjunct to that sufficient to provide an answer here. It can also be observed that there are several other possible ways in which the IE could legitimately have answered the question as to how they know each other, such as to mention that she has been staying at his flat, or to say that they are friends, all of which is information he does give later on. The fact that the first, and only, information about her he selects at this introductory stage is her diagnosed mental illness indicates that it is a key part of how he wishes to portray her here.

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Example 8.18

IR1:   =how long has she been staying with you.   70

IE: yes- (.) off and on she's been staying w- (.) this was the- (.) she'd been   71

         away for a couple of days but she (was) been staying (.) with me off and   72

→   on (.) cos she got thrown out of where she was living. (.) but er (.) (bs-)   73

→   she was staying on (er-) sleeping on (er-) (.) different people's couches   74

         kind of thing.   75

IR1:   okay,   76

IE: (yeah.)   77

IR1:   but she's been staying at your house for how long.   78

IE: off and on, (.) phh cup- (.) about a month. month or so, (.) but n- but only   79

→   periods of a couple of days at a time, she spreads it around, with (.) other   80

         people's houses.   81

IR1:   [okay,]   82

IE:→   [a-] a- other ac<u>quaint</u>ances. (like.)   83

In this example, also taken from the early stages of the interview, we see that the IE

again gives additional information about C which seems directed at negative character

portrayal rather than answering the question; in fact his initial response (71-5) does not

answer the question at all, leading to a second attempt by IR1 (78). Instead he reports

that C 'got thrown out of where she was living' (73), thus placing the blame for her

housing predicament squarely on her own behaviour. He also states that she has been

'sleeping on (er-) (.) different people's couches kind of thing' (74-5), implying a

haphazard, unstable lifestyle, augmented by his subsequent assertion that 'she spreads it

around' (80). It does not stretch the analysis too far to read this description of her

sleeping habits as containing a distinct implication of sexual promiscuity, particularly

given the context. The additional, superfluous, description of the people with whom she stays as 'ac<u>quaint</u>ances' (83), complete with speaker emphasis, also seems loaded.

A key part of the IE's portrayal of C is his constant emphasis on her drinking. As already discussed, this is entirely the wrong thing to do for the purposes of his defence. So why does he do it? It is, of course, impossible to know what was going on inside his mind during the interview. Instead, all we can do is analyse his discursive behaviour in order to demonstrate that this is in fact a key part of this interaction, and make the following observations:

(a) there is no such thing as a 'neutral version', a completely objective and 'truthful' description of what happened;

(b) the IE is not aware of the precise legal framework involved here and hence of the legal significance of this factor;

(c) he is asserting his innocence and is therefore presumably only presenting events in this way because he thinks it will assist him in proving that innocence;

(d) the essence of the position here is that it is ultimately one person's word against another's, and hence his overall line of defence is that C's version is wrong; and

(e) he combines this emphasis on drink and drugs with other attempts to discredit her character and reliability.

This leads to the tentative conclusion that this choice of characterisation is part of an attempt to suggest that her version should not be believed. It must be acknowledged that this conclusion is, and can only ever be, speculative.

We shall now observe how the IE brings in C's substance (ab)use as a key theme in the interaction. The following example gives the first information given by the IE when invited to give his version of events:

Example 8.19

IR1:	[…] what's happened.	103
IE:→	erm, (.) we'd been drinking basically, (.) erm Caroline possibly	104
→	have been using drugs, she <u>does</u>, (.) she got some slimming pill- pills on	105
	the black market wherever, (.) aaaaand she came (home w???) <u>I</u> didn't	106
	particularly want to go out […]	107

The IE is asked a very open question which could be answered in any number of ways, so, as above, the information he chooses to begin with is very significant. In addition, Labovian narrative theory tells us to expect a narrator to begin with a summary ('abstract') of what the story is about, in order to alert the listener to the 'point' of what follows (1977: 363). So the IE's choice of opening here suggests very strongly that his 'story' of that evening is about drinking and her drug use (and not any form of sexual interaction). It can also be seen that the IE is in fact not mentioning her drink/drug using as being a newsworthy, unusual event therefore worthy of a telling, but instead as general characterisation (akin to Labov's 'orientation' phase, 1977: 364). This is signalled especially through the use of the continuing present with 'she does' (105). This further indicates that the 'story' the IE is trying to tell is an indirect one: his 'counter-narrative' is her unreliable and untrustworthy character, the subtext being that her version of events did not happen.

His characterisation of C here also adds a further element which recurs throughout his account, namely strong hints of illegal activity ('the black market', 106). Given the context, it is again not difficult to read this as a deliberate attempt to discredit his 'friend'. Further, he noticeably introduces himself to the scene as a reluctant participant ('<u>I</u> didn't particularly want to go out' (106-7), which contains the highly significant

implication that it was in fact her who made him do things that he didn't want to do that evening. Overall, then, this opening to his version of events contains all the key information we see him emphasising throughout the interview: that C is unreliable, unstable, and untrustworthy, and that she was the dominant instigator of events compared to his passivity and compliance.

We shall now consider how these features are developed in the interview, through an examination of an extended sequence in which the subject of drinking is discussed. The passage in question is rather long and so will not be reproduced in full here. It can instead be found in Appendix B.

Example 8.20 (lines 217-44)
The first point to note is that IR1's initial question is potentially ambiguous in that 'you' (217, 218) could be singular or plural. However, given that the immediately preceding turns have involved reference only to him ('what's the nature of your disability': 204) the most likely interpretation is that, in the absence of any new potential referent, the 'you' still refers only to him. But the IE chooses to answer it by describing how much both of them had drunk, thereby bringing in her drinking as a topic and shifting focus away from his own behaviour. Indeed her drinking is clearly emphasised over his: there is a long description of what C had to drink, followed only by the assertion that he 'keep[s] up with that' (231), thus shifting all agency away from him and onto C. In fact, an analysis of agency in this passage is very revealing. The following table divides the IE's description into actions attributed to both him and C, to him alone, and to C alone.

Table 8.1: Agency in lines 217-43

we	him	her
we got two bottles of wine		
		she had been drinking before that
		she said she'd had some wine
		[before she met me in the bar]
	I'd probably had about three pints	
	I was tired	
		she drank spirits
		she has what she calls shots
		she has a shot with a glass of wine
		and she has one of those breezer things
	and I [...] keep up with that	
	[I was aware that]	she was using pills
		she bought dodgy slimming pills through the back door
	[I wondered because]	she started going a bit strange in the pub.

This clearly demonstrates the extent to which the IE places constant emphasis on C's drinking and drug taking, while minimising his own consumption – despite the fact that ultimately he is saying that they had the same amount to drink (as confirmed elsewhere in the interview: 596-9). The damage that this could have done to his defence is obvious: if she had consumed enough intoxicants to be in any way confused or unsure of what was going on, she would potentially be deemed legally incapable of consent. In fact, his statement here that she 'started going a bit strange in the pub' (241-2) is, in my opinion, the strongest evidence against him in this interview, because it implies that she was definitely affected by whatever she had drunk/taken, and that he was fully aware of this. It is noticeable that this key piece of evidence is provided freely by the IE without even being a response to a question.

One further point to note in this example is the IE's switch from discussing the specifics of that evening to more general habitual behaviour once again. This is signalled through the switch from past to present tense which takes place in line 224 ('she kind of like has...') and is maintained until line 231. This again provides characterisation of C as a regular heavy drinker, and also leaves it unclear exactly what she drank that evening. Even when the IE switches back to the past tense in line 233, he uses the progressive aspect ('she was using pills'), thus still leaving it ambiguous as to whether he is talking generally or about that specific evening. It is impossible to say whether this is a deliberate strategy, or indeed what that strategy may be. But it can nonetheless be observed that the overall effect is to build a picture of C as a regular heavy drinker and substance abuser who was indulging in her customary habits on this occasion, while failing to provide details of what she did actually consume that night.

The question of agency is worthy of more detailed consideration here in terms of its use by the IE as a tool for characterising both himself and C and their respective roles in events. Ehrlich, in her study of a similar factual scenario, identifies what she describes as a 'grammar of non-agency' (2001: 36- 61), employed by the accused 'to represent him as innocent of unlawful acts of sexual aggression' (ibid.: 38):

> '... in [the accused]'s own version of these events he rarely cast himself in a highly agentive role. Rather, he consistently de-emphasized his agentive role by (1) mitigating his agency when casting himself as the subject of transitive verbs designating acts of aggression, (2) diffusing his agency by referring to the complainants as the agents of sexually-initiating events or referring to himself as a co-agent along with one of the complainants and (3) obscuring

and eliminating his agency through grammatical constructions that concealed his responsibility in sexually-initiating sexual acts.' (ibid.: 43)

We shall therefore take the IE's extended description of his version of events and conduct a fairly simple transitivity analysis based on Ehrlich's study. (Again, the full text can be found in Appendix B.)

Example 8.21 (101-58)

Table 8.2 provides a breakdown of this entire sequence into whether actions are attributed to the IE alone, jointly to the IE and C, to C alone, or to no active agent.

Table 8.2: Agency in lines 104-158

co-agency	I	she	no agent
we'd been drinking basically			
		Caroline possibly have been using drugs, she <u>does</u>,	
		she got some slimming pill- pills on the black market wherever,	
		she came (home w???)	
	<u>I</u> didn't particularly want to go out.		
		but she (??) walk down to the sun tan (.) lounge (.) where she spends (an hour?) (??) sun bed place, (.) down in XXX Street,	
		so she wanted me to walk (cos it's dark) with her down there,	
	so I did [walk with her because she wanted him to]		
	<u>I</u> waited for her in the XXX Arms or whatever,		
		<u>she</u> has a sun bed,	
		then she comes into	

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		the {abbrev pub name XXX's}	
		and has a few drinks	
		but she's already been drinking I think earlier on she says (???) a few glasses of wine or something,	
		, (-) and then, (??) a couple of beers	
	<u>I</u> had a couple of pints of beer as well whatever,		
		she had some more wine,	
we went to the off licence, got two bottles of wine, (.) went back to the flat,			
	<u>I</u> made Caroline [food]	she had the munchies	
		she wanted (.) erm, (.) sardi- sardines on to- no <u>pilchards</u>! on toast	
we got them [pilchards] from the co-op			
and we'd had some wine, (.) whatever,			
and we <u>talked</u> a lot!			
and then we kinda curled up on the bed,			
we kissed,			
			it was consensual kissing, (.) kiss full on, french kissing,
		she was (.) in the bed	
	I sat on top of the bed,		
		she took her top off,	
	I got <u>in</u> to bed with her,		
	…		
	I got <u>in</u> to bed with		

	her,		
			there was a lot of kissing (.) basically at first.
			(-) thennn (-) ahmm (there) was <u>oral</u> sex.
	I (-) had oral sex with her. I (.) it was me (.) giving oral sex to her,		
		and she was telling me how to do it how the way she liked it or whatever, gyrating her hips (.) and (.) whatever, (.)	
and erm (-) then, (??) we were kissing,			
			it was, (.) like I <u>say</u> it was completely con<u>sen</u>sual!
			there was no <u>effort</u> to push me away or whatever,
		she *didn't* say (.) no, stop or whatever,	
			I then (.) erm after the oral sex
		she was moaning,	
		and (.) she was playing with her breasts actually,	
		(.) and feeling her nipples.	
			while oral sex was going on,
	(.) and then I inserted my penis! (.) >in her vagina,< with her consent!		
			there was nothing to suggest to me (.) no.
	I wouldn't have done it (.) if (.) sh- she had said no, (.)		
			[if] she had said

			no, (.) that would have been it.
	and then, I withdrew. (.) [because she said it was painful.]	she said it was painful	
			(she said?) because the oral sex had made it painful.
	(.) I- I (assumed) >(?????)<. I withdrew and *I didn't ejaculate*.		

It can be seen that this is a close match to Ehrlich's findings. We have already considered in Example 8.19 how the IE's opening here sets up the key aspects of his characterisation of himself and C, namely C as drunk and dominant, himself as reluctant accomplice. We can see how this is developed throughout this sequence. An examination of the column for the IE shows that virtually every action he ascribes to himself involves C in some way (relevant parts italicised): almost nothing is described as being an independent act on his part. There are two notable exceptions to this. At the end of the sequence he asserts that he 'didn't ejaculate' (156), but this is of course something he did not do as opposed to an action which he took. (He also states that he 'withdrew', but he has already said that this was 'because she said it was painful': 153.)

The other key exception is where he does assert that he gave C oral sex in lines 129-31. It can be seen that this is in fact phrased so as to place some emphasis on his active role: 'I (-) had oral sex with her. I (.) it was me (.) giving oral sex to her' (130-1). However, this emphasis in fact acts to set up a contrast with all the other activities he describes, in effect minimising his active role in everything else that happened. Further, it immediately follows him describing the same action using agent deletion: 'ahmm (there) was <u>oral</u> sex' (129-30), which does sound rather peculiar, so his immediate

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rephrasing of this assertion with emphasis on an active agent can perhaps be seen as a form of repair to this rather bizarre utterance.

Indeed it can be seen that the IE frequently describes sexual acts here using agent deletion (e.g. 'there was a lot of kissing': 129), nominalisation (thereby removing the active verb, e.g. 'after the oral sex': 146), and even ascribing agency to the act itself ('the oral sex had made it painful': 155). We also find examples of what Ehrlich describes as an 'unaccusative construction' (2001: 49-52) (e.g. 'while oral sex was going on': 148). She observes the following of this type of construction:

> 'Represented as nominalisations, then, the grammatical subjects designating sexual acts ... have no agents. Moreover, as the subjects of unaccusative verbs, they depict their referents as spontaneous sexual events, as happenings that have taken their natural course without any particular cause or agent.' (ibid.: 50)

> 'Indeed, I am suggesting that in [such examples] [the accused]'s agency is completely removed from the picture; his acts of sexual aggression are represented as autonomous – as having a force and life of their own.' (ibid.: 52)

They are thus a particularly strong form of agent deletion, significantly reducing any active role for the IE in what took place. All of this makes a distinct contrast with the agency ascribed to C. The column for C in Table 8.2 is full of active, independent activity: C wants things, tells the IE what to do, eats and (especially) drinks whatever she wants, and, most importantly, plays an active, independent role in the sexual activity: 'she took her top off' (123), 'gyrate[d] her hips' (134), 'was playing with her breasts actually, (.) and feeling her nipples' (147-8). None of the actions attributed to

her take place in response to anything the IE says, does or asks; she is portrayed as acting independently in intention and execution.

It is interesting to note that the 'we' column' contains relatively little activity, all of which is innocuous and mundane ('we went to the off licence': 115-6; 'we got [pilchards] from the co-op': 118-9; 'we talked a lot': 120). The nearest it comes to sexual activity is 'we kissed' (121, also 135-6). This is perhaps surprising given that the IE's version of events is that the sexual activity was consensual. It might have been expected that he would therefore emphasise the mutual nature of what took place, describing it as joint activity. However, this would of course involve him admitting at least part responsibility for those joint actions. Instead we have seen that he chooses to paint a rather different scene, removing himself from any active role and hence shifting agency onto either C alone or even the sexual activity itself. It is perhaps understandable that a person accused of serious sexual offences would seek to minimise their role in this way and avoid making any admission of responsibility, even shared, but the end result is once again likely to be a distortion of the 'true' picture which will ultimately not help the IE.

This portrayal of C as the active protagonist (as opposed to passive victim) continues throughout the interview, as illustrated by the following examples.

Example 8.22

IR1:	and that you came in to the, (.) bedroom, (.) and put a candle on the	320
	bedside table?	321
	(.)	322
IE:→	I put <u>two</u> candles in the <u>win</u>dow actually, because she <u>wanted</u> them there	323

	not on the bedside table, I don't <u>have</u> a bedside table.	324
IR1:	okay, (.) were they <u>lit</u> candles?	325
IE:→	they were lit, and they were on the window. (and) she wanted them there.	326

Here the IE repeatedly states that it was C who wanted the candles in the bedroom, again describing himself as acting only according to her wishes as opposed to his own will, while emphasising her proactive role. This focus on the candles by both IR1 and IE can be seen in fact to tap into a rather dubious notion of consent, the implication being that if a person wants candlelight in the bedroom they are somehow also indicating receptiveness to sexual activity. Although it is beyond the scope of our current purpose to consider this further, it is worth noting how the IR builds these details into the scene-setting through his line of questioning here, clearly invoking that dubious underlying implication even if not making it explicit. The fact that the IE recognises this implication is indicated, I would argue, precisely by the strength of his assertion in response that it was what C wanted.

Example 8.23

IR1:	can you remember (.) what Caroline was wearing when you went into the	630
	bedroom?	631
IE:	errm, (.) Carrolliiiiinnne was in bed, (.) first she had a <u>top</u> on, she	632
→	had a woolly top on. [(?was)] she took that off. I remember	633
	[IR: yeah,]	634
	that.	635
IR1:	yep	636
	(.)	637
IE:	underneath I (can't remember) what trousers she had on, (.) yeah a	638

→	woolly- (.) woolly top. yeah. because she definitely took that off herself.	639
	(.)	640
IR1:	yep	641
IE:→	because <u>I</u> didn't take that off. (.) she- she took it off. <u>and</u> she took her bra	642
	off.	643
IR1:	yep	644
IE:→	herself. (.) yeah? (.) and it was a <u>blue</u> bra if I remember. (-) I didn't take	645
	those off.	646
IR1:	okay	647

This final example contains a great deal of repetition by the IE of the fact that C took her own clothes off, not him. Once again, it can be seen that this is in fact not relevant to the question asked, but is instead information which the IE chooses to add. Again, this portrays C as an active, willing participant in events, painting her very much as protagonist not victim.

Overall, then, we have observed that the IE creates a detailed, consistent image of C as a heavy consumer of intoxicants, and as the instigator of events, while portraying himself as almost entirely passive and inactive. Events are described as if they simply happened around him. However, when this is considered in the light of the legal framework it can be seen that this is highly problematic for him. He is in fact under a positive obligation to actually do something, namely to ensure that she is consenting. Not only does he not do this (according to his own version thus far), he also attempts to shift responsibility onto someone who by his own account may well not have been responsible for her own actions, let alone his. The fact that C may not have been in

control of her own behaviour places a much higher onus on the IE to take responsibility for the situation, and for her. Thus, by describing the situation in this way, the IE actually raises the bar in terms of the standard of behaviour and responsibility he should have reached, effectively making the Prosecution's task easier and the Defence's more difficult. His chosen portrayal of C therefore works actively against him.

8.3.3.2 Construction of the interviewee *'s identity*

The preceding discussion has already identified several aspects of the IE's self-characterisation. We have just observed his depiction of himself as passive and inactive, especially in comparison to the proactive behaviour of C. It can also be seen that he constantly portrays himself as considerate of C's needs, either through walking with her because it was dark (109), making her food because she was hungry (116-7), performing sexual acts in a way which she likes (133), or indeed any number of other ways during the course of this interview. We have also already observed his emphasis on the non-violent nature of his actions (Examples 8.14, 8.15). These character traits can all be seen to contradict the stereotypical image of a rapist, and it is therefore hardly surprising that he should attempt to depict himself in this way. We shall briefly consider several aspects of this self-identification as a 'non-rapist' in more detail, in order further to demonstrate the way in which character is actively constructed in the police interview.

On closer analysis of Example 8.15 it can be seen that in his response the IE chooses once again not to discuss what he did or did not do on that particular evening, but instead to use the continuing present tense to describe his general character: '... I *can't* go around shoving myself on to (people for god's sake)' (207-8). This emphasis on self-identity as generally not aggressive can also be seen in the following examples.

Example 8.24

IE:	I wouldn't have done it (.) if (.) sh-	150
	she had said no, (.) she had said no, (.) that would have been it.	151

Example 8.25

IE:	she fully agreed to it yeah I mean there's p- if she'd been screaming	170
	shouting there's people above me or people below me.	171
IR:	(okay.)	172
IE:→	erm, (-) I would have stopped anyway. (.) I don't force myself on people.	173

A further, related, aspect is the IE's self-characterisation as not driven by his own personal sexual needs, as in the following examples.

