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Abstract:

Haworth, Kate. (Aston University, UK) 'Police interviews as evidence. This chapter will provide an introduction to police-suspect interview discourse, focusing on its role as evidence in the criminal justice system. It will describe its unique nature as a multi-mode, multi-purpose, multi-context form of discourse, and discuss the practical 'real-world' consequences. We will trace the path of interview discourse through the criminal justice system from the original interview itself through to its use as evidence at trial. This process will be illustrated by using data from authentic police interviews conducted by various police forces across England, and extracts from the trial of Dr Harold Shipman. Interview data are used by a variety of different audiences, such as the police, Crown Prosecution Service, trial lawyers, judge and jury, yet each has a different agenda. Through close, detailed data analysis we will consider how the competing demands of both present and future audiences affect the dynamics of the interaction itself, and how well the evidential needs of those future audiences are met. In particular we will compare how the interview meets the comparative needs of Prosecution and Defence at trial. The chapter will also highlight the changes in format which interview data undergo through the judicial process. The original interaction is audio-recorded, and the recording is then converted to a written transcript. This transcript is then converted back to audio format by being read aloud in court. We will consider how this transformation of the data affects its integrity as evidence.

Biodata:

Kate Haworth is a Lecturer in Applied Linguistics and Director of the Centre for Spoken Interaction in Legal Contexts (SILC) at the Institute for Forensic Linguistics, Aston University. She was previously a practising barrister. Her research interests include all aspects of spoken interaction in legal contexts, especially the use of language data as evidence, focusing particularly on investigative interviews. She retains a keen interest in strengthening links between research and professional practice, and provides practitioner training based on her research.

Chapter 10

Police interviews as evidence

Kate Haworth

Introduction

Police-suspect interview discourse has a vital function in the criminal justice process. For the police themselves, the formal interview with a suspect is a key part of any investigation into a criminal offence. In many jurisdictions, the interview later goes on to have a significant further function as a piece of evidence in itself, exhibited and presented in court as part of the prosecution case. Words spoken during the interview thus have a dual context, being produced in both interview room and courtroom, and a correlating dual function, being both investigative and evidential. Yet these contexts and functions are very different, and perhaps even conflicting, as we shall see.

In addition, interview data undergo changes in format en route from interview room to courtroom, substantially affecting the integrity of the evidence. This ‘contamination’ of verbal evidence makes a stark contrast with the forensic treatment of physical evidence, which according to long-accepted principle must be preserved as intact as possible.

This chapter will explore the influence of all these factors on police-suspect interviews in England & Wales (E & W), and will demonstrate that there are potentially serious implications for their role as evidence. It will also serve to illustrate that linguistics offers a powerful set of tools for unpicking exactly how something as socially significant as criminal evidence can be discursively ‘constructed’.

The role of police-suspect interviews

The process begins when the police conduct an interview with someone suspected of committing a criminal offence. In the UK, these interviews are routinely audio recorded, with

video recording additionally used for the most serious cases. An official transcript known as the 'Record of Taped Interview' (ROTI) is then produced from the recording, and so from here on the interview interaction is available in two versions: one spoken and one written. In practice, however, reliance is placed almost entirely upon the written version rather than the recording.

The interview forms an important part of the initial police investigation. The interviewee may have admitted involvement, or pointed the investigation in a different direction. Witnesses and other suspects will also be interviewed at this stage, and information passed on in any one of these interviews may be crucial in guiding the conduct of the others.

The decision about whether to charge the interviewee, and if so with what offence(s), is generally taken by the Crown Prosecution Service (CPS), and the interview is a key part of the information on which they base their charging decision. This decision can be a delicate one: for example, the distinction between various levels of offence may depend solely on proving the intention, knowledge or awareness of the perpetrator (the *mens rea* element of an offence), but the consequences in terms of the length of the sentence can be enormous.

Notable examples are the distinction between murder and manslaughter and between possession of drugs and possession with intent to supply. It is of course extremely difficult to get 'inside the mind' of the suspect in order to prove this element of an offence, and so their own words at interview can be an extremely important source of evidence.

If the CPS decides to proceed, the interviewee becomes a 'defendant' and the matter will go to trial – unless, of course, a guilty plea is entered. The interview now becomes part of the package of courtroom evidence against the defendant. In some cases the transcript will be

edited further at this stage by agreement between the prosecution and the defence, for example to remove inadmissible or prejudicial material which should not be seen by the court.