Example 8.26

IR1:	and that she could see your erect penis, (.) through, (.) the boxer shorts.	414
IE:→	I don't very often get an erect penis actually but erm, (.) for reasons	415
	{mumbling},	416
IR1:	yeah,=	417
IE:	=but I didn't have an erect penis [(???)]	418
IR1:	[okay]	419
IE:	mhm,	420
IR1:	tis obviously a question that I need to clarify, are you saying that you're	421
	incapable of having intercourse or not.	422
IE:	erm to a point a- to a level I can have intercourse, I (??) had	423
	(morbidoplexy) when I was a kid which means that I- er basically I had	424
	an undescended testicle.	425
IR1:	yeah.	426

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IE:→	which erm, was brought down okay. (.) but I don't have kind of like a
	great (-) (kind of) sex drive [(??phase)]
IR1:	[not a great-] great libido {pron. libaido}
IE:	no, (.) libido {pron. libi:do} whatever you call it [(yeah)]
IR1:	[yeah]
IE:→	over the years (.) kind of (phase) with it [(yeah)]

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As already noted in Example 8.9, despite this statement of his medical condition the IE does admit that they had sex, so he presumably must have had an erection at some point during the evening. This anecdote about his general inability to achieve an erection is therefore not (strictly) relevant to any discussion of that evening, and so must serve another purpose. That purpose, I suggest, is to project an identity for himself which does not fit with the 'Guilty scenario'. And a person who is not in any way sexually driven certainly does not fit the stereotypical image of a rapist. Another way in which the IE asserts this aspect of his identity is in his repeated referral to the fact that he did not ejaculate. This occurs in lines 156, 167 and in the following example:

Example 8.27

IE:	and then I inserted my penis at <u>no</u> point did she say (no I don't) want any
	of that, (.) the only time that happened was, (.) when, (.) (??) said it's
	<u>sore</u>. (.) [whatever] it's sore (.) and, (.) and I I immediately withdrew and
	[IR: yeah]
→	I didn't ejaculate inside her.

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The IE was told after the second mention of his lack of ejaculation that this 'doesn't matter' legally (Example 8.10), yet his repetition of this point even after being informed of this suggests that it clearly does matter to the IE. Again, I would argue that this is

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because such a detail, especially combined with his repeated insistence that he withdrew out of consideration for C's comfort, does not fit with the idea of a man who would use force to gratify his sexual needs. Thus it may not be legally relevant, but it certainly is relevant to the characterisation of himself which the IE is trying to construct.

8.3.4   Story co-construction

As with the previous case study, this section will demonstrate that the IE's story, and indeed its 'characters', are actively negotiated and constructed in the police interview between the discursive participants. At this stage in the judicial process this is a formative, creative process, and thus it is open to influence, editing and reconstruction as the interaction unfolds. We shall begin by examining the basic mechanisms of co-construction at work in this interview, before considering the use of C's witness statement in this process, and then conclude with an examination of the (different) story which the IE tries to tell in response.

To begin with, then, it can be seen that IR1 acknowledges that this is an ongoing drafting process:

Example 8.28

IR1:→	okay. (.) so y- you maintain then, (.) at the moment that, (.) you've (.) had	163
	sexual intercourse with Caroline,	164
IE:	yeah	165

'At the moment' (163) signals that this may well not be the final position the IE takes on this subject, but it is apparently not said as criticism and is certainly not

accompanied by any implication of dishonesty. Indeed IR1 uses the same expression

again later in the interview in a similarly non-pejorative utterance:

Example 8.29

IR1:→	so (.) in a nutshell at the moment then you say that you went into the	278
	bedroom (.) this morning,	279
IE:	yeah,	280
IR1:	and that you've had (.) consensual sexual intercourse with	281
	Caroline,	282
IE:	yeah,	283

Instead this seems simply to be an acknowledgement by IR1 of the realities of the

context: the 'facts in issue' have yet to be established; the parameters of both the

prosecution case and (consequently) of the defence are yet to be drawn up. Until those

factors are established later in the process, there will inevitably be a large degree of

flexibility and positional manoeuvring during these formative stages. We shall now

move on to a consideration of the influence which IRs have over this emerging account.

The following example, taken from the early stages of the interview, gives a simple

demonstration of the control an IR has over the version which is elicited from an IE

during the interview process.

Example 8.30

IR1:	okay, (.) annn (-) whereabouts were you arrested this morning.	56
	(.)	57
IE:	in my flat.	58
IR1:	right, which is where.	59

IE:	ermm, (.) it's on the XXX, XXX Court.	60
IR1:	(all right) and what number.	61
IE:	six	62
IR1:	okay. can you describe the layout of the flat for me.	63
IE:	it's a small flat, (.) so as you go in, it's an L-shaped hallway, (.) there's a	64
	kitchen to the right, (.) directly in front (.) there's (.) a (.) um lounge, (.)	65
	and (.) to the left there's (.) a (.) washing area, (.) bathroom, shower room,	66
	(.) and (.) to the right of that there's a (.) um (.) bedroom.	67
IR1:	okay. (.) was Caroline staying with you yesterday?	68

Here IR1's questions cue all the details which the IE subsequently provides. There is a logical progression, and a 'story' begins to emerge of the IE being arrested at home, with the stage for this event being conjured up through the description of the physical layout. However, although the IE is free to give whatever details he wishes and can do so in his own words, the choice of topic here is entirely down to the IR. It is he who has decided that this story will begin with the arrest, and with the setting of the scene of the flat. (It will be observed that this matches Watson's (1990) description of 'invited stories' discussed in Chapter 2.3.4.) The selection of topics, and the order in which they are introduced, are key features of any narrative and do much to establish its nature and direction. They are also usually in the control of the teller. When those aspects are controlled by someone else, the story becomes a collaboration; a joint telling. Yet there is (as yet) no acknowledgement of this co-authoring role which an IR inevitably holds in this context.

It must be remembered that the IR is not asking these questions because he needs to know the answers (he will know virtually all this information already), but in order to elicit the information on record for the future audiences. He is thus selecting topics and establishing the scene for those audiences, tailoring it for their needs. Given IRs' tendency to focus only on the future prosecution audiences, we once again see how the version which emerges from the IE (under the influence of the IR) is thus likely to meet the needs of the Prosecution very well, while being considerably less well tailored to the Defence.

The following example demonstrates another way in which IR1 exerts influence over the IE's version, namely through the use of formulations.

Example 8.31

IR1:	[okay] just describe yourself for me. what sort of build are you	253
	and size.	254
IE:→	me I- I'm a little un I'm stocky. (.) and (.) [small] and stocky yeah. [(??)]	255
IR1:	[yeah] [what	256
	sort of] what sort of height.	257
	(.)	258
IE:	I'm five foot five and a half.	259
IR1:	and what- what do you weigh.	260
IE:	I weighhh (-) I think it's about eleven and a half [stone (???)]	261
IR1:	[eleven and a half stone	262
→	so] you're n- you're not fat, you're not stocky, you're quite proportionate	263
	[build.] (.) what about Caroline, what does <u>she </u>look like.	264
	[IE: yeah.]	265

IE:	Caroliiiinnnnne iisss, errm (.) she's got a big <u>build</u>. (.) erm she she's five	266
	foot three cos we measured her. (.) ourselves against each other the other	267
	day, [and] it was about five foot three, (.) errrm (-) (no) it's- it's-	268
	[IR1: yeah,]	269
	it's a re- (.) normal, (.) it's <u>slight</u>, (.) because she's trying to lose all this	270
	weight or whatever, quite (.) <u>slight</u> fra- well I don't- n- no she's not slight	271
	she's kind of <u>normal</u>. I mean, (.) kind of, (-) sort of, (-) <u>I</u> don't know	272
	reasonable build, (.) reasonable height, (.) [(you know)?] (.) (okay)?=	273

This sequence contains a formulation by IR1 of the IE's self-description, but which directly contradicts what the IE actually said: 'I'm stocky' (255) becomes 'you're not stocky' (263). Presenting this as a formulation (signalled by 'so' once again: 263) rather than a direct contradiction, or as an expression of IR1's personal opinion, makes it very difficult for the IE to challenge, especially as it gives the (false) impression that this is the IE's own description which IR1 is merely summarising. Thus IR1 here appropriates and recasts the IE's portrayal of himself.

Another interesting feature here is the way in which the IE orients to IR1's previous questions in terms of selecting relevant details when asked to describe C. When asking about the IE himself, IR1 asked specific questions about his build/size (253-4), height (257) and weight (260). It can be seen that when asked a much more general question about C – 'what does <u>she</u> look like' (264) – the IE responds by limiting his answer to those same details: 'she's got a big <u>build</u>. (.) erm she she's five foot three ... it's a re- (.) normal, (.) it's <u>slight</u>, (.) because she's trying to lose all this weight or whatever, ... <u>I</u> don't know reasonable build, (.) reasonable height' (266-73). He does not include any

other information which we might expect in response to a request for a visual description, such as the colour of her hair. This demonstrates how the IE is taking cues from the IR's questions regarding relevance and even lexical choice ('build')[37], and how even when asked an open question his responses can nevertheless be constrained by the context – both the local context in the sense of the immediately surrounding discourse, but also the wider environment in the sense of the relative institutional roles occupied by IR and IE and the accompanying power relations.

Having said that, it is important also to acknowledge that the IE is still free to add in extra information of his own choice. Here he embellishes the basic information about her height with an anecdote about the two of them measuring each other (267-8). This provides enriching details about their relationship, even perhaps validating a certain amount of close physical contact between them. This kind of additional detail contextualises not only their relationship but also the events of the previous evening in a way that clearly bolsters the IE's line of defence. Although it may not be strictly relevant to the question, it is important to stress that IEs are generally free to add in such information should they so wish – current UK interview technique is, in my opinion, rarely so constraining or controlling as to prevent this.

Having observed various mechanisms through which IRs can influence the IE's account, we shall now consider the use by IR1 of C's witness statement in the process of constructing the IE's version. It was observed in the previous case study that the prior written version(s) obtained from witnesses formed the basis of the IR's questioning, thereby putting the IE into a responding role. This same role is invoked in

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[37] This was also observed earlier with the IE's picking up of 'policespeak' in Example 8.4 with the repetition of 'incident' (219).

this interview, beginning with the following exchange. IR1 has just summarised the

IE's account so far as being that he went into the bedroom, had sexual intercourse with

C, and that it was with consent (278-288, a clear orientation to the offence framework).

Having established the IE's agreement with this, IR1 responds as follows:

Example 8.32

IR1:→	okay. (--) that's where we've got a conflict now, (is that) Caroline	289
	[has] left the premises when she's left you, (.) and has [imm]ediately	290
	[IE: (right)] [IE: mm]	291
	phoned the police	292
IE:	mhm	293
IR1:	and said that she's been raped by you (.) and named you as the	294
	[person res]ponsible.	295

This clearly indicates that IR1 has been making direct comparisons between the version

being given by the IE and the version previously elicited from C. It can also be seen that

this correlates with the process of establishing the 'facts in issue' in the subsequent

stages of the process, demonstrating once again the influence of the later court stage on

this earlier context. Although this may seem like an obvious point and an entirely

desirable, natural part of the interview process, it is worth bearing in mind that the

prosecution version will thus always come first. The potential problem posed by this is

as follows. If, as we have observed, an IR uses a prior witness statement as a point of

comparison while he elicits an account from an IE, his questioning will inevitably be

influenced, perhaps even dictated by, that prior statement in terms of both its content

and structure. Since we have also already observed that an IR's questions will influence

the IE's responses, it can be seen that the prior witness statement is ultimately highly

likely to influence and constrain the account given by the IE through the interview process.

A further factor to bring into the equation is the police influence over those prior witness statements. This was observed in Example 7.36 in the previous case study, and is also present here, as shown in Example 8.5 above. This is presented as a quote from C's witness statement, but it is rather surprising to see C apparently referring to the IE's flat as 'the premises' (352). Fox (1993) identifies several similar examples of 'policespeak' appearing in witness statements, observing (without further comment) that they are 'obviously not completely in the witness's own words' (187; see also Rock 2001). This adds yet another level of embedded police influence over the IE's account. It must be emphasised that this influence is almost certainly not deliberate, and its effects are likely to be ultimately just as negative for the Prosecution as for the Defence. This only serves to reinforce the importance of exposing such factors to scrutiny in order that they may be recognised and countered.

As mentioned previously, an extended part of this interview involves IR1 reading parts of C's statement to the IE and asking for his response. There is no need to analyse this specific aspect in any detail, as the principle of the IE's version as response to a witness's prior written version has by now been well established. We shall, however, briefly consider how the end result of this can be a version assumed to be the IE's own but effectively co-authored between IR, IE and C.

Example 8.33

IR1:→   if I run through what (.) [she's] initially told us and I give you (.) [your]   307

                       [mm]   [mhm]   308

	chance to, (.) either refute it or explain anything that's different that's	309
→	gone on. (.) she said that (.) she was in bed (.) [by] herself (.) except that	310
	[IE: mm]	311
→	she had the dog with her w- with this Jack Russell what's the Jack	312
	Russell called.	313
IE: →	erm (.) (I've) forgotten its name! erm, (.) sausage! <u>That's</u> what she [calls	314
	it.]	315
IR1:	[sausage.] right, strange name for a Jack Russell but there you go! (.)	316
→	ahm, she said that she was in the bed (.) with (.) sausage the dog,	317
	(.)	318
IE:	mhm,	319

The IR's relaying of C's account undergoes an interesting change here. At first he reports that 'she said that (.) she was in bed (.) [by] herself (.) except that she had the dog with her' (310-2). This could quite naturally be taken as a direct quotation from her statement. However, he then asks the IE what the dog is called, to which he replies 'sausage' (314). IR1 then resumes his relaying of C's account, but he now presents it as: 'she said that she was in the bed (.) with (.) sausage the dog' (317), thus directly incorporating the IE's contribution into C's account[38]. It goes without saying that the contents of C's statement will not actually have changed, but this does show how the oral version constructed during the interview becomes something of a patchwork of the IE's, IRs' and C's contributions. This example of a dog's name is innocuous enough, but that is hardly the point.

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[38] It must be acknowledged that it is possible that C's statement did contain the name of the dog and the purpose of IR1's question was to check whether the IE knew this or not, but I would argue that this is unlikely.

To conclude, the overall problem with all these examples of co-construction is that the transcript of this interview will be presented in court as effectively being the IE's own version of events. No formal written statement is produced on his behalf, and so it is this transcript that will be used as comparison with his courtroom account for the purpose of assessing his credibility. It is all too easy in the context of a trial for the court to see only the overall picture created through the interview, and not notice the processes and influences which brought that image into being.

8.3.4.1 The interviewee*'s story: the row*

As already noted, despite the overall control of topic and relevance by the IR(s), it is nonetheless open to the IE to get in some points of his choosing. However, unlike the IE's obligation to address the topic of the IR's questions, the IR is under no obligation to pick up on points brought up by the IE, and hence they often remain undeveloped and unilateral, and thus cannot really be said to have attained the status of 'topic' in the interview.

It becomes immediately clear that there is one constant 'topic' which the IE attempts to bring into this interview in this manner, and that is the row which he claims took place between himself and C after they had sex. He is in fact allowed to speak at some length on this subject, but it can be seen that IR1 never actually follows up on this, immediately changing the topic on his subsequent turns and not asking any question about it throughout the interview. However the IE constantly returns to it, putting it forward as a form of 'counter-narrative' to C's account of the evening. To the IE the newsworthy 'story' of the evening appears not to be the sexual activity which took place between them, consensual or otherwise, but this row.

The manner in which he first raises it is rather interesting. As we have seen, the IE was initially invited to give his account of the evening with the very open question 'what's happened' (103). This was immediately subsequent to questions about their normal sleeping arrangements and whether or not they had ever had sex, and, combined with his knowledge of the context and the fact that he is being interviewed in connection with an allegation of rape, it is hardly surprising that he chooses to answer this question by going through the events leading up to the sexual intercourse and details of that activity. (We have already considered this account in detail in Example 8.21.). He appears to have concluded his account of the evening at the point where he withdrew ('that's (.) what happened': 158), which is of course the end of the activity relevant to the offence framework, and IR1 then moves to a summary sequence (Example 8.10). There is then a pause (175), at which the IE launches into the following additional account:

Example 8.34

IE:	<u>then</u> we had a <u>row</u>, you see, (.) <u>after</u>wards, (.) we had a <u>big</u> row. (.) and	176
	that was to do (.) with, (.) she uses drugs. (.) and what happened was, (.)	177
	erm (.) I raised a point that she owed me money about (.) (I paid her)	178
	insurance	179
IR1:	mhm,	180
IE:	car insurance a few months ago, (.) and the agreement was >I didn't	181
	expect her to (give) the money back (she would) give me< a christmas	182
	present or something in return. I just (.) kind of said well you get me a	183
	christmas present, (.) aannd (.) (cos that) (.) I said that (would have)	184
	meant a lot to me I suppose, (.) aannd (.) sh-e (.) and also I pointed out	185
	that she'd spent (.) all the money that her parents had given her on	186

	cocaine! (.) drugs.	187
IR1:	mhm,	188
IE:	she uses. (.) and we had a big row, (.) and (.) (said) all sorts of nasty	189
	things, (.) and she stormed out, (.) and I said to her why {cough} why	190
	don't you <u>stay</u>! >or whatever (saying)< I mean it's wet and it's raining,	191
	(.) but by then she had the bit between her teeth (and that?), and (she'd)	192
	said a lot of hurtful things, but (.) she said something (.) {very quiet}	193
	about (I said?) (kind of (.) whatever) prick or kind of thing, (.) you know,	194
	don't want to say any more,	195
IR1:	mhm	196
IE:	stuff like that, (.) but	197
IR1:	yep	198
IE:	but I mean, (.) she's called me that in the past (.) in a kind of, (.) in a kind	199
	of (.) <u>friendly</u> way if you know what I [mean, er]	200
IR1:	[yeah]	201
IE:	so er (.) that- that's basically what happened! I- (.) I <u>did</u>n't I didn't force	202
	myself on her at <u>all</u>!	203
IR1:	okay, (.) what's the nature of your disability please John if you don't	204
	mind me asking.	205

In his opening the IE sets up a link between this account and the preceding discussion with 'then' and 'afterwards' (176), both with speaker emphasis, although the nature of that link is not made explicit. Its status as somehow explanatory of that previous account, however, is signalled by 'you see' (176). In fact it can be seen as an attempt to set up a 'counter-narrative' to what has been presented thus far by IR1 as the 'story' of

the evening, namely the sexual intercourse. Its status as a complete competing version is indicated by its neat narrative framing with 'what happened was...' (177) and '...that's basically what happened!' (202), signalling that this is not an addendum to the previous story, but is in fact – to the IE – the story itself.

In order to assess the IE's purpose in putting forward this counter-narrative, it is worth analysing its structure in more detail. In Labovian terms (1977: 362ff.) this structure is as follows. The Abstract, or theme, is 'we had a row' (176). This is the newsworthy event in the IE's opinion, as opposed to any sexual activity. As Orientation, or background information which is necessary for an understanding of the story, we are told that 'she uses drugs' (177); its status as scene-setting information rather than 'action' signalled by the use of the ongoing present tense. This has already been demonstrated to be a key part of the IE's characterisation of C, and is presumably included here not only to explain what C spent the money on but also as explanation for her (irrational, untrustworthy) behaviour. The Complicating Action, or 'what happened', is the neatly framed information about their argument about the money C owes the IE, which involved 'nasty things' being said and resulted in C storming out (189-90). (The fact that this story also portrays him as a caring, generous friend, and her as exploitative and irresponsible, also ties in rather well with his overall characterisation of each of them as discussed earlier.) Having thus described what happened, the IE concludes with the Coda, which provides us with his overall assessment of the story and his reason for telling it at this time and in this context: 'I didn't force myself on her at all!' (202-3).

According to the coda, then, this story is apparently the IE's way of showing that he is not guilty of raping C. But the fact that this coda has no direct relevance to anything

contained within the story illustrates that this overall purpose is actually rather hidden. It is presumably being offered as an explanation for why the IE finds himself in this predicament (i.e. why he is currently sat in a police interview room talking to this IR), but only through implication. The connections (that he did not rape C but instead C has made false allegations, which is because she was upset, which was because they had a row, with a subtext of her as unstable and irrational due to drug abuse) remain unstated. Indeed it can be seen that IR1 does not pick up any aspect of this story, despite its apparent significance to the IE, but instead immediately changes the subject (204). This is perhaps not the most effective method of defending himself in this context, as seen even more clearly in the following example.

Example 8.35

IR1:	okay. (--) that's where we've got a conflict now, (is that) Caroline	289
	[has] left the premises when she's left you, (.) and has [imm]ediately	290
	[IE: (right)] [IE: mm]	291
	phoned the police	292
IE:	mhm	293
IR1:	and said that she's been raped by <u>you</u> (.) and named <u>you</u> as the	294
	[person res]ponsible.	295
IE:→	[she w-] she walked out (.) she walked out of my (.) flat in a real huff.	296
	really angry.	297
IR1:	mhm=	298
IE:	=I mean she had <u>all</u> her stuff with her, (.) it was <u>pouring</u> down with rain,	299
	(.) we had a <u>big</u> row, (-) aaaannd (-) I don't know she's feels let- she she	300
	had a- she had a difficult time recently, that a lec- one of the lecturers, (.)	301
	w- one of the reasons why she's homeless is one of the lecturers took her	302

in to (???) kind of thing, (.) and had to throw her out because of drug   303

using basically, and kind of (.) irrational behaviour, (.) but I mean (-) so   304

(she is) that's the reason why she is homeless. (.) >but I think she's had a   305

rough deal. (.) you know that's (-) (I'm saying).<   306

In response to the first actual allegation of rape put to him in the interview (294-5), the IE brings up their row once again (296-7, 300), along with further information about C's personal circumstances (300-6). As with the previous example, this can be seen as a rather oblique attempt to rebut the accusation by implying that she is lying, but this is considerably less effective than a straightforward denial would have been (the expected second pair-part in CA terms: Schegloff, Sacks & Jefferson 1974).

This indicates once again that the IE's line of defence is not to directly challenge C's account, but instead to give reasons why she has made it up. This can be seen as another way in which the IE does not orientate to the legal context and 'offence framework' underlying this interview: the reasons behind a false allegation are simply not relevant legally. They are of course extremely significant in the wider view in terms of explaining the overall situation, but they do not directly amount to a defence. Once a 'Guilty scenario' has been invoked it has to be addressed; in other words either confirmed or disproved. All that matters for the purposes of the criminal justice system is whether or not that story is true, not why it was told. The investigator's task is thus to collect evidence which establishes whether or not the necessary offence elements are present, and the information provided by the IE here is at best only very indirect evidence, if it can be called evidence at all. It is thus perhaps not surprising, given IR1's focus on the 'offence framework', that he does not follow up on any of the information

on this topic provided by the IE, and does not include it in his formulations summarising the IE's position, however relevant and important it may seem from the IE's perspective.

As already noted, however, IR1 makes a noticeable shift away from the 'Guilty scenario' in the course of this interview, after which he seems considerably more open to the possibility that an offence did not take place. Once he is prepared to step outside the 'offence framework', it will be seen that he does in fact begin to accept the relevance of this kind of information in forming a wider view of the situation. Thus far we have seen that the IE's method of defence is indirect, ineffective, and to a large degree counter-productive. After the shift in IR1's position, however, a rather different picture emerges which is much more effective from a defence perspective, as we shall now observe.

8.3.5 The shift

Thus far we have seen how IR1's discursive behaviour influences the version which emerges from the IE, and that the resulting account has not been entirely helpful to him. This section will demonstrate how a shift in IR1's position away from the 'Guilty scenario' directly results in the production of a more 'defence-oriented', or at least 'defence-friendly', version, as different aspects gain prominence due to IR1's change in focus in his questioning[39]. It is particularly interesting to observe how a change in interviewer behaviour can result in such legally significant changes to the IE's story, without any change in the factual content, nor in the IE's own position which remains

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[39] It is tempting to speculate as to what prompts this shift, but, even if based on observations of the discourse, this would ultimately amount to guessing at the internal thought processes of IR1 and shall therefore not be attempted.

consistent throughout. The implications of this finding are potentially serious, and will be discussed in the next chapter.

To begin with, then, it must be noted that there is no sudden turnaround in IR1's stance, but rather a gradual shift from one position to the other. The following examples represent the 'transitional phase' in this process, which occurs during the putting of C's statement to the IE. The first example leads directly on from those we have just observed regarding the IE's emphasis on the row as 'the' event of the evening.

Example 8.36

IR1:	okay. (-) and that (.) as she left you tried to give her a kiss and cuddle	514
	again but she [didn't want that]	515
IE:	[yes I] did! because she was upset and I said <u>look</u> why don't	516
	you stay it's pouring with rain outside. (.) and I kinda like put my arms	517
→	round her and she was kinda like really upset it was the <u>row</u> that upset	518
	her.	519
IR1: →	yep (-) and not- not the sexual intercourse (??) {slight questioning tone}	520
IE:	<u>no</u> it was a- it was a ruck! I mean it was kinda like, (that) (was-) we were	521
	arguing, saying things that >were kind of not very nice I suppose,	522
	but<	523

Once again it can be seen that for the IE the significant event which triggered this entire sequence of events is not the sexual activity, but their row (518-9). But what is different here is that IR1's response is not only collaborative, but directly supportive of the IE. He begins with the agreement token 'yep' (520), and then actually supplies the extra information implied by the IE's turn but not verbalised by him: 'and not- not the sexual intercourse' (520). He does still seek confirmation of this from the IE through his

intonation, but nonetheless the effect is to plant these words in the IE's mouth, building on his turn and making the (evidentially more important) implication explicit. We have already observed similar co-construction of an IE's account by an IR, and have previously noted the potential dangers for an IE given the difference in their agendas. However, if an IR moves towards agreeing with the IE's version of events, such a collaborator can instead become a powerful factor in the IE's favour.

Another indication of IR1's change in attitude is his choice of referential term for C in the following.

Example 8.37

| IR1: | but you've already now said that you've (-) had sexual intercourse with | 572 |
| → | the woman, | 573 |

This reference to C as 'the woman' is strangely impersonal and even slightly derogatory, and makes a distinct contrast with his introductory description of her as 'a lady' as observed in Example 8.16. As demonstrated by Watson (1983), such labelling can do a great deal of 'conceptual work' (78) in identifying a person as a 'victim' – or otherwise – in this context, especially in terms of the implicit apportionment of blame.

The shift in IR1's position is also indicated by his rather interesting formulation in the following sequence.

Example 8.38

IE:	and then I inserted my penis at <u>no</u> point did she say (no I don't) want any	469
	of that, (.) the only time that happened was, (.) when, (.) (??) said it's	470
→	<u>sore</u>. (.) [whatever] it's sore (.) and, (.) and I I immediately withdrew and	471
	[IR: yeah]	472

	I didn't ejaculate inside her.	473
IR1:	okay.=	474
IE:	=yeah.	475
IR1:	did you say to her that you were going to- (.) give it to her up the ass	476
IE:	no I did [not. (.) no.]	477
IR1:	[to use her phraseology.] (.) no?=	478
IE:	=no.	479
IR1:	right. were you wearing a condom at all.	480
IE:→	er, was I wearing a condom, (.) she did have a condom but I wasn't	481
	wearing one no.	482
IR1:	you weren't wearing [one.]	483
IE:	[no.]	484
IR1: →	so (.) when you, (-) had entered her you said (.) that she said she was sore	485
	so you (.) stopped almost immediately?	486
IE:	yeah.	487

Here the IE is responding to a series of propositions put to him by IR1 based on the contents of C's statement. This extract commences with the end of an account by the IE of the sexual activity which took place, which he concludes by stating that C said it was sore and so he immediately withdrew (470-1). These details clearly support his account of consensual sex and build on his self-portrayal as considerate and non-aggressive. IR1 then asks a couple of follow-up questions, the second of which establishes that the IE was not wearing a condom (480-2).This has definite connotations of recklessness, lack of care, and even impulsiveness, all of which is surely relevant to the allegation being made.

IR1 then produces what appears to be a summary of this sequence (signalled once again by 'so', 485), but instead of picking up on these potentially negative aspects he goes back several turns to pick up the points which strongly support the IE's position (485-6, echoing 470-1). Formulations such as this are generally a way for IRs to select the parts of an IE's account which they consider to be most salient, and so IR1's choice of what to include here, and especially what to omit, is significant. It also makes a noticeable contrast with his previous use of formulations as observed in Examples 8.10 and 8.31.

It can also be seen that IR1's formulation of the IE's words in 485-6 is subtly different to what the IE actually said (470-1). Both versions are based on the assertion that the IE withdrew as soon as C said she was sore. IR1's version implies that this occurred as soon as the IE entered her, whereas the IE in fact made no such claim, indeed his utterance in 470-1 gave no indication of the length of time during which intercourse took place. The difference is potentially very important, but this change once again goes in the IE's favour here.

Thus it can be seen that by the end of the process of putting C's statement to the IE, IR1 has moved towards a position which is much more favourable to the IE. For the remainder of this section, we will examine the consequences of this change by examining the rather different picture which emerges from the IE in the final stages of the interview. We will firstly consider the developments in character portrayal, before concluding with two sequences which elicit key new information directly relevant to the offence framework, which dramatically alter the position for the IE.

The following example is a key part of the re-characterisation and refocusing of the story which occurs in this final stage. We have observed that earlier in the interview the

IE's response to the allegations being made was to provide reasons why C would make false allegations, and concentrated heavily on characterising C in a way which supported this. We also observed that IR1, while allowing the IE to talk on these subjects, did not pick up on them or ratify them as topics in the emerging account. Their relevance thus remained unexplored and unstated. However, having previously ignored many opportunities to develop this point, IR1 now directly asks the IE about it, and in a way which makes its relevance to the offence explicit:

Example 8.39

IR1:	can you think of any reason why (.) Caroline might make this very	650
	serious allegation against you?	651
IE:	yeeeeeerrrrrr errrrm (-) I'm an ex psych- (.) psych nurse (.) and	652
	Caroline hates (.) psych nurses. (.) but she's been really good with me,	653
	Caroline (??) and I have got on well. (.) but she has this thing about	654
	psy- she doesn't like the label she's got paranoid schizophrenia. (.) erm,	655
	(.) she had a very (.) hard time recently living (.) with her- one of the (.)	656
	tutors,	657
IR1:	mhm {very quiet}	658
	(.)	659
IE:	who took her <u>in</u> to her home, and shouldn't have done it was	660
	unprofessional, (.) it was one of the tutors (who ?? on the course),	661
	(-) and who dumped her very quickly because she couldn't handle	662
	Caroline's behaviour, that made Caroline very angry,	663
	very upset.	664
	(.)	665
IR1:	okay. {quiet}	666

IE:	Caroline was using (.) drugs, also her illness, (.) trying to come off drugs,
	(.) at that time (.) (to) give Caroline credit she was trying to come <u>off</u> (.)
	drugs (??) yeah? (-) (??) she's back on them now, but erm (-) there was
	kinda lots of issues there, there was a lot of drinking going on there was a
	lot of (.) kind of using, there was a lot of people (-) erm Caroline's a- (.)
	Caroline flirts with men and she (was flirting) with tutors boyfriends or
	what[ever (?)] >(as (?) young- young people do (???)< (-)
	[IR: mhm,]
	<u>but</u> she felt very very let <u>down</u> (.) (by) when she got thrown <u>out</u> (.) of the
	tutor's place. (.) (it's just-) w- this person was (?)ing- promising her a
	surrogate mother and what[ever,] (.) and she felt she couldn't <u>trust</u>
	[IR: mhm]
	any- (c-) anyone any more.
IR1:	yep
	(.)
IE:	yeah, (.) and she's angry she's still bitter about that. (.) (and) when you
	talk her she (actually) (??) flares up er
	(-)

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IR1's question itself presupposes the possibility that C is lying, in that the obvious answer as to why she made the allegations is that they are true. By asking this question IR1 thus signals that he is now allowing in the possibility of another explanation, namely that they are false, which is of course exactly what the IE had been trying to bring in for most of the interview thus far, albeit indirectly. Indeed IR1 selects a very

open question-type ('can you think of any reason why...', 650), actively encouraging a positive response and leaving the IE plenty of scope to answer in any way he chooses.

The IE's response to this is to produce an extended character portrayal of C and also of himself. His self-portrayal here is particularly interesting. The very first thing he does here is to give himself a professional label: 'I'm an ex psych- (.) psych nurse', something he had not mentioned at any point in the interview thus far. Whereas at the start of the interview he had begun by describing himself and C as people who both had a form of mental illness (46-7, Example 8.17), he now elevates his own status from co-patient to mental health professional. It can be seen that that earlier description was part of his portrayal of their relationship as friends, whereas now he is setting up a very different form of relationship. He continues with further emphasis on her drinking, drug use and behaviour, but by combining this with the assertion of his professional status he effectively elevates this from personal opinion to professional diagnosis: '[her tutor's actions] made Caroline very angry, very upset' (663-4); 'there was kinda lots of issues there, there was a lot of drinking going on there was a lot of (.) kind of using (669-1); 'she felt very very let <u>down</u>' (675); 'this person was (?)ing- promising her a surrogate mother and whatever, (.) and she felt she couldn't <u>trust</u> any- (c-) anyone any more' (676-9). He further bolsters his own standing by passing professional judgement on the tutor, who 'took her <u>in</u> to her home, and shouldn't have done it was unprofessional ... and who dumped her very quickly because she couldn't handle Caroline's behaviour' (660-3).

However, although this re-characterisation of himself and of their relationship is most likely intended to assist his defence by making him seem more reliable and trustworthy, especially when compared to C, it in fact potentially works heavily against him once

again. By redefining their friendship as more akin to a medical professional-patient relationship, he actually raises the bar even higher in terms of the level of responsibility he should have taken for what took place between them. Further, his qualifications ought to have made him more aware than most of the potential effects of drink and drugs on her mental state, and hence more aware that her judgement and mental capacity may have been impaired.

Given the importance of such factors to the mens rea of this offence, it could be expected that IR1 would pick up on this as strong support for the prosecution case. But instead we see something rather different[40]. His response at the end of this sequence is instead to pick up on a particular aspect of the IE's characterisation of C which instead seems intended to bolster the *IE's* version of events:

Example 8.40

IR1:	you said obviously[41] she flirts with men was she flirting with <u>you</u> last	685
	night?	686
IE:	yeah, she- she was, she <u>does</u> flirt. (.) she comes touches you and	687
	whatever, [(?)] she kind of erm, she's quite ov[ert], she touches you, (-)	688
	[IR: yep] [mm]	689
	she comes right up to you, walks right up to you, she's very tactile,	690
IR1:	okay=	691
IE:	=yeah=	692
IR1:	=when did you, realise that sex was gonna be, (.) an opportunity or a	693
	chance for you last night then.	694

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[40] It must be noted that IR2 does later ask the IE about the effects of mixing drugs and alcohol (752-3) when she is given an opportunity to ask questions at the end of the interview.

[41] Although the use of 'obviously' here would at first sight seem worthy of analytical comment, it appears to be simply a habitual quirk of IR1 who uses it repeatedly throughout this interview as a form of filler and not with any apparent semantic content.

IE: errrm, phhh (-) I don't know! er, phhh (--) probably in the pub cos she   695

started (.) touching me in the pub kind of thing you know, s- moved her   696

stool right up close or whatever (I m-) (.) and, erm, (.) and we got the   697

wine, (-) and I didn't really (.) I wasn't really that bothered whether it   698

happened or not it was a long time since I had sex you know, s[o,   699

[IR: yeah]   700

(.) kind of just [(wanted) I wanted to see whether I could] function.   701

IR1:   [whereabouts was she touching you (in the pub).]   702

IE: (-) just- it was just gentle stuff (tactile) you know arms, or whatever, but   703

it's kind of (-) it's not like kind of like, (.) down, (-) sort of, (-) you know   704

(.) down there or whatever, [(but it's ?)]   705

IR1:   [just for the] benefit of the tape you're   706

indicating to your (.) genital re[gion is that (right ?)]   707

IE: [yeah yeah (??) there yeah.] (.) er no it's   708

kind of like (-) [but] she comes really- (.) up close to you and she pushes   709

[IR: (?)]   710

(-) she pushes often pushes her breasts into you or whatever [(?)] into   711

[IR: okay,]   712

(the) shoulders, (.) or whatever,   713

(.)   714

IR1:   okay   715

Of all the information relayed in the IE's previous turns, IR1 chooses to pick up on his

description of C as someone who 'flirts with men' (685, echoing the IE in 672). It can

be seen that this was only part of a much wider characterisation by the IE, but by

selecting this one element IR1 draws the focus onto it, thereby effectively minimising

other aspects such as her mental illness and substance abuse. It would be expected, and

certainly has been observed so far, that an IR would focus on those aspects which are

most relevant to the offence in question. However, the opposite is true here. Her mental

illness and drug use are highly relevant to the issue of consent, and in a way which is

potentially very damaging to the IE, whereas the question of whether or not a rape

complainant is a 'flirt' is certainly not – or at least certainly should not be. It can, of

course, be seen that it is the element of the IE's description which has most relevance to

sexual activity, but that is a far cry from being legally relevant to the question of

consent. The very dubious implication here is that if a woman flirts with men then this

is an indication that she is more likely to have consented to sex. Although such attitudes

are supposed to have been outlawed from the criminal justice system as legally invalid

(aside from any moral consideration), it can be seen that the above exchange involves

IR and IE co-constructing C's identity as a flirt and a tease; a woman of easy virtue who

was offering sex and therefore cannot now claim she did not consent. It is now C's

behaviour that is under suspicion, not the IE's.

Several features of this exchange illustrate its co-constructive nature. We have already

observed that IR1 selects 'flirting' as the continuing topic from a number of other

potential aspects in the IE's previous turn. In response to this 'focusing in', the IE

emphatically repeats his assertion 'yeah, she- she was, she does flirt' (687) and then

develops this with a series of further details in a string of clauses which create a much

richer image of C as a flirt, especially through the repetition of key elements: 'she

comes touches you... she touches you... she's very tactile' (687-90); 'she comes right up

to you, walks right up to you' (690). IR1's next question builds on this image even

further, and in fact represents a significant leap ahead in terms of the 'logical'

progression from flirting to consent. By embedding the propositional content with

'when did you realise that...' (693), IR1's question contains a clear supposition that sex

was 'an opportunity' for the IE that evening (693-4). Not surprisingly, the IE builds on

this even further in his response, maintaining the link with the preceding turns with his

repetition of C 'touching' him and moving 'right up close', thereby cementing the

'logical' progression through this exchange as if it were an entirely natural sequence. It

is also noticeable that through this additional questioning new details are added to the

pub scene which the IE did not include earlier.

IR1's next question continues the sequence by focusing in further on the 'touching'

(702), giving the IE further room to describe C's physical behaviour in even greater

detail. In his response it can be seen that the IE picks up on the underlying implication

that all of this activity is of a sexual nature by describing what the touching was not:

'it's not like... you know (.) down there or whatever' (704-5). This in fact acts to bring

in a strong sexual element even though negating it, and by following this negative

statement with 'but' (705, 709) he implies that even though the touching was not

actually sexual it was at least partly of that nature. This effect is exacerbated by IR1's

interjection of a visual description for 'the tape' of the IE 'indicating to your (.) genital

region' (706-7).

This focusing in on specific behavioural features, provided by the IE but instigated and

directed by IR1, results in a very powerful portrayal of C and by implication her

character and motivations. But it is easy to forget that none of this has, or should have,

any relevance at all to the matter at hand. The fact that a woman may have been tactile

or even a flirt with a male friend in a pub, or even if she makes a habit of such

behaviour, has no bearing whatsoever on whether or not she consented to sexual activity which took place on either that evening or any other time.