The manner in which interview data are presented to the court is particularly interesting. Technically, the actual piece of evidence is the recording, not the transcript (*R v. Rampling* [1987]), but transcripts are admissible as ‘copies’ of the original evidence (s.133 & 134(1) Criminal Justice Act 2003). What happens in practice is that the recording is rarely played, and reliance is placed solely on the transcript. The rather bizarre custom is for the transcript to be “performed” by being read out loud. Since the interview forms part of the prosecution case, the normal procedure is for a police witness to act as the interviewer, and the prosecution lawyer to take the part of the defendant interviewee. Although copies of the transcript are also made available to the court, it seems highly likely that the oral performance will become the predominant version in the minds of those present.

Lawyers for both prosecution and defence use the interview material in whatever way they can to support their case. Comparisons are commonly made between what a suspect says at trial and what they said (or at least are *reported* to have said) at interview. The defence will seek to use the earlier interview as evidence of the defendant’s consistency; the prosecution will point to any differences as a sign of inconsistency, and therefore dishonesty and potential guilt.

Further, an important legal provision – s.34 Criminal Justice and Public Order Act (CJPOA) 1994 – allows the court to ‘draw inferences’ if a defendant seeks to rely on something in their defence at trial which they did not bring up during earlier questioning, including their police

interview. As Bucke, Street and 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). This provision is predominantly aimed at those who invoke their ‘right to silence’ and make no comment at interview, but it equally affects every suspect who did choose to answer questions but, for whatever reason, ‘failed to mention’ something which later becomes part of their defence case.

The evidential function of the police-suspect interview is therefore extremely important. It can be observed in action in the following example, taken from the trial of Dr Harold Shipman. Here, Shipman (W) is being cross-examined by prosecution counsel (Pr). (The transcription, including the punctuation, is that of the official court transcript, with the exception that [...] indicates data omitted here by the author.)

(1) Interview evidence in court

Pr 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?

W It reflects what was said on the day, yes.

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

W No.

[Counsel reads long extracts from the interview]

Pr [...] 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?

W No, I don't think it is.

Pr [...] Do you agree you gave one version to the police and a different one today?

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

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

W Because today I am more sane.

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

W No.

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

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

(Trial transcript, Day 34)

Aside from the many other fascinating elements of this exchange, it demonstrates the importance of the interview as a piece of evidence in the criminal process. This is, in one sense, the ultimate purpose for the interview – indeed Baldwin (1993) comments that '[i]nstead of a search for truth, it is much more realistic to see interviews as mechanisms directed towards the 'construction of proof'' (327). It can also be seen that the interview's

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.

Some problems

The treatment of interview discourse just outlined will ring several alarm bells for anyone who has studied spoken discourse from a linguistic perspective, as it is based on several questionable assumptions.

Firstly, for interviews to be legitimately used as evidence, it is essential to be able to establish exactly what was said during the original interaction. This is entirely dependent on the adequacy of the format in which they are presented. The various different incarnations of the interview are treated by the legal system as if changes in format have no effect on the content, but this is surely not the case.

Secondly, direct comparisons between what was said at interview and at trial assume that an honest person will give exactly the same version of events on two different occasions, even when elicited by a questioner with a very different agenda, in front of a different audience, in a different context and after the passage of some considerable time, with no doubt several re-tellings in between. Again, it is erroneous to assume that these factors will not have any effect.

Thirdly, the current system presupposes an ideal scenario where a police interviewer asks questions about an incident and the interviewee, in replying to those questions, has every opportunity to say whatever they wish. However, given the nature of police-suspect 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 participants, this ideal scenario cannot exist.

In order to challenge some of these assumptions we shall first consider the findings of research into the influence of format, context and audience on interaction, and then illustrate the problems with examples from police-suspect interviews.

Format

The differences between spoken and written modes of language are long established in linguistic research (e.g. Biber 1988, Halliday 1989). This therefore presents a particular set of problems when attempting to convert any text from one format to the other. This difficulty has been fully appreciated by those linguists who need to convert spoken data to a written format to make them accessible to their readers, and hence has become an important methodological consideration in this field (e.g. Ochs 1979; Bucholtz 2000, 2007).