In contrast with the treatment of C's behaviour, this sequence is notable for its lack of any information whatsoever about how the IE behaved physically towards C at the same time. This lack of focus on the IE's actions is compounded by his portrayal once again of C as the active agent: 'she started touching me' (695-6), 'moved her stool right up close' (696-7); while he 'wasn't really that bothered' (698). IR1 does not question this; indeed instead of seeking a balanced picture of how both key participants were behaving, he now seems only to be interested in questioning the behaviour of C and not that of the suspect he is interviewing.

This questioning of C's behaviour, and indeed co-construction of her character, is also continued by (female) IR2 in her few turns at the end of the interview, particularly through the following example.

Example 8.41

IR2:	when (-) something upsets Caroline (-)	783
IE:	mmm	784
IR2:	describe [how she be]haves.=	785
IE:	[angry.] =angry. she flares up.	786
IR2:	[right.]	787
IE:	[she] goes kind of like, (.) you can't argue with Caroline,	788
	Caroline has all the kind of, (.) something she's right! (.) and she's	789
	very- (.) bright young woman Caroline, she has (.) answers for just	790
	about everything. (.) but she becom- she can be very aggressive. (.) I	791

think she's attacked people in the past. (-) but erm, (.) this (angular)   792

comes out (.) real anger. (-) that's kind of that's- that's been a history   793

with her   794

IR2's question appears to be directly aimed at eliciting further negative portrayal of C's character. It is interesting to note that the IE starts to respond before IR2 has even finished her question ('[angry.]': 786), showing that he already knows exactly where this is leading. It must be acknowledged that it is possible that IR2's question is aimed at establishing what would have been the expected response from C to being raped, but it seems implausible that a rape would be included in a general class of 'upsetting things' in this way. It must also be borne in mind that this follows on from the IE's constant assertion that C was upset after they had a row. I would therefore argue that this question is purely intended to elicit further details of C's reaction to their argument, picking up the IE's implication that it was this, and her general anger and bitterness, which led to C making false allegations. Once again, then, this line of questioning now directly supports and encourages the IE's version of events.

Having thus been encouraged in this direction, in his response the IE's characterisation of C takes on a whole new aspect, with his previous depiction of her anger now escalating into allegations of violence (791-2), albeit hedged with 'I think', marking their tenuous and unsubstantiated nature. We now have an almost complete turnaround in positions, with C now the aggressor and IE in the victim role, a move which has occurred not through any change in the IE's overall account but through its subtle re-emphasis and refocusing by the IRs.

Finally, we shall consider two key pieces of information which are elicited from the IE during this final phase of the interview, each of which strongly support the IE's defence but which are only 'uncovered' due to the persistence of the IRs in pursuing them, and almost despite the IE himself. In the first of these examples, IR1 has just been asking, once again, about how drunk they both were in some detail (524-63), before summarising the entire position by explicitly stating that 'it comes down to an issue of consent really' (577-9). He follows this with:

Example 8.42

IR1:	now are you telling <u>me</u> that (.) at the time of the intercourse, (.) that the	582
	time of that intercourse took place that (.) Caroline was consenting	583
	to it?	584

IR1 has already asked whether or not C was consenting on numerous occasions, and as we have seen the IE has also repeatedly emphasised the consensual nature of what took place, so the repetition of this question at first appears rather unnecessary. But we have already noted that the interview so far has left a definite doubt as to whether or not C was in a fit state to give meaningful consent. By asking this question immediately after a discussion of how drunk she was, IR1 is effectively cueing the IE to address this in his response. However, the IE fails to make this connection, instead merely repeating his earlier tactics of giving a bare assertion that she was consenting combined with using the dog as an indication of his lack of aggression or 'false move' towards her:

Example 8.42 (cont'd)

IE:	yes. I had no reason absolutely no reason to believe, (-) that sh- she	585
	wasn't consenting. (.) <u>nothing</u> was said, (.) th- little Jack Russell dog was	586
	by the <u>side</u> of the bed, (.) if there'd been <u>any</u> kind of- (.) r- <u>right</u> by her	587

	>(on) the side of the bed<, if there'd been <u>any</u> kind of (-) sort of <u>false</u>	588
	move towards her, (.) th- <u>that</u> little Jack Russell (is) really protective and	589
	goes berserk.	590
IR1:	okay	591
IE:	and if she says (.) you know, (.) I mean I- I- so- s- so it'sss (.) I can't (.)	592
	you know,	593
IR1:	okay	594
IE:	the dog would have gone crazy. put it like that.	595
IR1:	(given/?keeping) in mind the fact that she'd been drinking, that	596
	[(?)] same amount as <u>you</u> had,	597
	[IE: (yeah)]	598
IE:	yeah,	599
IR1:	and y- you said you don't know whether sh- (.) that she was sober she	600
	may have been a bit drunk,	601
	(.)	602
IE:	yeah, she was <u>tipsy</u> perhaps (?yeah [?something] ?yeah) {mumbling}	603
	[IR: yep]	604
IR1:	did you take all reasonable steps to ensure that she was willing to have	605
	sex with you.	606
IE:	yeah. (.) oh yeah, (.) yeah. (.) ye[s.]	607
IR1:	[in] what respect. what did you do.	608
	(.)	609
IE:	I made her aw<u>are</u> I mean (.) >you know I said< (.) is it okay if I get into	610
	bed kind of thing, and she said yes, fine, (.) and thenn (.) when I kind of	611
	(--) when I kind of (?) the oral sex (??) say is that okay? (.) and, you	612

know, just check out (.) th- that it's okay with her. (.) and she was   613

actually gyrating her- (.) her (.) vagina, (.) if you like, (-) <u>in</u> my face, (.)   614

basically, showing me points that- (.) where she liked being touched,   615

[and she was] playing with her breasts at the same time.   616

[IR: mhm,]   617

IR1:   right   618

In his initial response, then, the IE misses the opportunity being presented to him to address a key weakness in his position, but nevertheless answers the question at some length in the manner of his own choosing (585-95). Yet IR1 does not leave it there. Instead he tries again, this time making the connection explicit: '(given/keeping) in mind the fact that she'd been drinking, ... she may have been a bit drunk, ... did you take all reasonable steps to ensure that she was willing to have sex with you.' (596-606). It can be seen that the final part of this utterance is in fact directly taken from the statute (s.1(2) SOA 2003). When the IE replies merely with the affirmative 'yeah. (.) oh yeah. (.) yes.' (607), IR1 pursues this still further by asking for specific details: 'in what respect. what did you do.' (608)[42]. He could hardly make it easier for the IE to make exactly the points needed for his defence. To borrow legal terminology from the court context, this is not far off leading a witness. Yet it is rather bizarre to observe a suspect being almost prompted to provide information which will directly assist his defence by a police officer.

In response to this sequence of questions the IE produces details which were not present in his previous account of the sexual activity: 'I said (.) is it okay if I get into bed kind

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[42] It is interesting to note that this question is strikingly similar to one posed by the IR in the previous case study, also in order to elicit details directed at a specific part of the relevant statute, but there in order to bolster the prosecution case: 'what did you <u>do</u>. t- t- to s- to resist arrest.' (Example 7.11: 256).

of thing, and she said yes, fine, (.) and thenn (.) when I kind of (--) when I kind of (?)

the oral sex (??) say is that okay? (.) and, you know, just check out (.) th- that it's okay

with her' (610-3). These reported exchanges between IE and C are absolutely crucial to

the Defence, but only emerge after this persistent pursuit of this point by IR1, further

demonstrating the heavy influence IRs can have on the story an IE ultimately produces

during the interview process. In terms of story co-construction, it is possible to view

IR's turns here as amounting to feedback to the IE that certain details are missing from

the account he has given so far, thus directly causing him to edit those details into it.

This raises a rather awkward question, however: did the IE fail to mention these details

before because he was not given the opportunity to do so, because he did not think they

were relevant, because he had forgotten them until prompted, or, more controversially,

because they did not actually happen but he is now embellishing his account in response

to the strong hints embedded in the IR's questions? It is worth noting that immediately

prior to this, the IE had asserted with regard to the question of consent that 'nothing was

said' (586). It is likely that by this he meant that C said nothing to indicate lack of

consent, but, especially due to the ambiguous passive, it could equally be interpreted as

meaning that the matter was never raised by either of them. Again, it is interesting that

IR1 fails to pick up on this potential weakness in the IE's account, instead continuing to

pursue points which actively assist the IE.

We now come to the final example from this case study, in which once again vital

information supporting the defence case emerges for the first time, but this time during

questioning by IR2.

Example 8.43

IR2:   did (.) she take anything (-) when she got back to your flat. other than (.)   727

	alcohol.	728
IE:	she's been taking tablets for a while. she's got like I said some black	729
	market (.) slimming tablets. (.) (she) might or might not (have), (.) I don't	730
	really know.	731
IR2:	right {very quiet}	732
IE:	she- (.) she uses (.) erm, (.) I don't know how much she actually u- uses,	733
	cos I think she fibs about that. but she uses kind of (.) I know at the	734
	weekend she was using last weekend she was using cocaine.	735
	(.)	736
IR2:	right.	737
IE:	(you know?)	738
IR2:	but did she take anything in your flat.	739
	(.)	740
IE:	not that I saw, [no.]	741
IR2:	[not] (.) not	742
IE:	oh! yeah- e- oh- she took a ciprielex which is her anti-depressant. (--)	743
	mhm, (-) I've seen her take <u>that</u> in my flat, whether it was <u>that</u> day or	744
	whatever. (-) she didn't take it for a long time so I do notice.	745
	(--)	746
	[discussion of Ciprielex, including effect when combined with alcohol]	[...]
IR2:	but she didn't take any, (-) illegal drugs (.) today (.) <u>yes</u>terday that you	775
	knew of?	776
IE:	(you don't-) I- I- (.) you don't know with her I really	777
	[don't. er- I- didn't see-]	778
IR2:	[no. not in your present.]	779

IE: not in my presence no I mean she's often come round to my place stoned   780

        or whatever you know. (-) happy shall we say   781

        (--)   782

As already noted, during this final stage of the interview IR1 gives IR2 the opportunity to ask questions. Her first choice of topic is C's consumption of drugs on that evening, which of course is so crucial to the question of her capacity to give meaningful consent. The IE has made constant reference to C's drug-taking throughout the interview, but, largely due to his habit of including this as general characterisation rather than talking specifically about the previous night, it has in fact not yet been established exactly what she had taken at the relevant time. What is clear is that it is the IE who has repeatedly raised this as a factor, and has thus made it a prominent part of his account and of his portrayal of the evening. We have already discussed the fact that this potentially causes him a great deal of trouble due to the legal position on intoxication and consent, something of which he is apparently unaware. What the IE eventually concedes in this exchange, however, is that C had almost certainly not in fact taken any drugs at all that night. His reluctance to give up this information, and indeed his attempts to minimise it, are rather startling given the positive legal consequences for him.

Firstly, in response to IR2's question about what C took 'when she got back to your flat' (727), the IE does not give a straight answer but instead speaks generally: 'she's been taking tablets for a while' (729); 'she uses' (733, 734); and also speaks about other occasions: 'last weekend she was using cocaine' (735). He thus avoids answering the question about the previous evening while still strongly asserting that she is a regular drug user. Left at this point, this could easily have been taken as indirect confirmation that she used drugs that evening. However, IR2 does not leave it there, but repeats her

question: 'but did she take anything in your flat.' (739). Pinned down to providing a specific answer, the IE does now confirm that she did not take anything in his flat, but qualifies this with 'not that I saw' (741), thus still leaving open the possibility that she had in fact taken something. But having given this answer he then immediately issues a correction: 'oh! yeah- e- oh- she took a ciprielex' (743), the initial exclamation and intonation suggesting relief and/or enthusiasm at being able to provide a positive response after all. But the continuation of this turn reveals that he is once again talking generally rather than of the relevant time: 'I've seen her take that in my flat, whether it was that day or whatever.' (744-5). There follows a discussion of that drug, after which IR2 returns to pinning the IE down as to what exactly C had taken, this time moving away from the prescription medicine and on to other substances: 'but she didn't take any, (-) illegal drugs (.) today (.) yesterday that you knew of?' (775-6). This proposal of a negative statement invites a simple confirmation from the IE, yet still he resists giving this answer, instead leaving the possibility of her having taken illegal drugs also still open: 'you don't know with her' (777). He is thus still strongly resisting having to admit that C did not take drugs. Meanwhile IR2 appears intent on extracting this admission from him. Having once again not received a straight answer from the IE she effectively provides her own: 'no. not in your present.' (779), which picks up the most helpful part of his previous utterance ('I didn't see-', 778) while glossing over the rest and actually adding the rather important 'no', which did not occur in the IE's reply. Interestingly the IE does then repeat the answer supplied by IR2: 'not in my presence no' (780), a response which reveals much about the ability of IRs to prompt specific utterances from an IE. But he immediately qualifies this once again with further general description: 'I mean she's often come round to my place stoned or whatever' (780-1). Overall then the actual answer, that C apparently did not in fact take any drugs that

evening, is buried by the IE under a barrage of information which implies exactly the opposite and which actively jeopardises his own defence. It is equally interesting to observe IR2's tenacity in eliciting a 'confession' to information which actually weakens the prosecution case.

To conclude this section, this analysis has demonstrated that during the majority of the interview the IE fails to construct an effective defence for himself, instead actively drawing attention to, and even exaggerating, points which are legally very damaging to him. Yet once the IRs apparently begin to doubt the 'Guilty scenario', their discursive behaviour actually leads to a more favourable account being produced by the IE. In this latter stage the IE now tells us that he did positively check that C was consenting, that she was drunk but lucid (line 534, not directly discussed above), that she had not taken drugs, and that she actively encouraged and invited the sexual activity. Although several of these points were present by implication in the earlier part of the interview, their explicit statement and development later on is of much greater value evidentially. Also we have seen that at this stage the IE does still raise several aspects which are problematic for his defence, but these are not pursued by the IRs and so are effectively minimised.

8.4   Discussion

As with the previous case study, this chapter has shown that at the interview stage the IE's account is actively under construction, and that this is a process of co-construction heavily influenced by the IR(s) in terms of not only topic and relevance but even characterisation. At the start of the interview the main IR is, as with the other case study, pursuing a 'Guilty scenario' and we have observed that the account which emerges contains much which is harmful to the Defence. But the striking feature of this

interview is the shift which takes place in the IR(s)'s attitude, moving away from the 'Guilty scenario' and towards the possibility that the offence did not take place. At that stage we observed that the account is edited and re-drafted, now including several points which are extremely helpful to the Defence.

This demonstrates the extent to which the version produced by the IE during the interview process is hugely dependent on the questions that the IR asks. The last two examples contain vital defence points which would not have emerged if the IRs had not specifically pursued them. If we imagine what would have happened if those sequences had not occurred, if the IE had subsequently made these points at trial any prosecutor would have immediately pointed to their absence at interview, especially since at other stages of this interview they go over the same ground very thoroughly without these points emerging. This shows how different the outcome can be once an IR abandons the 'Guilty scenario' and explores other angles, especially those which may actually support a defence.

But the situation is perhaps not quite so straightforward here. Firstly, the question has already been raised as to whether these vital details were only added as a consequence of the prompting of the IRs. Secondly, although my data set is not large enough to make any firm claims or generalisations, it cannot go without mention that this interview concerns an allegation of rape. Although much of the information available is conflicting and confused, it is nonetheless the case that the number of rape complaints proceeding to trial is very low, especially where the issue is one of consent, and accusations of anti-complainant bias and the perpetuation of 'rape myths' are frequently levelled at the criminal justice system. In light of this, the shift by the IR(s) identified

here from a 'Guilty scenario' to a position where they appear not to believe C, and the resultant emergence of strong evidence for the Defence, is perhaps of some concern.

What this particular interview perhaps demonstrates, then, is not good interview practice which meets the needs of both Prosecution and Defence, but instead the tendency of interviews to produce evidence and 'facts' which best fit the scenario upon which the IRs are currently working. When this is the 'Guilty scenario', as I have argued it generally will be, then the resulting interview interaction will produce information which supports that version and which minimises or omits anything which does not. But equally the same can be observed in reverse when the IRs appear to switch to a 'Not Guilty scenario': an account now emerges which strongly supports that version. The result is therefore no more a balanced, neutral approach than the earlier part. Overall this illustrates the extent of the influence which IRs have over the account elicited from an IE during the interview process, as well as raising serious concerns about the consequences.

9. Discussion

9.1 Introduction

This chapter will bring together all aspects of this study, discussing first the findings of the case studies in Chapters 7 and 8 (section 9.2), then linking this with the earlier analysis of the format of interview data in Chapter 5 (section 9.3). The chapter will conclude with some practical recommendations for improvements (section 9.4).

9.2 Discussion of case studies

The discussion of the two case studies will bring together the findings of both, and is arranged as follows. We will begin with an overview of the discursive behaviour first of the interviewees, then of the interviewers. This will be followed by a discussion of the place of the interview in the chain of events which make up the judicial process, and the effect this has on the interaction. We will conclude this section with an assessment of the consequences of these findings for criminal justice, including an evaluation of the complex role of the police interviewer.

It must, of course, be acknowledged that it is not possible legitimately to generalise purely from two case studies, but I hope the evidence of these studies combined with the broader analysis of the wider data set in other chapters is sufficiently robust to justify the conclusions presented here. It is my firm belief from my (admittedly much less detailed) analysis of my data set that the findings of those case studies would be replicated through a similar study of any other recent E&W police interview, although limitations of space and time prevented such further analyses being included in the present study.

9.2.1 Interviewees

It was observed at the outset that every speaker will tailor their discourse to suit the context and audience for their talk. It was therefore posited that the trans-contextual nature of police interview discourse and the multiple, largely hidden, audiences, would present a particular challenge for the police interview participant. The data analysis bore out this hypothesis. Overall, in terms of the discursive behaviour of the interviewees the most important factor was found to be the influence of the interviewer over their account. In particular, the interviewees appear to focus purely on the interviewer as sole recipient of their talk, hence adapting their discourse for that particular audience while neglecting – or rather apparently being unaware of – the various other audiences, contexts and purposes for the interview data, which are arguably of considerably greater importance. The analysis shows that this leads to the accounts produced by the interviewees being adapted to the agenda of the interviewer, which is of course not likely to coincide with the interviewees' best interests.

The fact that interviewees were not orienting to the future audiences and contexts was shown through features such as misfiring deixis (Examples 7.4, 8.3), which not only failed to operate communicatively beyond the initial present audience, but also left these turns with no evidential value for the interviewee (7.4). Further examples demonstrated that the interviewee was not taking into account the fact that the courtroom is another direct audience for their talk, referring to it instead as an entirely distinct, unconnected context (7.5, 7.25), which again has potentially serious consequences for them. These examples all signal lack of awareness of the wider legal process in which the interview is situated, and in which their words will be recontextualised.

With regard to the version of events which emerges from the interviewees during the interview process, the Rape case study in particular illustrates very clearly that any narrator will paint a situation in a certain way based on what they think best suits their audience and the context in which they are relating their account. There is thus no such thing as a 'neutral' version of the facts; yet this is not a question of dishonesty but a basic, everyday communicative principle. Any telling is necessarily subjective and selective, and no two people will relate the same event in the same way. A narrator will thus introduce certain information, or omit certain points, in order to construct the narrative which they think best meets the needs and expectations of their audience, and which also puts themselves in the best light in the eyes of that audience. However, that necessarily depends on the speaker's knowledge of their audience, of their purpose in listening, and of the context for their talk. Unfortunately for interviewees these are precisely the factors which we have identified as most problematic for them.

This was manifest in the data in several ways. One of the most significant identified problems was that interviewees did not appear to know, or at least did not orient to, the legal 'offence framework' which governs the interview interaction in each case, and which also forms the basis of their audiences' use of the interview data as evidence. The interviewee's lack of knowledge of the requisite elements of the offence with which he had been charged was made explicit in Example 8.11 in the second interview (Rape). On the other hand, the first interviewee showed greater knowledge of some aspects of the offences with which he had been charged, yet nonetheless clearly did not orient to this in terms of structuring his responses (7.24, 7.25).

A significant consequence of this is that the interviewees largely failed to put forward a legally recognisable defence. Instead, their method of defence was shown to be

generally indirect, misguided and often entirely counterproductive. It is perhaps not surprising that lay individuals do not structure their discourse in terms of a legally recognisable framework of which they would not be aware. But the analysis showed that this was not simply a question of structure or terminology but was in fact much more fundamental, affecting the interviewees' entire portrayal of both themselves and the events in question. Given that a narrator is likely to be adapting their portrayal of such features to suit their intended audience, it can be seen that this discursive difficulty is therefore not simply due to lack of legal knowledge alone, but is another consequence of their lack of awareness of those audiences and purposes.

Considering this aspect in more detail, in the Rape case study we observed that the interviewee chose to put forward a very indirect line of defence, namely to emphasise the fact that he and the Complainant had had a row that evening (Examples 8.34, 8.35). Although this may have acted for the interviewee himself as the primary explanation for how he found himself in a police interview room, it was not relevant to the offence framework and thus did not counter the 'Guilty scenario' upon which the interviewers were operating. Despite its clear relevance and significance to the interviewee, indicated by its frequent recurrence in his turns often immediately after some form of accusation, it did not in fact amount to a legal defence.

A further related feature identified in both case studies was interviewees attempting to counter specific 'offence elements', but getting these elements wrong. This was due to the fact that much of the accusation was unvoiced and unspecified, so although interviewees were clearly aware of the fact that they were being accused and of the need to counter this, they were effectively left to second-guess the exact nature of that accusation. Without knowledge of the offence framework, and hence of the elements

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which they need to put forward in their defence, interviewees were seen to select legally irrelevant aspects and deny those instead. Thus we observed the first interviewee repeatedly emphasising the fact that he had not hit the police officer (Examples 7.16, 7.19-25) despite the fact that this is not a necessary element of the offence of assault, nor was it part of the 'Guilty scenario' being proposed against him. Similarly, the second interviewee chose to repeatedly deny that he had been violent, and to emphasise that the complainant had not screamed or physically resisted (8.24-27), again aspects which are not in fact part of the criminal offence. (It can, however, be seen that all these elements do match what may be described as the general lay understanding of what an 'assault' or 'rape' entails. Although this is a potentially fascinating aspect, it is unfortunately beyond the scope of this study to pursue any further here.)

Both interviewees were also observed to put forward an identity for themselves, and a role in events, which instead of supporting the innocence they were attempting to assert in fact achieved precisely the opposite. For example, the first interviewee repeatedly emphasised that he was just trying to get away, and that he pushed the officer away as opposed to hitting him (Examples 7.19-23). Yet legally this amounts to admission of the offences with which he was charged, namely resisting arrest and assaulting a police officer. Similarly the second interviewee constantly portrayed the complainant as a drunk, mentally unstable drug user (8.20, 8.17, 8.19 respectively), when this raises the distinct possibility that she was not legally capable of meaningful consent, thereby making him guilty of raping her by his own account. He also chose to portray himself as extremely passive (8.20-23), a problem since he was under an obligation to take positive action to ensure she was consenting, as well as shifting agency onto the complainant while portraying her as not entirely responsible for her own actions.

Combined with his bringing in his professional identity as an ex-mental health nurse (8.39), the effect of these discursive choices was that this interviewee set the bar considerably higher for himself in terms of what he should have done in the circumstances. He thus made it potentially far easier for the Prosecution to secure his conviction than if he had said nothing.

This highlights the fact that the interview can often lead to interviewees actually creating evidence against themselves, especially through providing evidence of the mens rea element of the offence. In this instance it will be recalled that with regard to the question of consent and intoxication, it is not a question of producing evidence of how much the complainant had actually drunk (for example through evidence of her blood alcohol level when examined, although this would still be admissible and relevant evidence), but instead the offence hinges on the *interviewee's* own perception of whether she could reasonably be considered capable of consent. Similar importance was shown to attach to the internal thought processes of the first interviewee with regard to the various 'offences against the person' which he faced.

Given the fact that the interview thus provides the police with a golden opportunity – in fact their only opportunity – to elicit evidence relating to key elements of crimes, and given that this analysis has shown clear examples where the interview process resulted in significant evidence against chief suspects, it could be argued that overall this simply shows that the interview process is doing a good job of assisting the investigation of crime and the apprehension of offenders. It could also be argued that it is entirely valid for the police not to make an interviewee aware of the exact legal framework which they are applying, and to ask questions without revealing their agenda, thus making the interviewee respond truthfully rather than merely providing an answer which thwarts

that agenda. Surely if they were to set out specific details of what would amount to a valid defence, an interviewee would simply tailor their account in order to fit with that 'Not Guilty scenario'. It could therefore be argued that what is happening here is quite simply that the interviewees are saying what really happened, giving an honest, 'true' account which they would not have done if they had been made aware that these details might make them look guilty.

I would argue against such a view. I would argue that it is almost impossible to over-ride the inclination to respond in a way which addresses the questioner's agenda. The problem here is that the interviewees do not know what that agenda is and so are guessing at it, then responding to that guess. The resulting account will be a subjective version of the truth, but it can only ever be thus. This is simply a manifestation of the basic tendency of any narrator to try to create the most appropriate and favourable identity for themselves, based on their understanding of the audience, the purpose, and the context. Here the interviewees appear to misjudge those factors, and as a consequence they choose to produce an account which is not even necessarily the best fit with the facts as they see them, but which they instead – misguidedly – think best meets those contextual requirements. Thus, although it may have been expected that overall interviewees would tailor their accounts in order to bolster their defence, in fact it was shown that interviewees could equally end up 'bending' their accounts in a manner which made themselves appear more culpable than perhaps they really were.

This is demonstrated most persuasively by the second interviewee's constant attempts to portray the complainant as having taken drugs, when ultimately he has to reluctantly admit that she almost certainly did not (8.43). He effectively gives strong evidence against himself by implying that she had used drugs that evening and had 'gone strange'

in the pub (8.20), thereby creating a clear doubt that she was capable of consent, a factor which may well not have been part of the interviewers' 'Guilty scenario' until the interviewee himself brought it in during this interview. Yet in fact it appears that drug-taking played no part at all in the events in question, even if it is part of the wider picture in terms of characterising the complainant. The interviewee's decision to introduce this particular topic into this particular account can thus be seen as a classic example of a narrator 'bending' his account to fit what he thinks is most helpful to him in the circumstances, yet completely misjudging his audience and creating the opposite impression to that he intended. This is not an uncommon communicative phenomenon, and will be familiar to most of us. The unwisely chosen anecdote or joke among people who do not know each other well can lead to social embarrassment or offence. The difference here is that the stakes in this context are considerably higher. Of course the difficulty here is that it is impossible for us to know which version of events is closer to the truth. As already stated, I make no claim here whatsoever about the guilt or innocence of these interviewees. My intention is simply to show the existence of these factors as a powerful influence on their discursive behaviour, and hence on the evidence which emerges from the interview process.

Another significant factor influencing the accounts which emerged from the interviewees was identified (in line with previous research on interview contexts) to be the interviewers. This was observed partly to be due to the interviewee being in the role of responder, both to the interviewers' questions and to the 'Guilty scenario' upon which the interviewers appeared to be operating (more on which below). Interviewees' accounts were thus often restricted to being secondary and reactive rather than an unfettered 'first telling' (Examples 7.34, 7.35, 8.33). That is not to say, however, that

interviewees were not given the opportunity to put forward an account in their own words. In both interviews interviewees were invited with very open questions to give their own version of events. However, despite this apparent discursive freedom the analysis showed that the resulting accounts were nonetheless directly influenced by aspects of the interviewers' discursive behaviour.

The analysis demonstrated firstly that at this stage of the judicial process the accounts for both Prosecution and Defence are under negotiation and construction, as acknowledged by the interviewer (8.28, 8.29). 'Facts in issue' are in the process of being established; the most relevant aspects of plot and characterisation are being determined. Topic and relevance are thus key factors in the emerging accounts, and these factors were observed to be largely determined by the interviewers. However, a particularly interesting finding, which to some extent contradicts assertions and (perhaps) assumptions made in other studies, is that this was not due to coercion or restrictive discursive practices by interviewers, but instead was shown to be the result of a process of collaboration and co-construction between interviewer and interviewee. However, they were not equal collaborators, but instead it was shown that the interviewees tended to defer to, or take their cue from, the interviewers in terms not only of topic and relevance but also characterisation and even lexical choice.

We thus observed interviewees treating interviewers as supportive co-narrators (7.41), limiting the information they provided to the interviewer's own particular focus of interest in previous questions (8.31), echoing the interviewers' immediately preceding words in their responses (7.40, 8.4, 8.31), and even by directly asking the interviewer whether the information they wished to relate, and which they clearly considered relevant from their own perspective, 'mattered' or not (8.10). It was also shown by

analysing an extended sequence how such 'prompting' resulted in an account – and indeed effectively a confession – from the interviewee's mouth but nonetheless co-constructed by the interviewer (7.43).

The analysis showed how this discursive tendency observed in the interviewees generally resulted in the production of utterances which fitted with the interviewers' agenda, and hence were damaging to their defence. However, the shift in the interviewers' position identified in the Rape case study provided an extremely interesting insight into this phenomenon. There, the process of co-construction was instead shown to produce utterances which amounted to evidence which strongly supported the interviewee's defence. We observed that, through the prompting of the interviewers' questions, the interviewee now added extra details to his account of the pub scene (8.40), and that such subtle refocusing and editing of his earlier account also escalated the interviewee's negative characterisation of the complainant. Thus, again due to the specific focus of the interviewers, the interviewee portrayed her as much more of a flirt and a sexual tease (8.40), and even aggressive and violent (8.41). Most significantly, it was shown that direct prompting and even 'leading' by the interviewers led to the interviewee producing two extremely important pieces of evidence for his defence (8.42, 8.43).

However, this raised the possibility that such details were added precisely because the interviewee was being led by the interviewers and hence was adapting his account accordingly. This, of course, fits with the earlier observations of the tendency of any narrator to 'bend' their account to suit the apparent needs of their audience. Given that we have identified interviewers as the interviewees' primary intended audience, it is therefore not at all surprising that they would tailor their account according to the

prompts and requests of that audience. Further, given the difference between participants in their familiarity with this institutional context and indeed their control over it, it is perhaps inevitable that interviewees have to defer to the interviewers' superior knowledge of both the contextual requirements and the underlying legal framework, leaving them further likely to take their discursive lead from them. Combining these factors with the interviewees' previously identified responsive rather than initiating role, this illustrates the considerable power that interviewers have to influence the account which emerges from interviewees.

This was observed to work in the interviewee's favour at the end of the Rape case study, but it is highly significant that this appeared to be a consequence of the interviewers abandoning the 'Guilty scenario' and coming round to the view that the interviewee was in fact not guilty. This interview should therefore not be held up as an example of balanced interviewing which resulted in good evidence for both sides, but rather as an illustration of the strength of the influence of the interviewers' own position on the account which emerges from an interviewee. Thus as the interviewers changed position, so did the interviewee's account and the nature of the resulting evidence. The problem for interviewees, however, is that interviewers are perhaps not likely to shift their agenda in this fashion very often.

Overall, then, the analysis demonstrated that the account produced by the interviewees was jointly created with, and heavily influenced by, the interviewers, yet that influence currently goes entirely unacknowledged in the legal process. The fact that the resulting account emerges from the interviewee's mouth and without anything that would be legally recognised as (or indeed actually amount to) 'coercion' or undue pressure, makes this especially dangerous, as it is therefore taken to be the interviewee's freely

given and complete account of events. I believe that this analysis has demonstrated that it is not.

9.2.2 Interviewers

In contrast to the interviewees, it was shown that the interviewers did orientate their talk to the future audiences for interview discourse, and especially to its future use as evidence. We thus observed interviewers asking for information which both they and everyone else present in the interview room already knew, such as the day (8.1), the participants' names (7.1), the number of people present in the room (7.3), or a physical description of a person sat in front of him (8.2). We also observed an interviewer providing a verbal description of what was physically happening in the interview room (8.3), an utterance again clearly not addressed to anyone present.

Yet it was also noted that at the same time as addressing their own talk to the future audiences – indeed asking questions specifically for their purposes – the interviewers did not encourage the interviewees to address that intended audience in their responses (7.1, 8.2). This is analogous to the interviewers not making interviewees explicitly aware of the offence framework governing the interaction, as discussed above. However, it is rather less easy to justify. The caution is, of course, intended to provide sufficient warning to interviewees of the future uses of interview data as evidence, but the analysis has already demonstrated that the interviewees clearly did not take the full import and consequences of that warning on board. Interviewers could therefore easily invite interviewees to provide answers expressly for the benefit of the future audiences, especially when that is the entire purpose of asking a question. But instead we observed them almost encouraging them in the opposite direction, explicitly inviting them to direct their talk to the interviewer personally ('give me your name': 7.1; 'describe

yourself for me': 8.2). I would, as ever, not wish to argue that this is a deliberately deceptive strategy on the part of interviewers, but this is perhaps an area worthy of further reflection within the relevant institutions and will be raised again in the later discussion of future directions.

A key factor in the interviewers' discourse was shown to be their orientation to the applicable 'offence framework', and to the future use of the interview as evidence. This was manifest in the data in several ways. It was observed that they used the requisite elements of the criminal offence to structure the interview and to dictate topic and relevance (7.8, 7.9). However, it was shown that they were working only through the elements necessary for a successful prosecution (the 'prosecution checklist'). Many defences are based simply on the absence of crucial elements of the prosecution checklist, and so it could be argued that this approach does still meet the majority of the needs of the Defence. However, the analysis showed that this was not the case. Interviewers were shown to overlook or omit elements which were relevant to potential defences (7.11, 7.12, 7.13). In addition there are a range of defences, such as self-defence, which are not simply a negation of the prosecution case but involve raising a separate element altogether. This approach was shown to completely miss investigating such defences. Further, it was also shown that interviewers tended to be focused on attempting to fit the interviewees' words into making out those crucial prosecution elements (7.7, 7.37, 8.8, 8.10), that they sought to create evidence of mens rea (7.9), and that their focus was on dismissing potential defences rather than exploring them (7.13, 8.9). Another related feature was their recasting of events into 'offence terminology' with phrases such as 'commit oral sex', thus subtly redefining those events as criminally culpable (8.4-8.7). All of these identified features indicate that the

interviewers were in fact directing their talk, and shaping the discourse to meet the

needs of, the future prosecution audiences (fellow police investigators, CPS,

prosecution lawyers) as primary recipients of interview discourse. The significant

consequence of this is that the future defence audiences and their evidential needs are

neglected.

Just as interviewees were observed above to tailor their talk to meet the assumed needs

of their intended audience, then, so it can be observed that the interviewers were also

tailoring their talk, and indeed the structure and content of the entire interview over

which they have discursive control, to meet the needs of their intended audience,

namely the future prosecution audiences. Further, the above examples demonstrate how

their more powerful discursive position allows them to exercise a degree of control over

the interviewees' turns through which they can package their discourse into evidential

points for that intended audience. Indeed this focus on the future prosecution audiences

over the needs of the interviewee was shown through the rephrasing of an extremely

significant question not to make it clearer for the interviewee but to fit the exchange

into the establishment of a vital piece of evidence for the prosecution case (7.11).

The interviewers' influence over the account which emerges from the interviewees has

already been discussed above in relation to the discursive behaviour of the interviewees.

The combination of the interviewers' influence over the interviewee's account and their

prosecution orientation results in the account which emerges from the interviewee

effectively being limited and edited. Thus we observed interviewers dictating the

contents of the interviewee's account through the questions asked and the topical

sequence thus initiated (8.30), shutting down opportunities for interviewees to develop

aspects which they did not consider relevant (7.30), only picking up certain aspects of

the interviewee's prior turns and thereby editing and re-focusing them (7.38, 8.10), claiming to quote the interviewee's own words yet altering the content in a manner which better suited the prosecution agenda (7.37, 7.38), and using formulations to re-draft the interviewees' utterances (8.31).

It was shown that the effect of these features in all the above examples was to bolster the prosecution case and minimise potential defence elements. However, as also already discussed with regard to the interviewees' discursive behaviour, there was a significant exception to this at the end of the Rape case study. There, we observed entirely the opposite phenomenon. The same discursive features were observed from the interviewers, but significantly they now worked to bolster the defence case. We thus observed interviewers co-constructing an account which was now supportive of the interviewee's position (8.36), formulations of interviewee's prior utterances in which interviewers now ignored aspects which were potentially helpful to the Prosecution and instead picked up on aspects which were favourable to the Defence (8.38), and interviewers selecting topics and refocusing the interviewee's account to emphasise aspects which actively contributed to the interviewee's negative portrayal of the complainant (8.40. 8.41). Most significantly, we witnessed interviewers actually prompting the interviewee to provide key elements of a defence (8.42, 8.43), in a remarkably similar way to the prompting of key prosecution points identified in the Assault case study (7.11). This resulted in a (legally) completely different picture emerging in this final stage of the interview. In fact nearly all of the key information which emerges in this final stage had in fact been mentioned or alluded to earlier by the interviewee, but it is the *interviewers'* shift in their choice of emphasis, topic and focus which results in this dramatic alteration of the overall picture.

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This demonstrates the hugely significant influence of interviewers over the evidence which emerges during the interview process. It also clearly illustrates the danger of the discursive influence of the interviewers resulting in the interview producing 'evidence' which fits the model upon which they are currently working – whatever that is. This is most usually going to be a scenario in which the interviewee is guilty as charged (more on which in the following section). This may result in what appears to be a successful interview from the interviewers' point of view, but it could well mean that that evidence is perhaps not as reliable as it first appears precisely because of their (unwitting) influence (7.42, 7.43).

9.2.3   Interviews in the judicial process

In the discussion so far a recurrent factor has emerged as an influence on interview discourse, namely the place of the interview in the chain of events which make up the criminal justice process. We shall now consider firstly the influence of the prior stages of the process, then the subsequent stages and the courtroom in particular, before assessing several facets of the place of the interview in the judicial process in the light of the findings of this study.

9.2.3.1   Influence of prior stages

The analysis has shown that a particularly strong influence on the discursive behaviour of interviewers is a pre-constructed 'Guilty scenario'. This must have been formulated as part of the criminal investigation in order for the police to have enough grounds to arrest and interview a suspect. In other words without a plausible 'Guilty scenario', however basic, there can be no interview in the first place. Another key part of that initial investigation is the taking of witness statements. The information gleaned from witnesses will play a significant role in the building of the 'Guilty scenario', and we

observed how these statements are used heavily by interviewers during the subsequent interview with their suspect (7.32-35, 8.32, 8.33).

However, these essential parts of the process preceding the interview[43] were also shown to lead to certain problems in the interview room. The previous section has shown how the interview can result in the production of evidence which fits the model upon which the interviewers are currently working. I would suggest that that model is almost always the 'Guilty scenario' created by the investigation up to the point of the interview. As we have seen, the danger of this application by interviewers of a specific preconceived framework to structure and dictate the interview is that this limits and restricts the information which emerges as a result. It can become self-fulfilling, effectively pre-determining the outcome of the interview. What is particularly disappointing is that this appears to match observations made by Baldwin (1993: 340-4) of interviews conducted some considerable time ago (1989-90), suggesting that this is a particularly entrenched feature of police interview discourse. This affects both the quality and quantity of the evidence produced. Not only does it restrict the emergence of potential defences, but it also increases the risk of prosecution points being missed if they do not happen to fit with the current version of the 'Guilty scenario'.