However, written transcriptions of spoken data are widely used in the criminal justice process without any recognition of these challenges. This has been given some attention by linguists with an 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 Eades (1996) and Tiersma (1999: 175-9). Fraser’s research focuses on the transcription of covert recordings (see e.g. Fraser 2003, 2014, 2018), and the serious consequences that can ensue when such transcriptions are used as evidence, especially in the case of indistinct recordings. (See also Shuy 1993, 1998; Coulthard and Johnson 2017: 130-33; Gibbons 2003: 27-35.) All these studies demonstrate

the difficult representational choices facing those transcribing spoken data for use in legal contexts, and, troublingly, highlight the many inadequacies in current practice.

However, it must be acknowledged that current E&W practice is fairly unusual in even attempting to produce verbatim transcripts of police-suspect interviews from audio recordings. Prior to the introduction of mandatory tape-recording in 1992 (Police and Criminal Evidence Act 1984), formal written records were produced by the interviewers themselves from contemporaneous notes or even memory. Not surprisingly, these have been shown to be poor representations of the interaction which actually took place (Coulthard 1996, 2002). Worryingly, this is still the method used in E&W for obtaining witness statements (see Rock 2001).

This practice is also still used for police-suspect interviews in other jurisdictions, despite the fact that, again, linguists have been pointing out the problems for many years. In a Swedish study, Jönsson & Linell (1991) highlight substantial differences between the account produced orally by a suspect and the corresponding written report produced by the interviewer, which they link with differences between spoken and written language. Gibbons (2001: 32) makes similar observations of witness interviews in Chilean *audiencias*, and comments: '[t]he question we have to ask is whether the judicial process, and hence justice itself, is threatened by the fact that the judge receives a digested version of the evidence'. Komter's work has long shed light on these processes in the Dutch system (e.g. 2002, 2006, 2019), and in the same jurisdiction van Charldorp (2013) demonstrates the tangible interference that the production of a contemporaneous written record has on the interaction as it happens. (See also Eades (1995) and Gibbons (1995) on Australian cases.) It is significant

that the transformations and inaccuracies observed in all these studies nearly always assist the prosecution, not the defence (see also Bucholtz 2009).

Taken together, these studies highlight serious deficiencies in the production of written records of spoken interaction across various legal contexts and jurisdictions over a considerable number of years. The current E&W system of recording and transcribing police-suspect interviews is a significant advance compared with previous practice and with other jurisdictions, but unfortunately this appears to have led to an assumption that problems no longer exist.

Further, in the E&W system the interview data are not only converted from spoken to written format, but also from written back into spoken when the transcript is read out loud in the courtroom. This process has received considerably less academic scrutiny (although see Haworth 2018: 443-5), but it once again cannot be described as a neutral, problem-free exercise. This is especially true given that the oral presentation is performed only by representatives of the prosecution.

We will now look at an example which demonstrates how the format changes undergone by police interview data affect their evidential integrity (Haworth 2006: 757). It relates to a crucial point in the Harold Shipman trial. It must be acknowledged that the data used here are certainly open to question for exactly the reasons just outlined, given that we must rely on the official trial transcript, but it is nonetheless a striking illustration.

Shipman was a doctor accused of murdering a large number of his patients, often by administering fatal overdoses of diamorphine. In response to a specific question during one of

his police interviews, he denied that he kept any dangerous drugs, yet diamorphine was found at his home during a search. Not only did this give him the means to commit the murders, but this denial at interview proved that he had lied to the police. This significantly undermined his honesty and integrity, an aspect which was relied on heavily by the defence during the trial, tapping into the image of trust and respectability typically accorded to family doctors. This deceitful response at interview was therefore hugely significant, as emphasised repeatedly by the prosecution. However, it appears that errors crept into the version presented in court. According to my own transcription from the audio recording, the relevant exchange is as follows:

(2a) Author's 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 controlled drugs

This is a very straightforward – and untrue – denial. Yet the official police transcript puts this differently:

(2b) Police transcript

IE *I've given your drugs.* Are you talking about controlled drugs?

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, during cross-examination the prosecution challenge Shipman about this point, and use exactly this part of the interview to do so. However, the version ‘quoted’ by prosecution counsel is different again:

(2c) Prosecution version

IE *I have given you all the drugs.* Are you talking about controlled drugs?