I would suggest, therefore, that police-suspect interviews are currently not being used effectively as an investigative tool. I have previously described the interview as a golden opportunity for the police to gain information and evidence from a key witness, namely the interviewee. What this indicates is that it is currently more often a missed opportunity. I would argue that this is because interviewers are orienting more towards

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[43] It should be noted that witness statements may also be taken after the suspect interview, but clearly those are not our concern here.

the interview's future role as a piece of evidence in itself, rather than its contemporaneous role as part of the initial information-gathering process. The conflict between these two competing roles is a source of great potential difficulty, and we shall return to this shortly.

From the defence perspective, a further point to note with regard to the police construction of a full working version of events prior to the interview is that the interviewee's own account is thus only introduced some way into the process, by which time the basic 'story framework' has already been determined. Interviewees can influence that story to some extent, but, as we observed, they will still always be in the position of responding to that pre-existing frame and are never in the position of being able to put forward their own unfettered version as they might independently have wished to tell it. It is, I believe, significant that this fits with an extremely important rule of criminal evidence, albeit one that arguably only applies at the later stages of the judicial process; namely the burden of proof. This is therefore a convenient point to turn to those subsequent stages.

9.2.3.2   Influence of subsequent stages

Thus far, then, it has been suggested that interviewers go into the interview room with a preconceived 'Guilty scenario', a version of events whereby the interviewee is guilty of the offence(s) for which they have been arrested. Through the interview process, interviewers (most likely unintentionally) shape the discourse in a manner which tends to confirm and bolster that scenario. They tend not to go too far beyond this preconceived version in terms of exploring weaknesses and possible defences. It is my contention that the primary reason for this is the interviewers' awareness of, and orientation to, the future uses of the interview data as evidence. In other words, this is

due to the influence of the later stages of the process back along the chain into the interview room.

This orientation by interviewers to the future value of interview data as evidence is evident throughout the above discussion of their discursive behaviour. It is also demonstrated by the interviewer specifically ascribing utterances a legal role in the later court context (7.30: 'mitigating circumstances'; 7.35: 'evidence'). It can be seen that these differ from the occasional reference made by interviewees to the court context (e.g. Example 7.5) in that those examples show that interviewees, although aware of the existence of that later context, are nonetheless treating it as entirely separate and distinct, when it is in fact a direct context and audience for their current talk in the interview room. Interviewers are not only aware of that future context, but are also aware of that trans-contextual connection. It is this awareness, I would argue, which leads them to label and package up the interview data into neat pieces of evidence in a way that best suits the needs of that context, even as that evidence is being created in the interview room. Further, I would argue that it is this awareness which leads them to focus on establishing the prosecution case during the interview and not to address aspects which are important for the Defence, since by airing such points explicitly and on record, they could thereby effectively cause defence evidence to be created. This could seriously undermine the chances of a successful prosecution of their suspect. (Ironically it is of course the tape-recording of the interviews, such a vital safeguard, which produces this effect.)

I would further suggest that in this respect interviewers are effectively rehearsing the role of the court prosecutor. The whole process of which the interview is part is

working towards the court context. The outcome of a case depends purely on the evidence which is presented in the courtroom; ultimately nothing else matters. The Prosecution will have full knowledge of, and indeed direct control over, virtually all of that evidence, but a key exception to this is the testimony of the defendant. The interview is the only opportunity for the police to talk directly to their suspect and gain insight into that testimony. Hence, I would argue, the temptation to test the case and use the interview as a rehearsal of that later crucial stage. Courtroom lawyers need to do their utmost to ensure that they do not elicit responses from witnesses which undermine their side's case. They will thus structure their questioning in a manner which restricts the resulting responses as far as possible to producing evidence which is favourable to their version of events, and will steer witnesses' testimony well away from areas which are damaging to it. Of course, lawyers for the other side are equally capable of steering the evidence back into those damaging areas in cross-examination and producing evidence of their own to support a different version. It is therefore a completely legitimate tactic for courtroom lawyers to structure the questioning of witnesses in a way which allows only one side of the story to emerge. But at the interview stage, the situation is entirely different. There is one set of questioners, not two. Those questioners should therefore cover both sides, and should not be afraid of getting answers which amount to defence evidence. If a good defence is available, it is in everyone's interests that it should emerge as early as possible rather than allowing a weak case against a potentially innocent suspect to proceed.

However, it is not quite that straightforward, due to the fact that the interview is itself a piece of evidence which will be presented in the courtroom. If there is still a good overall case against the interviewee (and the interviewer will almost certainly think

there is for the reasons discussed above), then the interviewer will be fully aware that any responses at interview which support a defence or undermine the prosecution 'Guilty scenario' will be picked up and used by the Defence in court. The Defence need only raise a 'reasonable doubt' to ensure a Not Guilty verdict. Given the interviewers' orientation to the court context as the ultimate locus of interview data, and their professional function of ensuring the apprehension and conviction of offenders, it can be seen that expecting police interviewers to deliberately attempt to elicit evidence which could potentially lead to a Not Guilty verdict for someone they believe to be guilty goes entirely against their institutional raison d'être.

This brings in a further highly significant aspect of the future court context. As set out in Chapter 4.5, the principle of the criminal burden of proof means that there is no requirement for the Defence to put forward a positive version of events, or indeed (generally) to prove anything at all at trial. Instead, it is the Prosecution which must prove their version of events, and the Defence's task is no more than to cast doubt on that version. Thus at the court stage the Prosecution present their case first, after which the Defence have the opportunity to respond to it, again mirroring a discursive feature identified at the interview stage of placing the interviewee in the position of responder. It can also be seen that this principle is a close fit to the tendency observed in interviews to concentrate on building a prosecution case and ironing out any potential weaknesses in it, rather than investigating the availability of a plausible alternative defence version. That is simply not required or necessary in the criminal justice process, arguably providing a legitimate explanation, perhaps even justification, for its absence at the interview stage. However, although this may fit with the later stages of the process, it does not sit well with the investigative stage of which the interview is part. If

interviewers, as we have observed, focus on attempting to eliminate potential doubts rather than searching for them or exploring them, then only a partial picture will emerge. That may be all that is required evidentially further along the line, but surely a thorough and complete investigation should aim to result in the fullest picture possible.

Further, although there may be no evidential requirement for the Defence to prove their version of events, or indeed even to have their own counter-version of events, the presence of such a version is undoubtedly one of the strongest forms of defence. And s.34 CJPOA directly penalises the defendant if they fail to introduce information at the interview stage. Thus a failure of the interview process to fully investigate potential lines of defence will undoubtedly put defendants at a disadvantage. This is particularly true of those defences which are not a negation of the prosecution case but require the putting forward of a separate point, such as self-defence in the Assault case study. Similarly, in the Rape case study the Act puts an obligation on a defendant to take positive steps to ensure consent. (Although this is not a full defence, nor a firm duty, it is nevertheless a vital point for the Defence to raise if it is available to them). Such defences involve a slight reversal of the usual burden of proof, in that they place an evidential burden on the Defence to provide sufficient information to bring that defence in (although the persuasive burden then switches back onto the Prosecution to disprove it). Points which place such a burden on the Defence are therefore a key area which perhaps need better attention in the interview process than they currently receive. If the judicial process is to place a positive duty on the Defence to raise such points, and to provide sufficient information in support to bring them in legally, then they must be given proper opportunity to do so. If this does not occur, then it seems rather unreasonable for that same system to then penalise the Defence for failing to do so.

Overall, then, one of the most important findings of this study is that interviews do not always present interviewees with an opportunity to put forward their own full version of events, yet to the non-linguistic eye – and indeed to the whole judicial process – it appears that they do. This results in defendants arguably being put at a real disadvantage legally. The analysis has suggested several reasons why this is the case, and these predominantly relate to the place of the interview as part of a chain of events, and its differing role at various points along that chain. The most significant aspect of this is its dual role as both evidence-gathering as well as evidence-in-itself. The difficulties arise from the fact that the judicial process treats the interview as if it is purely evidence-gathering, yet the analysis has shown that it is its function as evidence-in-itself which is arguably the more important and certainly the greater influence on the interviewers and hence the interaction itself. The analysis has also shown that interviewees are not so tuned in to this function, and this difference in orientation is the source of real difficulties for interviewees when it comes to the later stages of the process. It places restrictions and even distortions on the story that emerges from the interviewee through the interview process. So ultimately, the rather unexpected and self-contradictory result is that the nature of the interview's later role as evidence actually adversely affects its own evidential quality and value.

9.2.4   Consequences for criminal justice

We shall now consider some important points which the discussion thus far has raised about the role of the interview in the criminal justice process. Firstly, the analysis has shown that the interview is not a neutral and impartial fact-finding exercise, but is part of the prosecution case-building process. I would argue that it is vital that it is acknowledged as such, rather than being treated by the system as an open opportunity

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for a suspect to give their version of events. Hodgkinson & James (2007) make the following observation of the relative position of prosecution and defence expert witnesses, and I suggest it applies equally to interview evidence:

'To an English civil lawyer or to anyone familiar with continental systems of criminal justice, English criminal proceedings have a lop-sided feel to them. The prosecution authorities, usually in the form of the police, have extensive power of search and seizure and may arrest the defendant. By contrast, the defence has no power to obtain its own evidence before proceedings have been started. Even after proceedings have been started, most defence evidence is obtained through the filter of the prosecution (as part of the prosecution's duty to make disclosure) and, commonly after the prosecution's experts have carried out their work. This means that, in many cases, the defence expert will not see the evidence in its original condition.' (2007: 126)

Similarly I am suggesting that interview data are 'filtered' through the prosecution in the form of the police interviewers, and the suspect's own story does not get to emerge 'in its original condition'. The various factors affecting interview data revealed through the analysis, and especially the discursive influence of the interviewers over the interviewee's account, mean that the resulting evidence is almost inevitably likely to be biased towards the Prosecution rather than the Defence. It is taken within the system that the police interview presents a suspect with the opportunity to say whatever they wish, and that the safeguards of tape-recording and of the other PACE regulations ensure that no undue pressure or influence is placed on interviewees. However, the system currently pays no heed to the wealth of linguistic research which demonstrates that influence and manipulation, intentional or otherwise, can take many other forms than those currently acknowledged in the criminal justice system.

That is not to say, however, that interviews in their current form represent a serious source of injustice, or that innocent people are routinely being convicted on the strength of corrupted evidence. It is my firm belief that the current system of police interviewing in E&W is one of the best in the world, with generally high standards of professionalism, training and built-in safeguards. Indeed the influences over the interviewee's account identified here are arguably subtle and not often of any real consequence. But the fact remains that the interview amounts to evidence which will be presented to the court against every single criminal defendant, and therefore any potential source of 'contamination' or hidden influence should at the very least be recognised as such and openly acknowledged.

9.2.4.1 s.34 CJPOA 1994

This leads us on to another key area of concern raised by this study, namely the comparison of the suspect's words at interview with the account given in court, something which occurs routinely at trial in order to create an inference of guilt from apparent omissions or alterations in the defendant's version of events. This stems from s.34 CJPOA 1994, whose introduction was intended to redress a perceived imbalance in the system created by the Defence's role as responder and disprover of the prosecution case. Previously a defendant could – and frequently did – with complete (legal) impunity say nothing at all right up to the trial stage, including going 'no comment' at interview, and could thereby wait until the Prosecution had shown all their cards before structuring a defence in response. If a defendant chose to 'play the system' in this way they would gain an arguably unfair advantage. S.34 is intended to reduce that advantage, yet without tipping the balance too far back the other way. It seems entirely reasonable that if a person has a valid defence they can be expected to put this forward

at the earliest opportunity, and that the court should be allowed to 'draw inferences', to use the wording of the Act, if they do not. However, although the principle is sound, I would argue that this study raises problems with its current application in practice. The problem is twofold: firstly it is based on the assumption that the interview gives the interviewee the opportunity to say whatever they need in their defence, which we have already demonstrated it is not; and secondly it assumes that if an account is true a teller will recount it identically every time regardless of the context or audience.

With regard to the latter point, it can be seen that this conflicts with a communicative principle also borne out by the present study, namely that any narrator will adapt their account according to the context, audience and purpose (or more accurately their understanding of those factors). The courtroom and interview room are very different contexts in terms of the discursive participants, the audience for the interaction, and the time and stage at which they occur along the chain of the judicial process. Given the influence of the interviewer identified above, it is hardly surprising if a different questioner – this time with a defence agenda – elicits a rather different account from the interviewee in court, not necessarily in overall substance but certainly in focus, emphasis and construction.

We have also observed that the interview represents a formative, drafting stage in the construction of both prosecution and defence versions of events, with 'facts in issue', and hence the relative relevance and importance of various aspects, yet to be determined. By the time the interviewee gives their account in court such factors will have been settled, and an often considerable amount of time will have passed, during which the account will have been frequently rehearsed and retold with inevitable revisions in the process. It thus seems rather unrealistic to expect these different

contexts to produce accounts which are completely mutually consistent. These factors may not lead to a completely different account emerging, but even small differences may become significant when we consider the level of detailed scrutiny to which interview evidence may be subjected, as observed in Chapter 5. I would, of course, not wish to suggest that all inconsistencies between accounts given at interview and in court are as a result of these discursive factors; they may well often be an indication of the defendant's guilt. However, what this study suggests is that there are also other valid alternative explanations which are currently not being considered.

9.2.4.2   Role of police interviewer

The final problem area I wish to raise here is that of the role of the police interviewer. One of the more interesting findings of this study is quite how difficult the interviewer's task is in terms of the various conflicting roles and tasks they are expected to fulfil during the interview process. Firstly, in terms of their narrative function we have observed that their role is ambiguous. On the one hand they are the audience for the interviewee's talk, and indeed it was demonstrated that this is the role which interviewees allocate to them in their talk, tailoring their account accordingly. But on the other hand, they also have a highly significant role as co-narrators of the interviewee's account, and this appears to be the role which interviewers allocate to themselves, co-constructing the account to meet the needs of their intended audiences later in the process. Not only does this creates serious difficulties for the interviewee, as discussed above, but it also places interviewers in a contradictory and conflicting discursive position.

However, it is, at least theoretically, possible for this role to be positive and constructive. An argument in favour of this dual role is that the interviewers alone have

the requisite legal and institutional knowledge of what needs to be elicited at this stage. It arguably should be their role to guide the interviewee's account towards those evidentially relevant areas and to make sure that all legal requirements are fulfilled. (The process of 'offence construction' observed in the case studies is an example of this at work, although unfortunately partial.) If the agenda of both interviewer and interviewee were the same, then this could result in a helpful and productive dynamic whereby the interviewer provides a bridge from lay to legal discourse, and from interviewee to ultimate audience, (benignly) shaping the interviewee's words into a form which best fits the institutional context. (This is, in fact, precisely the role of a courtroom lawyer in presenting their clients' interests to the court.) However, if the agendas of interviewer and interviewee are different, as they almost always will be, then this dynamic is instead likely to be counter-productive and a source of interactional dysfunction, as I believe this study has shown. Further, aside from any other factors of institutional role and prosecution bias, the interviewers were not present at the events in question and do not (yet) know anything of the interviewee's version of events. Their understanding of what took place is at best second-hand, filtered through the accounts of others, and the interview is supposed to be an opportunity for them (as well as others) to discover more about what happened. The role of co-narrator is therefore simply not an appropriate one for them to adopt.

This leads into another conflicting and problematic part of the interviewer's function, namely the question of neutrality. As just suggested, a potential role for the interviewer is that of a neutral and disinterested conduit between the interviewee and the ultimate audiences for their talk. This is akin to the role of news interviewers discussed in Chapter 6.2. However, the analogy breaks down in that police interviewers are clearly

not disinterested; they are also investigating police officers and hence part of the prosecution establishment. They are therefore by definition not neutral, despite their claims to the contrary (7.26-7.28), and the apparent expectations of the criminal justice system.

Yet it is clear that the interviewer's institutional – and hence discursive – position is in fact to act as a filter between interviewee and ultimate audience. However, interviewees are not made aware of this, so instead of being a transparent medium through which interviewees' talk is filtered, interviewers in fact form an opaque block between the interviewee and their audience which interviewees apparently do not see past. Further, given the fact that this filter is not neutral, it does not simply process the interviewee's account largely unchanged, but instead alters its nature by adding its own influence. The end product, therefore, is contaminated evidence.

There is no suggestion, however, that this is in any way deliberate on the part of police interviewers, but rather is a consequence of their conflicting discursive position. Indeed it was observed that the outcome, in terms of missing or distorted information, is potentially as damaging to the Prosecution as to the Defence. However much interviewers attempt to be neutral and even-handed, giving interviewees what seem to be entirely free and open opportunities to put forward whatever they wish, I would argue that their influence, and the inherent prosecution orientation contained within that influence, is unavoidable given their institutional and discursive role.

Nevertheless, even if interviewers cannot escape that discursive and institutional role, it is surely open to them to attempt to investigate all aspects of a potential offence, including aspects relevant to the Defence. Yet once again it is not that simple. We have

already observed that although they largely fail to do so, this appears to be a consequence of the conflict between the role of the interview as part of the evidence-gathering process, and as a piece of evidence in itself. Once again, then, the interviewer is left in an extremely difficult position, expected to simultaneously meet competing demands, this time due to the interview's dual function as both investigatory and evidential.

9.2.4.3   Legal representatives

It is possible to argue that the availability of a legal representative for interviewees operates as a form of balance to the interviewer's prosecution-oriented role. It was mooted in the Rape case study that the police interviewer possibly defers to the presence of the solicitor in not providing full details of the legal make-up of the offence of rape, seeing it as the solicitor's role to provide legal advice to the interviewee (Example 8.11). However, I would argue that this does not provide sufficient balance, either in theory or practice. In reality, the majority of interviewees do not request the assistance of a legal representative, and those that do so often only receive advice prior to the interview rather than having them present during it. Further, legal representatives are, I suggest, unaware of these factors influencing the discourse and are hence not alert to their dangers. It may, however, seem reasonable to expect them to explain the offence framework and full details of the prosecution and defence 'checklists' to interviewees, in order that they may be aware of these aspects of the interviewer's agenda.

However, it is simply not possible to explain all the relevant principles of criminal law and procedure to a person with no legal knowledge in the short available time and in a manner which they would be able to digest at a time of great stress. Further, aside from

the practical realities of the situation, the presence of a legal representative in the interview room cannot, I would argue, be sufficient to counterbalance the position of the interviewer. Their discursive positions are entirely different, with the interviewer as a fully ratified participant with a large degree of control over the discourse due both to their institutional role and their discursive position as questioner. The legal representative's contributions, on the other hand, are constrained by PACE as discussed in Chapter 4.3.2, and they are at best secondary, ancillary participants, peripheral to the main discursive action. Their role is less as a main player, and more akin to a referee, whose presence is intended to ensure fair play and abidance by the rules rather than performing any active role. Thus although their presence does provide at least some balance to the position of the interviewer, it would be inadvisable to look to interview legal representatives alone as providing a potential solution to the problem areas identified above.

Overall, then, I would argue that it is in the interests of all parties for interviewers to take some, if not the majority of, responsibility for ensuring that interviewees are made sufficiently aware of the crucial aspects of the legal and evidential framework of the interview identified in this study, in order to ensure that the best evidence can emerge through the interview process. In particular, this study has demonstrated that the caution does not provide adequate awareness in interviewees of the future audiences for, and uses of, interview data, and that this potentially has a detrimental effect on the resulting evidence. That is not to say that it is not a legitimate tactic for interviewers to withhold certain information as a method of testing the interviewee's version of events, but it is equally important that interviewers appreciate the potential of this to produce incomplete or even misleading evidence as a consequence. Ultimately, increased

awareness of all the factors identified in this study can only assist interviewers in their task and thus lead to more productive and effective interviews for all concerned.

9.2.4.4 Summary

Anything said by an interviewee is inevitably influenced by the context in which it is produced. Yet the police-suspect interview is a particularly complex and unusual context, with a unique trans-contextual, multi-purpose function in the criminal justice process. This study has identified several consequential sources of interactional trouble. Interviewees are likely to orientate only to the initial present audience and not the future audiences who are so significant in the wider process; they are generally not aware of the underlying legal and evidential framework which governs the interaction, hence do not know what counts as contextually relevant or important and so take their cue from the interviewer in this respect; and they are put in the discursive position of responding to the prosecution version of events rather than initiating their own account in their own terms. Meanwhile interviewers orientate predominantly to the future audiences and evidential uses for interview data, with a distinct bias towards the needs of the future prosecution audiences. Their discursive and institutional position results in them effectively co-constructing the interviewee's account, and combined with the interviewee's deference to the interviewer in key aspects of the interview interaction, the end result is an account which fits with the interviewer's prosecution-focused agenda while overlooking aspects which are relevant predominantly to the Defence. The overall result is that the interview is not a neutral opportunity for the interviewee to put forward their story, as is generally assumed and indeed built into the system via s.34 CJPOA. It has a vital role in the evidence-gathering process – but evidence of what, exactly? I would suggest that the interview is only good evidence of what an interviewee thought was appropriate to say at the time of the interview, in that specific

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context, and for that immediate audience. These factors are of fundamental importance in shaping the resulting discourse, yet given the wider position of the interview in the judicial process, it is highly likely that the interviewee will have misjudged one or all of them. The criminal justice system is not necessarily set up to mislead interviewees in this respect, but equally we have seen that it does little to make them clear. Overall, this casts doubt on the validity of the conclusions generally drawn by the system when taking interview data out of that temporal and physical context and using them as evidence against the interviewee.

9.3   Form and Function

This study has focused on two aspects of police interview data which undergo changes through the criminal justice system; one connected to its physical format, the other to its function (in the sense of its audience and purpose). This section will bring these two aspects together to create an overall picture of the place of interviews in the judicial process.

Firstly, we have observed that interview data are put to a number of different uses by various different audiences subsequent to the original interview room interaction. Figure 4.1 represented these audiences and their purposes in using interview data at the various different stages of the criminal justice process. Secondly, in Chapter 5 it was shown that interview data undergo various transformations in format at different stages of the process, as set out in Figure 5.2. To summarise, first we have the original spoken interaction in the interview room. This original version is of course ephemeral and context-bound, experienced only by those immediately present and instantly lost. It is, however, audio-recorded and thus we have its second incarnation in the form of the interview tape. This tape is transcribed, thereby creating a further version in the form of

the formal written transcript. These two versions are made available to all subsequent

users of interview data, but in practice the transcript is relied on almost completely

rather than the audio tape. This remains the case up until the court stage, when a further

version is created through the process of reading aloud the interview transcript in order

to introduce it as evidence. Putting these two aspects together produces the following

picture:

Figure 9.1: Form and function of interview data in the criminal justice process
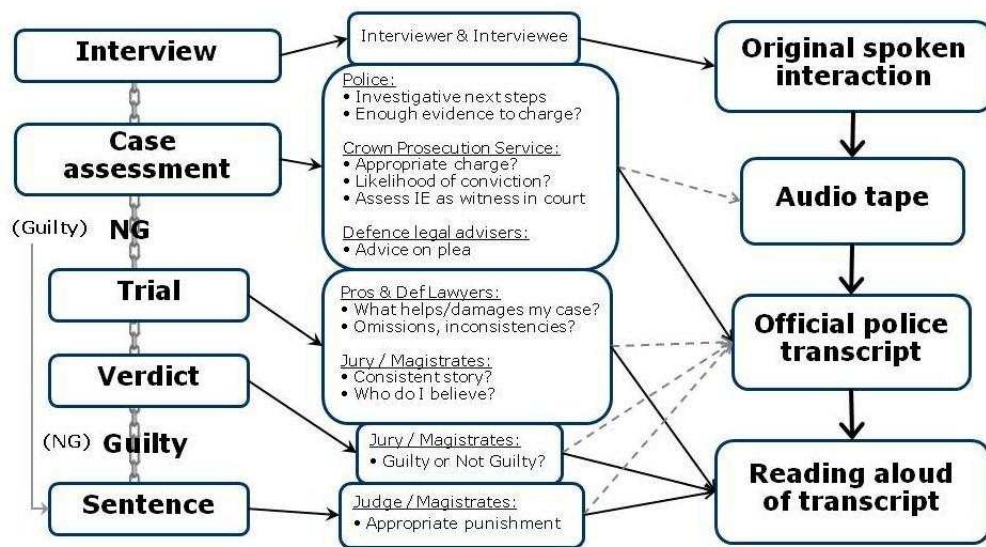
This highlights several important points. Firstly, the various audiences for interview

data are not just using the data differently, they are in fact using different data. This

raises serious questions about evidential consistency through the process. Secondly, it

can be seen that as we move away from the original speech event the format of the data

becomes more corrupted while the uses to which they are put become more important.

This is clearly not a desirable correlation.

Further, when we bring in the question of audience orientation, a further troubling

correlation appears. In Chapter 6.2 a 'concentric rings' model, based on Bell 1984, was

proposed for the various different audiences for interview data and their position

relative to the main interview participants. Bell's theory states that as you move away from the centre in terms of audience role, the link between speaker and audience grows weaker and so the speaker is less influenced by that audience in their talk. The courtroom audiences were identified as the most remote from interviewees, and hence likely to be least oriented to by them in their talk. The data analysis undertaken in this study has borne this out. Thus, combined with the other findings just noted, the end result is that the audience least addressed by the interviewee's talk receives their words in the most corrupted format, and will then put that data to their arguably most important use in judging that interviewee's fate.

9.4   Practical Implications & Recommendations

9.4.1   Format

It is clear that the current formats in which interview data are used are far from ideal. Further, the format changes which they undergo raise serious questions regarding evidential consistency. It is a long-established principle of police investigative practice that extremely high levels of preservation must be applied to physical evidence, in order to avoid any contamination which may undermine its evidential merit. Yet the same system currently institutionally embeds 'contamination' into the processing of interview data, without any apparent concern for the evidential consequences. This appears to stem from a lack of recognition that changes in the format of linguistic data involve transformation of the data themselves. A first step in improving current practice, then, is to increase awareness of that simple fact. There is also scope for several specific improvements, all based on the principle of preserving the original data as intact as possible, and using them in as near as possible to their original form. These are as follows.

- All interview recording should be switched to digital format rather than out-dated audio cassette tapes.

This format is already virtually obsolete in all other contexts, making its continued use for such important material no longer justifiable. Although there would be an initial financial outlay to update equipment, the improvements in data quality would be considerable. Accessibility would also be vastly improved, both in terms of data-sharing via electronic means, and in the ease with which specific extracts could be located and replayed. This would be especially useful in the courtroom. Further, it would lead to potentially considerable savings in time, storage space, and hence money. It should be noted that several forces are already making moves in this direction, but this is a long way from being standard practice, especially for everyday volume crime. It has also already been noted that the latest version of the PACE Guidelines involves an amendment to include newer recording formats (Code E, 2005 version). This is therefore a change which I would expect to take place in the reasonably near future. I would, however, wish to encourage this to occur sooner rather than later.

- Further research should be conducted on the use of video recording.

There is already some debate about the merits of switching to video rather than audio recording of interviews. Certainly digital technology has made this a more viable option practically and financially, but there are still areas of concern. It would give far greater insight into the interview room, revealing previously hidden aspects of body language, stance, and physical set-up, thus providing greater access to the interaction's original context. Video footage has become standard for the most serious cases in most forces, and its impact can to some extent be seen in the media interest and 'air-time' it affords

when released to the public following a conviction[44]. However, misgivings have been voiced on the grounds that behavioural aspects revealed by visual recording will inevitably influence the court's impression of the interviewee, yet they may misinterpret or misjudge such features, especially due to cultural differences. A common example cited is that of eye contact (e.g. Gibbons 2003: 35), which in some cultures is seen as a sign of openness and honesty, yet in others is a sign of disrespect.

However, my analysis has shown several instances of police interviewers providing a verbal description of visual features, and indeed in my data set I came across an example of an interviewer specifically making mention of an interviewee's lack of eye contact with her, combined with a strong insinuation of dishonesty (IV 2.19). In other words, the lack of visual data is no protection, and its availability would at least provide the court with more contextual information from which to form their own opinion. Further, such arguments overlook the fact that the interviewee, now the defendant, will be sat in the courtroom in front of the magistrates or jury, and will presumably be exhibiting the same habitual quirks or culture-specific behaviour. Thus restricting access to visual images of the same person in a different context will not, I would argue, avoid this problem. However, this is not the subject of this study, and I would not wish to profess any expertise in this area. I would, however, suggest that it is an area ripe for further research in order to inform the debate. At this stage, I would tentatively suggest that it should be utilised whenever financially justifiable, and that it should be a longer-term aim to introduce it as standard practice across the board.

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[44] Recent examples are Ian Huntley's and Harold Shipman's police interviews, both convicted of multiple murders in very high-profile cases.

Moving on to the transcription process, it should firstly be observed that it is entirely necessary for a formal written version of the interview data to be produced. Further, the conversion process will inevitably involve some level of alteration and 'contamination'. The challenge is in keeping that to a minimum.

- Better training should be given to transcribers.

Training for transcribers could be significantly increased, preferably to include some introduction to linguistics, spoken communication, and the differences between spoken and written language.

- A standard code of practice for transcription could be introduced.

This would be especially valuable for transcription conventions, covering features such as overlaps, pauses, sighs, and raised or lowered voices. It could also address the editing process, giving an indication of the principles to be applied when deciding what should be included in full, or in summary form, or left out altogether.

- The use of 'civilian' transcribers should be considered further.

At the moment the transcription process appears to be fairly low priority and low status, reflecting the lack of appreciation of the vast differences between the oral and written formats of the data. Further, there appears to be wide variation between different forces in terms of training and other important factors, including the use of 'civilian' rather than police staff to transcribe interview data. My findings indicate problems of built-in prosecution bias in the police interview process; this suggests that using non-police personnel as transcribers would represent good practice. However, some legal and procedural knowledge would perhaps be advantageous, in order to assist with the

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editing process and to ensure that relevant points are not unintentionally omitted. Once again, then, this an area which would benefit from further research.

- Those subsequently assessing the interview as evidence should listen to the original recording rather than relying on the official transcript.

This is particularly important for prosecution and defence lawyers, and especially with an edited transcript. The difficulty is that this is a much more time-consuming task, and will arguably not often produce fruitful results. Given the very tight time constraints within which lawyers are generally working, this is therefore often not seen as a worthwhile task. I hope that some of the findings of this study are enough to suggest otherwise. An increased awareness of the significance of many of the factors discussed in this study would, I would suggest, lead lawyers to be able to listen more effectively and to target likely problem areas in specific cases. This could be particularly useful for defence lawyers in defending allegations of inconsistencies or omissions at the interview stage.

- The practice of reading aloud the interview transcript in court should be abandoned. This additional format change is, I would argue, of no benefit but potentially considerable detriment. The analysis of real examples of this process in action in Chapter 5 demonstrated that it adds a further unnecessary layer of distortion, confusion and corruption to the interview data. Further, given that this task is performed by the prosecuting lawyer and a police witness any shift in emphasis or interpretation, intentional or otherwise, is most likely to be in a direction which favours the prosecution case. But of course any distortion of evidence is in the interests of neither side.

Several alternative methods are available for presenting the interview as evidence in court. Firstly, the audio recording could be played. This is unlikely to take up significantly more time than the current process of reading aloud the transcript; indeed possibly less in light of the confusion and need for clarifications observed in Chapter 5. If time constraints are an issue an agreed edited version approved by both sides could be used, as is often already the case with written transcripts. Digital technology will assist considerably in this respect, and should also reduce problems of audibility.

Of course where a video recording is available, this should (arguably) always be played in the courtroom as the most effective method of presenting the interview as evidence. Indeed this is likely to be considerably easier for the court to digest than listening to an audio recording, thus providing another argument in favour of the routine video recording of interviews.

If these options are not accepted, or are unavailable for reasons of practicality or quality, a further alternative is to continue the practice of reading the transcript out loud, but to have the interviewee's role taken by a defence representative, thus providing more of a balance. Although this is still far from ideal for all the reasons discussed above, it is perhaps the most practical and simple change to effect, and hence realistically the most likely to occur. If combined with better quality recording, better standards of transcription, and increased awareness among legal representatives of the factors raised in this study, this would still be likely to achieve real improvements in the current process of presenting interview data to the court as evidence. Finally, whatever system of presentation is used, it must be accepted that neither the recording nor the transcript should ever be treated as if they were original data, but must be recognised as secondary, altered representations of the original evidence.

9.4.2 Function

Once again, the main recommendations with regard to the interview interaction itself, and the subsequent uses to which it is put, involve increasing awareness of the principles discussed in this study. Overall, one of the key points which I believe needs to be acknowledged within the system is that the interview is currently not a neutral opportunity for an interviewee to give their version of events and provide a full, legally valid defence. It therefore should not be treated as such when considered as evidence. The following recommendations are therefore aimed at either increasing the neutrality of the interview itself, or encouraging the system to acknowledge that it is part of the prosecution case-building process, with all the inevitable biases and omissions that implies. It should be noted that the use of terms such as 'bias' is not intended to imply any deliberate wrongdoing, but is merely a recognition of the end result, intentional or not.

As a further general point, it has been shown that many of the difficulties arise from the application of s.34 CJPOA. It is not my intention here to question the principles contained within this legislation (although this is certainly a matter worthy of separate debate), or to make recommendations for its amendment or repeal, but I believe this study has shown real problems with its current application and the practical consequences for both interviewees and for criminal justice. Hopefully these findings can be used to inform any future debate on the subject of this legislation. In the meantime, the following recommendations are based on the assumption that s.34 will remain in its present form.

9.4.2.1   Prosecution

- The interview should be used to secure as full an account as possible from an interviewee, including fully investigating defence points.

The analysis undertaken in this study has shown that this is as much in the interests of the Prosecution as the Defence. The interview is the only opportunity for the Prosecution to talk directly to their prime suspect, and thus gives them an early opportunity to discover their likely line of defence at a subsequent trial, thereby considerably assisting the police investigation and the preparation of the prosecution case. Further, by providing an open and fair opportunity for an interviewee to put forward all available information in their defence, any subsequent additions or alterations can more legitimately be challenged as suspicious, as opposed to being simply due to the interviewer's discursive tactics.

- Interviewers should be made aware of the dangers of being too dependent on the pre-conceived 'Guilty scenario' when preparing for and conducting interviews.

Although this may well lead to the interview producing the evidence they were seeking, it is important that they be alert to the possibility that their own discursive behaviour has restricted or distorted that evidence. They need therefore to remain open-minded to the possibility of other explanations.

- Interviewers should be made more aware of their discursive influence over interview interaction, and of the discursive difficulties inherent in their role.

By increasing knowledge and awareness of these aspects of their task, interviewers will be more able to make appropriate adjustments to counteract and overcome them. Of course, it could be argued that interviewers may then exploit such factors in order to deliberately manipulate the interviewee's account; however I would argue that the fact

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that such knowledge could be put equally to good or bad use is not sufficient reason to withhold it. Further, a corresponding increase in awareness in defence representatives would hopefully provide the necessary check on such tactics.

- It should become part of the interviewer's task to make interviewees more aware of the other audiences for their talk.

Interviewers should encourage interviewees to treat them partly as a conduit to those other audiences and contexts and not as the only recipient of their talk. This could very easily be achieved, given the numerous occasions during interviews when questions are specifically asked for those audiences. Inviting interviewees to give information 'for the tape' has, I believe, been shown to be inadequate for this purpose.

- Research should be conducted into the use of 'civilian' rather than police interviewers.

The use of non-police interviewers could theoretically increase the neutrality of the interview. However, this would be a radical change and would need considerable further thought. Some police forces already make use of civilian interviewers, and indeed my data set includes several such interviews. However, such personnel are clearly still under the employment of the police force and hence are arguably no more 'neutral'. Their success or otherwise would depend heavily on intensive training. Further, there are real tactical advantages for the officers investigating a case to gain this first-hand experience with their suspect (as attested to in a BBC interview with the officer in charge of the Shipman investigation, DS Postles[45]). As a preliminary first impression, based on a very limited data sample, I would have to say that the interviews

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[45] http://news.bbc.co.uk/1/hi/in_depth/uk/2000/the_shipman_murders/the_shipman_files/608691.stm (last accessed 28/9/08)

I observed using non-police interviewers were of a noticeably poorer standard, but clearly this is in no way conclusive. However, given the fact that such personnel are already starting to be used in the interview context, this is an area which certainly merits further research.

9.4.2.2   Defence

There is of course no obligation on an interviewee/defendant to say anything at all in their defence. It is entirely legitimate for them to remain completely silent and to put the prosecution's case to the test. However, the effects of s.34 CJPOA make this a rather risky strategy. Thus legal representatives need to make careful decisions before advising any client as to what to say, or not to say, during their police interview, based on the specific circumstances of each individual case. It is therefore not possible, or indeed sensible, to offer any suggestions as to the appropriate manner in which to introduce defence points into the police interview. Nevertheless, there are several ways in which the findings of this study could be utilised by defence representatives.

- The implications of this study with regard to the use and interpretation of interview data as evidence should be incorporated into legal professional training.

This would be of particular use in court when attempting to counter points made by the Prosecution under s.34 CJPOA regarding apparent inconsistencies or omissions at interview. This study has raised the possibility of other explanations for such features, but it will always be up to the Defence to make that point on a defendant's behalf. That clearly depends on the defence legal representative's awareness and understanding of such factors.

- Legal representatives attending at police stations should make interviewees more aware of the future evidential uses of their words in the interview room.

Although there is little that can be done about many of the discursive factors identified as problematic for interviewees, it is nonetheless extremely important for them to take whatever steps they can to adapt their discourse to fit the interview's future role in the judicial process. Defence legal representatives can assist in this respect. For example, they could suggest that interviewees imagine they are in a courtroom rather than an interview room, and thus consider what they would say if they were directly in front of a judge and jury. This would hopefully make interviewees more able to adapt to the unusual trans-contextual nature of the context in which they find themselves. However, as stated above I believe that this should partly be the responsibility of the interviewers themselves, who are much better placed interactionally to make this change during the interaction itself.

- Legal representatives who attend interviews should be more proactive than currently tends to be the case.

This study has shown the need for more balance to counteract the intrinsically more powerful – and prosecution-oriented – position of the police interviewer, and defence representatives are obvious candidates for this role (although, as previously discussed, it is not possible for them to provide a complete solution). Further, it is likely that their presence in the interview room will be taken as providing that balance in itself, thus potentially leading interviewers to be even more prosecution-oriented than otherwise. Thus the presence of an inactive legal representative during an interview (as in the Rape case study) may actually do more harm than good.

A primary function of the representative ought to be to ensure that (tactical considerations aside) all relevant defence points are covered during the interview, and it is entirely acceptable for the representative to intervene in order to allow the interviewee to raise such points if they have not been addressed by the interviewer. It is always open to them to request a private consultation with their client at any point during the interview, rather then risking raising a point without knowing what their client will say on that matter. I would once again suggest that these areas should be included in legal professional training, in order to make defence legal representatives more aware of the factors raised in this study and their implications for police station practice[46].

- Further research should be conducted on the role of legal representatives in interviews.

Unfortunately it was not possible to include this in the present study, but it is certainly an aspect worthy of considerable further study, preferably from a cross-disciplinary perspective.

One final point should be raised in terms of potential suggestions for improvement from a defence perspective. It is possible to argue that a solution to the difficulties raised of defence points not being enabled to emerge during the police interview is for the suspect to make a full formal statement of their own at the point of their arrest and before any interview takes place. This would avoid any potential influence by the interviewers, and would provide defendants with a neutral opportunity to put forward whatever they wished in their defence at this early stage. However, there are several

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[46] Of course, none of these recommendations get round the problem of the majority of interviewees currently declining their right to legal advice and representation, but that is a separate matter and one eminently worthy of further investigation.

reasons why it would not be appropriate to introduce such a requirement. Firstly, it would still represent a very different context, physically, temporally and in terms of participants, to the later court context and thus would not necessarily represent a fairer point of comparison with the version the defendant subsequently gives in court. Secondly, and more significantly, it represents something of a reversal of the fundamental legal principle of the Prosecution having to prove their case and the Defence only having to cast doubt upon it. The burden of proof is a significant and vitally important safeguard for defendants against the might of the state in bringing a prosecution against them. Thus any requirement for a suspect to have to put forward a full defence at this preliminary stage, and before the Prosecution have had to formulate their own case, would arguably place an unacceptable burden on the Defence.