(Trial transcript, Day 32)

Compared to the police transcript, this contains the significant addition of ‘all’. This version is much more helpful to the prosecution, in that this *would* still amount to a lie: Shipman cannot have given the police *all* the drugs if more were then found at his house. I am certainly not suggesting that this alteration was deliberate, but nevertheless it is certainly helpful to the agenda of the person quoting the ‘evidence’.

This example clearly and concisely demonstrates the transformations which interview data can undergo, stage by stage, from interview room to courtroom. It shows that by the time the process reached the crucial stage where the jury were considering the interview as evidence in deciding on their verdict, the content was significantly different from what Shipman actually said in his interview. Indeed, following a more detailed exposition of this process of data transformation, Haworth (2018: 19) concludes that the criminal justice system ‘currently institutionally embeds contamination into the processing of interview data, without any apparent concern for the evidential consequences’.

Context

As we have seen, a significant feature of police interview discourse is that it does not simply occur in the interview room, but is reproduced and recontextualised from interview room to courtroom (see e.g. Komter 2002). This recontextualisation is not unique to police interviews, however, and has been investigated as a feature of some other institutional, and especially legal, texts.

Walker (1986) considers a similar process of taking original data out of context and putting them to a slightly different legal use, namely by judges assessing transcripts of witness evidence when determining appeals. This demonstrates the significance of the chosen representation of certain contextual language features in the transcripts (e.g. pauses, ‘ungrammatical speech’: Walker 1986: 418) and their influence on the judges’ decision-making process. (See also Coulthard 1996.) In a rather different take on the same underlying phenomenon, Aronsson (1991) considers the ‘recycling’ of information in various institutional processes, and highlights the resulting misinterpretation and ‘miscommunication’ which can result. (See also Jönsson & Linell 1991). There is, of course, a strong link between the recontextualisation of the data and the corresponding changes in format just discussed.

This idea of ‘messages travel[ling] across sequences of communication situations’ (Jönsson & Linell 1991: 422) links with the concept of ‘trans-contextuality’, as developed in the work of Briggs and Blommaert. 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. He traces what is described 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. This highlights the strong influence of the wider judicial sequence in which the relevant interaction occurred over the content of the statement produced.

Blommaert (2001) addresses similar processes involving narratives of African asylum-seekers in Belgium. He examines how the asylum-seekers' stories, as given in their original interview with immigration officials, are then institutionally processed: '[t]he 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' (438). Blommaert shows that these processes go further than simply questions of transcription and format change, emphasising the significant ramifications of the recontextualisations, while also raising important questions of ownership and control over the asylum seekers' stories. It is important to recognise the inequality in access to the transformative processes undergone by such data. Just as with Blommaert's asylum-seekers, police interviewees lose all control over the subsequent 'trajectory' of their words as soon as they have been uttered.

Picking up these concepts of trans-contextuality, 'text trajectories' and intertextuality in the legal process, Heffer, Rock & Conley (2013: 13) collect together various studies of 'textual travels in the law', encompassing a wide range of contexts and data types, and adding further weight to the argument that such treatment of linguistic data almost inevitably results in 'the loss or distortion of the lay voice as it travels through the legal system'.

All these studies demonstrate the importance of looking beyond the immediate site of production of institutional discourse, and of seeing such texts as just one part of much wider

processes. This is clearly true of police interview discourse and its important role as criminal evidence. The next step is to consider the influence of those wider processes and institutional functions over the interview interaction itself.

Audience

A useful starting point for such an analysis is a consideration of the effect of audience on interaction. It is a well-established principle, from sociolinguistic studies of speaker style (Giles and Powesland 1975, Bell 1984) to studies of the narrative construction of identity (e.g. Schiffrin 1996), that speakers adapt their talk according to the intended audience. Indeed Sacks, Schegloff and Jefferson (1974: 727) describe 'recipient design' as 'perhaps the most general principle which particularizes conversational interactions'.

But the recontextualisation of police-suspect interview interaction means that it has several different audiences – from those initially present, to lawyers preparing their cases, to the judge and jury of the courtroom – each of which has a slightly different purpose for it. Much depends on how successfully the participants meet the needs of all those audiences during the interview itself. Failure to do so can lead to dire consequences for an interviewee, but is it reasonable to expect them to cater for so many diverse needs? By the same token, how challenging a task is this for police interviewers to manage successfully?

There are some parallels with courtroom discourse, where interaction between questioner and witness is to a large extent a display for the 'overhearing audience' of the jury (Drew 1992). However, although the courtroom jury is arguably also the most important audience for police-suspect interview discourse, they are of course not present at the original interaction.

It is therefore instructive to consider another context with parallels in this respect. In broadcast news interviews, the presence of an overhearing, non-present and often temporally remote audience is an essential feature, and hence has been the focus of some research (e.g. Heritage 1985, Greatbatch 1988, Clayman and Heritage 2002). This has shown that in that context the overhearing audience is by far the most influential in discursive terms. News interviewers use 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: 100).

However, despite the similarities between these contexts, there are some important distinctions. 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). Yet the police interviewer *is* an intended primary recipient: they are part of the team investigating the offence in question, and may be directly involved in decisions about charging and detaining the interviewee immediately consequent to the interview. 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. In addition, the role would seem to demand neutrality, yet the interviewer's institutional position as a member of the police force is clearly anything but.

Further, in broadcast interviews the participants are under no illusion regarding the true purpose of the interaction or the primary intended audience. It is less clear whether that can be said of police interviewees. They are made fully aware that they are being recorded and

therefore 'overheard', and will probably have a basic grasp of the legal process which may ensue, but this is not the same as knowing the identity and purpose of those who will listen to that recording. On the other hand, the interviewers' relationship with the future audiences is completely different. They belong to the same institutional system, and it is part of their professional role to be aware of the subsequent evidential use of the interview. This is therefore an important distinction between the interviewer's and interviewee's positions. (For a more detailed discussion, see Haworth 2013.)

Data analysis

We will now look at examples from police-suspect interviews to observe the influence of all these aspects in the interaction itself, and how this may affect its future role as evidence.

(Transcripts here are the researcher's own.)

(3) Interview 5.11.2/1: Assault PC

IR so the next question is would you agree that apart from meself and y-
 yers- yourself, there is no-one else present in this [room.]

IE [mm.] yep.

The interviewer's question here is entirely redundant for the purposes of himself and the interviewee, but is a method of providing information purely for the future audiences of the interview. It is reminiscent of a magician asking a person on stage with him to confirm, for the more distant audience, that there is no rabbit in his hat. It is, of course, an example of exactly the same discursive phenomenon.

Stokoe & Edwards (2008: 93) document similar ‘silly questions’ in police-suspect interviews, especially in connection with ‘intentionality’, or *mens rea*. For example:

(4) ‘Silly question’ (Stokoe & Edwards 2008: 90)

IR Did Melvin give you permission to throw the hammer at his front door?

(pause)

IE NO!!

Such questions have a clear evidential function, attempting to establish ‘on record’ an essential element of the relevant criminal offence. As Stokoe & Edwards (2008: 108) comment, ‘[u]nder the guise of ‘silly’ or ‘obvious’ questions, police officers work to obtain, for the record and for later use in court, something very serious indeed’.

These examples demonstrate interviewers’ clear awareness of, and accommodation to, the future overhearing audiences and the future evidential value of the interview. On the other hand, the following illustrate that interviewees often have no such awareness.

(5) Interview 5.11.2/1: Assault PC

- 1 IR the officer’s received injuries that amount to, what we call ABH [...] and I’ll
- 2 tell you what they are, graze to the left right elbow, graze to the lar- left
- 3 right knees, graze to the left right rear shoulder, soreness, at bruising below
- 4 right breast and to the nip of his er nobe on his- node on his er on his chest.
- 5 (.) okay?
- 6 IE (there) look there I’ve got some
- 7 IR yeah, [(? what you) s-]

8 IE [from falling on] the floor [(?)]
9 IR [(I hear] what you're saying, but the
10 officer's saying, that those (.) those (.) number of bruising occurred, whilst
11 he was effectively arresting you. (.) and during the struggle that ensued.

This interview concerns offences relating to assaulting a police officer while being arrested. But the circumstances surrounding the attempted arrest are confused, with a number of different people involved and the interviewee himself receiving injuries. Yet despite the evidential importance of the information, there is a striking contrast between the amount of detail provided about the officer's injuries and those of the interviewee, who merely invites the interviewer to 'look there' (line 6).