Nevertheless, that is not to say that it would not be advantageous for suspects in some cases to put forward such a statement. In fact something similar is occasionally used as a tactic by legal representatives as a way of partly circumventing s.34 CJPOA and as an alternative to advising clients to go completely 'no comment' at interview. This involves the preparation of a written statement by the suspect and their legal adviser, which is then read out loud at the start of the police interview, after which the interviewee refuses to answer any further questions. (This tactic is in fact used in IV 1.06 in my data.) They can thus arguably not be accused of having failed to put forward their defence at interview, while avoiding having to provide any information which they do not wish to. It can be argued that the findings of this study support the use of this tactic, but I would suggest that it is still a risky strategy, and the potentially negative effect such non-cooperation might have on the court should not be underestimated. This suggests that it would be worthwhile to conduct research on the relative effectiveness of

such tactics compared to either going completely 'no comment' or to co-operating fully at interview, but unfortunately the restrictions on access to juries make this rather difficult. However, experimental research could still provide useful insights into this area and the results would no doubt make extremely interesting reading for defence legal advisers.

- Overall, the most effective and fairest solution for all sides is to endeavour to improve the discursive context of the interview room in order that interviewees are provided with a fair opportunity to bring in whatever points they wish in their defence.

It may well be that the information they choose to introduce in fact harms their defence; equally they may choose to say nothing at all. The important point is that this should be a matter of their own choice, as opposed to a discursive restriction placed upon them, intentionally or otherwise, by the nature of the interview room context. It may be the case that such restrictions are inevitable and unavoidable given the place of the interview in the criminal justice system. However, at the very least that system needs to be made more aware of such factors in order that they may be recognised, acknowledged, and any negative consequences minimised as far as possible in the interests of justice.

9.4.3 Conclusion

The findings of this study with regard to both the format and function of interview data in the criminal justice system have demonstrated the need for increased awareness of the linguistic factors influencing those data within that system. Alongside some specific practical recommendations regarding the format changes currently undergone by interview data, the main recommendation for effecting improvements is for these

factors to be incorporated into professional training. This applies to police interviewers and investigators, to prosecution and defence lawyers, but also to the judges and magistrates who will ultimately preside over the use and interpretation of interview data in the courtroom. Perhaps the most important area of practical consequence is the practice of comparing the account given by a suspect at interview with the version they give in court. The analysis of both the form and function of interview data has shown that apparent omissions or inconsistencies between these two versions as presented in the courtroom may not be evidence of guilt, but merely a consequence of the various linguistic factors discussed in this study. It will always be up to the court to weigh up whether or not this alternative explanation is viable, but in order to do so guidance needs to be available on the linguistic and communicative principles which underlie such alternative interpretations. A key next step is therefore to produce such guidance in a form which is easily accessible by practitioners in the field. This should ensure that the findings of this study, which have the potential to result in real positive change in the criminal justice system, are given the best opportunity to effect such change.

10. Evaluation and Conclusion

10.1 Overview

Overall, this study set out to investigate a specific legal context through a multi-method discourse analytic approach, with a view to producing recommendations to improve and enhance that context. I believe it has met those aims well. It has produced realistic recommendations which can be applied by practitioners in the field. These are based on thorough analysis of the context and the data, which ensures that they are justifiable, practical, and likely to lead to real improvements. In addition to this, it is also a worthwhile linguistic study in its own right. It has generated research findings and a methodological framework which potentially have much wider applicability and interest, especially for other interview contexts. It is thus not context-bound and only of use to the specific area of study, nor limited in its findings to a series of practical suggestions for professionals working in this area. Yet it is also not merely descriptive and of theoretical academic interest only. This balance between the practical and theoretical, and its contribution to both areas, is one of its key achievements. We shall now evaluate in more detail its successes and weaknesses as an academic, and especially a linguistic, research project.

10.2 Strengths

10.2.1 Methodology

A key strength of this study is the development of an innovative multi-method framework of analysis. This successfully combined elements of discourse analysis, conversation analysis, pragmatics and sociolinguistics, yet without sacrificing methodological rigour. As discussed previously, the various methodological elements were viewed as parts of a 'toolkit' brought together in order to produce the most

relevant and meaningful results, and this approach was thus seen as a means to an end rather than being a specific intended research outcome. Nevertheless, that approach has in fact proved to be of research interest in itself. The combination of different methods, which each revealed different aspects of the data, produced overall a far richer and more rounded picture than any single approach would have been capable of producing on its own.

Linguistic studies which utilise only one methodology can be of considerable theoretical interest, especially in terms of increasing our understanding of the nature of spoken interaction, but I would argue that such an approach is likely to be less effective in addressing more practical research questions. Although a single methodological approach will uncover much about one particular aspect of a context or an interaction, no one approach is likely to reveal the whole picture (Roberts & Sarangi 1999). Real events are almost infinitely multi-layered and multi-faceted, and in order to understand them in their entirety I would argue that the most successful approach needs to be able to uncover and examine as many of those aspects as possible.

Thus for this project a narrative study alone would have given a broad impression of the types of identity the interviewees were projecting, but the addition of detailed CA-type analysis demonstrated how those identities were constructed, and indeed who by. Similarly, a purely CA-type analysis would have revealed much about interactional co-construction in the interview, but would not have allowed wider consideration of the place of the interview in the wider judicial process and hence the overarching influence of the legal frameworks, the other contexts and the hidden future audiences for interview interaction. Thus the combined methodological approaches enabled answers

to emerge to all the questions which needed addressing in order to provide fuller understanding of police interview discourse: not just how, and who, but also why.

This approach has potentially much wider applicability for the study of other contexts, especially other interview contexts. Such interactional sites offer much of interest to the researcher, whether in terms of discourse strategies, interactional behaviour, power relations or identity projection and construction. They are often a key part of the decision-making process in many key institutional situations, from doctor-patient consultations, to asylum adjudications, to job interviews and many others. Any methodological approach which can offer revealing, robust findings which can be of genuine practical assistance to those operating in such contexts is clearly of some merit.

One further point should be made regarding the chosen methodology. Much of the analysis and discussion has involved assessing the role of the police interviewer. One aspect which has been deliberately left to one side is the question of whether some of the discursive behaviour observed was part of a deliberate, or perhaps even subconscious and intuitive, strategy on their part. One possible method of examining this would have been to conduct interviews with police interviewers. However, it was considered that this would not in fact have been likely to answer this question effectively, especially if the influence was subconscious. Further, the aim of this study was to observe and analyse the discourse, identify aspects of the discursive behaviour of participants, and point out the consequences. Thus the analytical focus was on the actual behaviour of the interviewers, not on their underlying intentions. However, this is potentially a fruitful area for future research, which could be informed by the findings of this study. This could be particularly beneficial when assessing the best methods of

introducing potential changes in interviewer practice, particularly in terms of challenging any identified underlying attitudes and assumptions.

10.2.2 Interdisciplinarity

Leading on from the combination of different linguistic methodologies, this study also combined elements of both linguistic and legal research. Again, this was a difficult balance to strike, but one which I believe was managed successfully. This was always intended to be a linguistic study, but one in which legal aspects of the context were especially important. A potential weakness of some previous research in this area is that it does not always take sufficient heed of particular legal factors which are of crucial significance to the context being studied. In mainly descriptive linguistic studies, such factors are not necessarily of primary concern. This study is different in that respect in that its goals were aimed equally at the legal context itself as well as contributing to linguistics as an academic discipline. It thus required much greater legal input. It was therefore a particular challenge to incorporate the necessary legal factors for a non-legal audience without making the result too simplistic legally, and also without sacrificing the predominantly linguistic focus of the analysis. I believe that this was achieved. The framework of analysis is entirely linguistic, yet allows vital legal aspects to be included and explored. The findings are thus relevant to both disciplines, while ensuring that this remains a methodologically sound linguistic study. Further, the success of incorporating factors which are so crucial to the context being studied, while retaining the linguistic integrity of the analytical framework, suggests that this approach can be applied equally effectively to other contexts where similar professional or institutional factors need to be included, again demonstrating the much wider potential applicability of the chosen methodology.

10.2.3 Data access

This project is notable for its considerable success in obtaining data, something which has proved a serious impediment to other similar studies which have been attempted in legal contexts, especially of UK police interviews. The amount of data collected was in fact considerably greater than expected, and even at the conclusion of the project police forces are still offering assistance and further data. This has, in fact, proved something of a difficulty, especially in terms of handling, storing and processing the unexpectedly large quantities of data received. Although this necessitated changes for example in the intended processes of data selection, it is of course a tremendous bonus. It has resulted in the creation a corpus of police interview data which represents a unique and extremely valuable resource for future research – subject to securing continuing access from the data providers.

The reasons for this success were discussed in Chapter 3.3.2. Although the researcher's legal background was a distinct advantage in terms of pre-existing knowledge of the context, the key appears to have been in the thorough preparation and planning before the approach for data was made, the consideration of the needs of those approached, and the fact that those approached could appreciate the potential practical usefulness of the findings. This is therefore something which is certainly not beyond any other researcher requesting data access in this or any other context. However, it does indicate that research which is practically-minded rather than of purely academic interest is likely to enjoy rather better co-operation in this type of professional context, especially when the data sought are of such a sensitive nature.

10.3 Weaknesses

10.3.1 Breadth of data analysed

A potential weakness in the study is that only two police interviews were analysed in depth, which is arguably not sufficient upon which to draw firm conclusions and recommendations about police interviews in general. However, I believe that overall sufficient data were utilised, and that the approach taken is justifiable. Firstly, case studies are long established as a means of conducting very detailed and productive analysis of a particular context, which can produce far more insightful results than a more quantitative approach which uses more data but in considerably less depth. The interviews were chosen through a robust and systematic process of data selection, ensuring as far as possible that they were representative of the genre. Further, although the main analysis was conducted on only two interviews, the analytical framework applied was developed after observation and study of the much larger data set, as detailed in Chapters 3 and 6. It was through this process that it became clear that a strong factor was the underlying legal framework for each interview, which depended on the specific circumstances about which each suspect was being interviewed. This was thus a factor which, although generic, would be factually different for each interview. The case study approach was therefore selected as the most appropriate method of investigating the particular aspects of interest for this research project. The quality, and indeed quantity, of the findings that emerged due to the very detailed nature of the analysis have, I believe, demonstrated the value of the approach taken.

However, although the case study approach has been justified, it must be conceded that additional case studies would have strengthened the findings. Unfortunately these were not possible in the time and space available. The inclusion of additional interviews

would have necessitated sacrifices in the level of analytical detail which it was felt would not be justified by the possible benefits. However, having thus developed a sound framework of analysis whose merit has been established in the two case studies included here, analyses of a wider pool of interviews can now be undertaken as a further study.

10.3.2 Interviewer training as a factor

The reasons for not incorporating interviewer training as a factor in this study were set out in Chapter 3.3.1. Although it is still felt that this was a valid decision, it does leave the study with potential weaknesses.

The first difficulty is that potentially the discursive features identified were due to the specific training undergone by the particular interviewers observed. Just as I have shown that the legal framework is a vital but often overlooked underlying factor in interview discourse, so too might be police interviewer training, yet it is a factor which I did not directly account for in my analysis. However, I believe that it is unlikely to have affected the outcome of this study. The type of analysis conducted has, I believe, identified underlying features which will be common to all police interviews. Thus the insights it produced and conclusions reached should be fundamental and generic, occurring regardless of the personal circumstances and practices of individual interviewers.

Further, the data collection and selection process will have ensured that the overall data set has sufficient range in terms of interviewer training and experience, and indeed any other factor which will vary from interviewer to interviewer, to ensure that it is representative of the genre and to eliminate (as far as possible) their influence on the

findings. However, although this can be said of the wider data set, it is inevitably reintroduced as a potential difficulty when only a small number of interviews are then analysed in detail. It is at this stage that individual quirks of particular interviewers could potentially skew the findings. Ultimately, then, this is an inherent problem of using the case study approach. Despite this, it is still maintained that that approach is justifiable for the reasons given above. Further, the fact that all the features identified occur in both case studies – interviews involving different interviewers from different forces and conducted at different times – suggests that those features are indeed generic and not due to specific training.

The second potential weakness is that since this study has not examined current interviewer training, it is possible that some of the findings are already out of date or even obsolete as current training may already address some of the problems identified. However, I would again argue that this does not affect the validity of this study, given its aims and objectives. The analytical focus was on interviews in practice, not on interviewer training. Therefore it was right to examine what actually happens in practice, and then consider the implications for training, rather than the other way round.

As discussed in Chapter 3.3.1, there is wide variation in the amount and type of training undergone by interviewers in practice, both from force to force and within forces. Additionally, even the most effective training does not guarantee that those principles will actually be applied in practice. Given that the intention was to investigate the nature of interview discourse as it occurs on an everyday basis across the country, this study therefore needed to concentrate on what actually happens in practice, not in the theoretical classroom. Any information thus uncovered about police interviews, and

particularly the identification of fundamental underlying features of the interview context, can then be used to improve interviewer training, even if only by endorsing aspects which are already covered. Thus a next step leading on from this research project is to examine current training programmes in order to evaluate how well they fit with the findings of this study, and hence how best to incorporate those findings into that training. This will amount to a significant further research project in itself. Good links have already been established with several police interviewer trainers, and this is certainly a priority for future research consequential to this study.

10.4 Conclusion

Overall, this study has met its research objectives well. It has revealed fascinating aspects of police interview discourse, especially the significance of its position as part of a chain of events making up the criminal justice process. Its key contribution has been to demonstrate how this is manifest in the interaction itself, and indeed how many vital aspects of the role of the police interview are shaped and even constructed discursively. Its findings are thus not just of academic interest but will hopefully be of significant practical benefit to the context studied.

As such, it also serves a wider purpose in demonstrating the potential real-world applications of linguistic research. This is especially true of legal contexts, which are so dependent on language and involve such high stakes both for individuals and for societies as a whole. Many other academic disciplines, from biochemistry to psychology, are now widely accepted and incorporated into modern legal and evidential practice. Studies such as this show that it is time for linguists to claim the same status and recognition for their field and all it has to offer, in the interests of justice and the society it serves.

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[Appendix A: Full transcripts for case studies on CD]

[Available on request from the author – please contact via the School of English Studies, University of Nottingham, NG7 2RD.]

Appendix B: Chapter 8 data extracts

Example 8.20 (lines 217-43)

IR1:	[u- up un-] up until. what had you had to drink. tell me in	217
	total what you had to drink.	218
IE:	er before the incident took p- (.) errr fff (.) errm (-) between us we got	219
	two bottles of wine. okay, (.) from the off licence. (.) Caroline had been	220
	drinking before that, (.) she said she'd had some wine. (.) er before she	221
	met me in the bar I'd probably had about three pints in the (pub, (.) I was	222
	tired ???) (.) and she (.) she drank spirits and I was (thinking ?? wasn't	223
	very ???) and she kind of like has (.) what she calls shots (???)	224
IR1:	yep	225
IE:	she has a shot with a	226
IR1:	yep	227
IE:	with a glass of wine and (before) she has one of those (.) be- breezer	228
	things, you know	229
IR1:	yeah	230
IE:	and I (???) (.) keep up with that.	231
IR1:	yeah	232
IE:	but she was also errm (-) I was aware that she was using pills.	233
	(-)	234
IR1:	yep	235
IE:	and that was the erm (.) slimming pills that she got (on the kind of)	236
	dodgy slimming pills basically [that] she bought through the back door	237
IR1:	[okay]	238
IE:	{mumbling} (somewhere (.) [from] (.)	239
IR1:	[okay]	240
IE:	you know (-) I wondered (.) you know) (-) because she started going a bit	241
	strange in the pub.	242
IR1:	okay.	243

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Example 8.21 (101-58)

IR1:	[okay] (.) so, (.) you're saying on to this morning	101
	what happened this morning. (.) we're talking about (.) saturday the Xth	102
	of {month}. what's happened.	103
IE:	erm, (.) we'd been drinking basically, (.) erm Caroline possibly	104
	have been using drugs, she <u>does</u>, (.) she got some slimming pill- pills on	105
	the black market wherever, (.) aaaaand she came (home w???) <u>I</u> didn't	106
	particularly want to go out. sh- erm but she (??) walk down to the sun tan	107
	(.) lounge (.) where she spends (an hour?) (??) sun bed place, (.) down in	108
	XXX Street, (.) aaand erm so she wanted me to walk (cos it's dark) with	109
	her down there, (.) so I did, (.) and <u>I</u> waited for her in the XXX Arms or	110
	whatever, (.) <u>she</u> has a sunbed, (.) and (.) then she comes into the {abbrev	111
	pub name XXX's} and has a few drinks but she's already been drinking I	112
	think earlier on she says (???) a few glasses of wine or something, (-) and	113
	then, (??) a couple of beers <u>I</u> had a couple of pints of beer as well	114
	whatever, she had some more wine, (-) aaaand (.) we went to the off	115
	licence, got two bottles of wine, (.) went back to the flat, (.) <u>I</u> made	116
	Caroline she had the munchies (as??) she wanted (.) erm, (.) sardi-	117
	sardines on to- no <u>pilchards</u>! on toast [IR1: mhm,] cos we got them from	118
	the co-op yeah? (.) and erm (-) {raised pitch} and we'd had some wine,	119
	(.) whatever, (-) and, (-) and we <u>talked</u> a lot! (.) and then we kinda curled	120
	up on the bed, (.) we kissed, (.) it was consensual kissing, (.) kiss full on,	121
	french kissing, (-) and erm (.) she was (.) in the bed I sat on top of the	122
	bed, (.) and she took her top off, (.) I got <u>in</u> to bed with her, (.) do you	123
	want (go/know) the whole,	124
IR1:	yeah!	125
IE:	[yeah]	126
IR1:	[you] carry on. yep!	127
IE:	I got in to bed with her, (.) aaand erm (.) what happened first? erm (--)	128
	there was a lot of kissing (.) basically at first. (-) thennn (-) ahmm (there)	129
	was oral sex. I (-) had oral sex with her. I (.) it was me (.) giving oral sex	130
	to her,	131
IR1:	mhm,	132

IE:	and she was telling me how to do it how the way she liked it or whatever,	133
	gyrating her hips (.) and (.) whatever, (.) {quiet} er (that's a (.) way of)	134
	(-){louder} aannd erm (-) that was it! and erm (-) then, (??) we were	135
	kissing, (.) it was, (.) like I say it was completely consensual! there was	136
	no effort to push me away or whatever, she didn't say (.) no, stop or	137
	whatever,	138
IR:	mhm	139
	(-)	140
IE:	and (.) her little Jack Russell was by her side, (.) (cos he'd) been kind of	141
	>you know seeing as it's a Jack Russell it doesn't ever (.) go far,< (.) (and	142
	if) I'd been any way kind of aggressive towards her or whatever th- that	143
	Jack Russell would have gone absolutely crazy!	144
IR:	mm	145
IE:	or whatever. no! sh- she was, (.) I then (.) erm after the oral sex she was	146
	moaning, and (.) she was playing with her breasts actually, (.) and feeling	147
	her nipples. (.) while oral sex was going on, (.) and then I inserted my	148
	penis! (.) >in her vagina,< with her consent! (-) there was nothing to	149
	suggest to me (.) no. (.) [IR1: (right?)] I wouldn't have done it (.) if (.) sh-	150
	she had said no, (.) she had said no, (.) that would have been it.	151
IR:	okay,=	152
IE:	=and then, (.) and then, I withdrew. (.) because she said it was painful.	153
IR:	right.	154
IE:	(she said?) because the oral sex had made it painful. (.) I- I (assumed)	155
	>(?????)<. I withdrew and I didn't ejaculate.	156
IR:	okay.	157
IE:	that's (.) what happened.	158