This use of context-dependent deixis displays the interviewee's lack of recognition of the interview's subsequent audio-only format, and his failure to take into account the needs of any non-present audience. It also demonstrates his focus on the interviewer as sole audience for his talk: 'look' can have only one intended recipient here. It is not even clear (to anyone not present) what he means by 'some' – the interviewer's previous turn could provide 'grazes', 'bruising' or even the general 'injuries' as the intended referent. There is thus no evidential value whatsoever to the interviewee's response here.

Yet despite this, the interviewer fails to pursue or provide the missing information for his future audiences. By not establishing evidence of the interviewee's injuries here, the interviewer leaves the defence potentially disadvantaged in any claim of self-defence at a later stage, due to s.34 CJPOA 1994. However, it also leaves a potential gap in the evidence available for future prosecution audiences, particularly in relation to the charging decision.

The following is a further example of what can happen when an interviewee fails to take the future audiences and their purposes into consideration. The interviewee has been shown photographs taken from CCTV footage of the scene of a burglary, showing the perpetrator. The interviewer is alleging that this is the interviewee, yet he fails to make an adequate denial.

(6) Interview 2.26: Burglary

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.

What is striking about this example is that it shows an interviewee being explicitly aware of the future court context, while simultaneously failing to consider that those who will be present in that context are also an audience for his current talk. In other words, he has overlooked the multi-purpose, trans-contextual nature of police interview discourse, and is treating the interview as purely investigative, not evidential. His point here is that the photos are insufficient on their own to convict him, which may well have been the case. Yet I would argue that for a later court audience attempting to reach a verdict, the photos *combined with these responses at interview* are almost certainly enough, regardless of the quality of the images. He has effectively incriminated himself.

Prosecution v Defence

Thus far we have seen that interviewers do address the future audiences and their purposes during interview interaction. I now wish to refine this observation and suggest that they are not addressing *all* future audiences, but that their professional position will make them focus mainly on collating evidence for the future *prosecution* audiences – by which I mean their fellow investigating officers, the CPS, and courtroom prosecutors.

Meanwhile if interviewees focus only on the *interviewer* as their audience, they are likely to take their cue from them in terms of tailoring the content of their utterances. It is also the case that interviewers, with their more powerful institutional and discursive role as questioner, have considerably more control over interview interaction than do interviewees (e.g.

Greatbatch 1986). Putting all these factors together, there is a strong likelihood that the account elicited from an interviewee during an interview will end up being tailored much more towards the future *prosecution* audiences, while their own *defence* needs go unmet or even undermined. Indeed, research on police-suspect interview discourse has almost universally shown that the prosecution version of events is privileged over the suspect's story (e.g. Auburn et al. 1995, Heydon 2005, esp. 116ff.; although see Haworth 2017 for an apparently anomalous case involving an interview with a rape suspect).

This has potentially serious ramifications for the assumption built into s.34 CJPOA that an omission of supporting material for the defence at interview is an indication of guilt. It can have other equally serious consequences in terms of the evidence produced through interview interaction, as shown by the example below. As noted earlier, key elements of a prosecution case often depend on the difficult task of providing evidence of a suspect's knowledge and intentions. In the case already discussed above, relating to assaulting a police officer, a more serious offence is potentially available, namely 'Assault *with intent to resist arrest*' (s.38 OAPA 1861). This has a maximum sentence of two years' custody, compared to six months for a basic 'Assault on a constable' (s.89(1) Police Act 1996). The interviewer's questioning here is clearly designed to elicit – indeed to *create* – evidence regarding this specific offence element of intent, in the form of the interviewee's response.

(7) Interview 5.11.2/1: Assault PC

- 1 IR right when he grabbed hold of yer,
- 2 IE yep
- 3 IR why- w- what did you believe he was doing when he grabbed hold of yer.

4 IE what, when he was- I thought he was trying to hurt me at the end of the
5 day- I was just angry, I didn't know what was going off [(or)]
6 IR [no.] when the
7 officer, grabbed hold of yer,
8 IE yeah
9 IR cos earlier on you actually said at the beginning, that when the
10 off[icer grabbed hold of yer]
11 IE [I thought he was just getting me out of the garden.]
12 IR you thought that he was going to arrest
13 [yer. and you didn't want to] be arrest[ed.]
14 IE [yeah at first yeah.] [I didn't] wanna.
15 IR [(?)]
16 IE [cos] I hadn't done owt wrong at the end of the [day.]
17 IR [so] am I right making
18 the assumption then, that at the point that he grabbed hold of yer, you
19 thought you were g- being arrested.=
20 IE =yeah.
21 IR and you didn't want to be ar[rested so-]
22 IE [I'm not gonna lie] yeah.
23 IR right. okay th-
24 IE I did [r-]
25 IR [what] I'm asking you James, is to keep it straight.
26 IE yeah I did resist arrest cos I didn't want to get arrested.

The sequence begins with the interviewer asking what the interviewee believed was going on at the point that the officer grabbed him. The interviewee's initial response raises two significant points for the defence. Firstly, he states he thought the officer was 'trying to hurt me' (line 4), which supports a potential claim of self-defence. Secondly, he says that he 'didn't know what was going off' (line 5), which indicates that he didn't realise that he was being arrested, which would support a defence to the s.38 offence.

Yet the interviewer does not pick up on either of these aspects, instead interrupting with 'no' (line 6), indicating that this is not the response he wanted. He then suggests an alternative answer, which instead fits a finding of guilt: 'you thought that he was going to arrest yer. and you didn't want to be arrested' (lines 12-13). Significantly, the interviewee does then agree with this proposition, actually echoing the interviewer's words ('you didn't want to', 'I didn't wanna': lines 13-14), despite the fact that this contradicts his immediately prior utterance (line 11), and his original response to the question (lines 4-5). Having received this preferable response, the interviewer moves to a formulation which contains none of the elements of the interviewee's own unprompted utterances, but once again explicitly spells out the elements which would support a prosecution case (lines 17-21). Again, the interviewee agrees with this (line 22).

This sequence is rounded off with a very interesting exchange. The interviewer asks the interviewee to 'keep it straight' (line 25). In response, the interviewee himself provides a form of summary (line 26), but includes only those points repeatedly stressed by the interviewer, and none of those which he raised independently. He also notably uses offence terminology: 'resist arrest'. It is effectively a confession to the more serious offence. In the space of these few exchanges, then, the interviewee has gone from making valid points

supporting his defence, to making damaging admissions. What the analysis shows is how this transformation from defence to prosecution evidence is achieved discursively by the interviewer.

Discussion: interviews as evidence

This chapter has shown that police-suspect interviews have a significant role as evidence in the criminal justice process. We have also observed the tension created by their dual role as being both investigative and evidential. Interviewers are professionally attuned to the subsequent evidential role of the interview, leading to an apparent focus on the needs of the future prosecution audiences, and an inclination not to pursue 'on record' evidence which may support a defence. At the same time, interviewees appear to orientate more to its initial role as part of the preliminary police investigation, and to tailor their account according to cues from the interviewer as sole audience for their talk, often to their cost. This can lead to the interview simply confirming whatever version of events the interviewers are currently working on, thus undermining both its investigative and evidential function.

We have also seen that interview data undergo various transformations in format, raising serious questions about evidential consistency. 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.

Overall, linguistic research suggests that, even with the many current safeguards, police-suspect interviews as presented as evidence are still not accurate and faithful representations of the interviewee's words, nor do they present interviewees with a neutral opportunity to put forward their own full version of events. And 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.

Further reading

Bell, A. (1984) 'Language style as audience design', *Language in Society* 13: 145-204. (A useful model for the influence of various audiences on interaction.)

Haworth, K. (2018) 'Tapes, transcripts and trials: The routine contamination of police interview evidence'. *International Journal of Evidence & Proof* 22(4): 428-450. (A more detailed analysis of the transformative processes undergone by U.K. police interview data.)

Heydon, G. (2005) *The Language of Police Interviewing: a critical analysis*, Basingstoke: Palgrave. (Extended linguistic analysis of police-suspect interview discourse, using Australian data.)

Komter, M.L. (2019) *The Suspect's Statement: Talk and text in the criminal process*. Cambridge: Cambridge University Press. (Extended illustration of the evidential use of police-suspect interview records in the Dutch (Roman Law) system.)

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